

1 TITLE 20 ENVIRONMENTAL PROTECTION

2
3 CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL
4 BOARD

5
6 PART 72 HEALTH, ENVIRONMENTAL AND EQUITY IMPACTS

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8 20.11.72.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board,
9 P.O. Board, P.O. Box 1293 Albuquerque, New Mexico 87102.

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11 20.11.72.2 SCOPE: 20.11.72 applies to any applicant seeking a permit for an emissions source
12 subject to Chapter 20.11 NMAC.

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14 20.11.72.3 STATUTORY AUTHORITY: 20.11.72 is adopted pursuant to the authority provided
15 in the New Mexico Air Quality Control Act, NMSA 1978 §§ 74-2-4, 74-2-5(C), as amended; the
16 Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5, Sections 4 and 5;
17 and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque, 1994 §
18 9-5-1-4.

19
20 20.11.72.4 DURATION: Permanent.

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22 20.11.72.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of a
23 section.

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25 20.11.72.6 OBJECTIVE: Consistent with the Department’s authority to prevent and abate air
26 pollution, the Department shall ensure that the health, environmental and equity impacts of
27 combined air emissions sources are considered and addressed by the Department’s permitting
28 process such that no neighborhood or population group bears the disproportionate health impacts
29 of air pollution or disproportionate concentration of emitting facilities and that all permitting
30 complies with the goals of the National Integrated Urban Air Toxics Strategy and in the
31 furtherance of environmental justice.

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33 20.11.72.7 DEFINITIONS: In addition to the definitions in this Section, the definitions in
34 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the
35 definition in this Part shall govern.

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37 A. “Applicant” means the person applying for a permit under the Air Quality Control
38 Act and Chapter 20, Part 11 of the New Mexico Administrative Code.
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- 1 B. “Criteria Air Pollutants” means the air pollutants for which there are national
2 ambient air standards provided for in 40 C.F.R. Part 50.
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- 4 C. “Community-based Participatory Research” means a collaborative approach to
5 research that equitably involves community members, organizational
6 representatives, and researchers in all aspects of the research process. The
7 partners contribute unique strengths and shared responsibilities to enhance
8 understanding of a given phenomenon and the social and cultural dynamics of the
9 community, and integrate the knowledge gained with action to improve the health
10 and well-being of community members.
11
- 12 D. “Consultation” means to cooperate in good faith with the Indigenous peoples
13 concerned through their own representative institutions in order to obtain their
14 free and informed consent prior to the approval of any project affecting their lands
15 or territories and other resources.
16
- 17 E. “Cultural Resources” means a structure, place, site, land use or object having
18 historic, archaeological, scientific, architectural or other cultural significance.
19
- 20 F. “Cumulative Impacts” or “Cumulative Effects” means the exposures, public
21 health and environmental effects from the combined emissions and discharges in
22 a geographic area, including air emissions from all existing and reasonably
23 foreseeable sources, routinely, accidentally or otherwise released and non-
24 chemical stressors. Cumulative Impacts shall take into account sensitive
25 populations and socio-economic factors.
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- 27 G. “EJSCREEN” means the United States Environmental Protection Agency
28 Environmental Justice Screening and Mapping tool.
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- 30 H. “Emissions or Discharges” means chemical or physical agents released in the
31 environment, routinely or accidentally, continuously, intermittently, or cyclically.
32
- 33 I. “Environmental Effects” means the adverse environmental conditions caused by
34 emissions, including various aspects of environmental degradation, ecological
35 effects and threat to environment and communities. These effects may be direct,
36 indirect, immediate or delayed.
37
- 38 J. “Exposure” means direct or indirect contact of any magnitude or dose, through
39 inhalation, ingestion or skin absorption, with emissions or pollution, transported

1 through the air, water or soil. Contact may be continuous, discontinuous but
2 regular, or intermittent.

3
4 K. “Hazardous Air Pollutants” means those air pollutants designated pursuant to 40
5 C.F.R. Part 63.

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7 L. “Health” means a state of complete, physical, mental and social well-being and
8 not merely the absence of disease or infirmity;

9
10 M. “Impacted Census Tract” means the census tract where the permitted facility is
11 proposed to be located.

12
13 N. “Overburdened community” means a census tract and all contiguous census tracts
14 where the combined permitted emissions from all sources are 10 tons per year of
15 Hazardous Air Pollutants or 25 tons per year of combined criteria pollutants and
16 Hazardous Air Pollutants.

17
18 O. “Pollution” means the emission, except emission that occurs in nature, into the
19 outdoor atmosphere of one or more air contaminants in quantities and of a
20 duration that may with reasonable probability injure human health or animal or
21 plant life or as may unreasonably interfere with the public welfare, visibility or
22 the reasonable use of property.

23
24 P. “Public Health Effects” means diseases and other health conditions influenced by
25 exposure to pollutants or emissions, including but not limited to asthma, lung
26 cancer, developmental effects, neurological effects, psychological effects, heat-
27 related illness and miscarriage.

28
29 Q. “Sources” means any stationary source, or any other source of air emissions, that
30 must comply with an applicable requirement.

31
32 R. “Stressor” means an factor that contributes to increased vulnerability to
33 environmental health harms, including everything listed in 20.11.72.8.A

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35 20.11.72.8 PRE-APPLICATION REQUIREMENT: An applicant seeking a permit pursuant to
36 the Air Quality Control Act shall contact the department in writing and request a pre-application
37 meeting for information regarding the contents of a health, environment and equity impact
38 analysis and the health, environment and equity impact analysis process. The meeting may
39 include discussion of approved emissions factors and control efficiencies, air dispersion
40 modeling guidelines, department policies, air quality permit fees, public notice requirements and

1 regulatory timelines. If the meeting includes discussion of approved emission factors and control
2 efficiencies, air dispersion modeling guidelines, department policies, air quality permit fees,
3 public notice requirements and regulatory timelines, the meeting shall fulfill the requirements of
4 20.11.41.13.A NMAC.

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6 20.11.72.9 HEALTH, ENVIRONMENTAL AND EQUITY IMPACTS ANALYSIS: Evaluation
7 of the cumulative or disparate impacts of air emissions is intended to enable the Department to
8 develop a complete understanding of the current and future effects of permitting actions on
9 human health, plant and animal life, public welfare or reasonable use of property in Bernalillo
10 County and the City of Albuquerque, to evaluate and recognize the differences, needs,
11 requirements and conditions within the County and parts thereof, and to make permitting
12 decisions that meaningfully consider such cumulative or disparate impacts. This section is
13 intended to supplement existing permitting requirements in this Chapter and nothing in this
14 section is intended to limit the application of the existing requirements associated with
15 permitting actions and permits issued pursuant to Title 20, Chapter 11 of the New Mexico
16 Administrative Code.

17
18 A. **Disparate Impacts Screening.** The Applicant shall evaluate the census tract in which its
19 operation is proposed and all contiguous census tracts to determine whether the proposed
20 operation will impact an overburdened community. If the operation is proposed in an
21 overburdened community, the Applicant shall gather and disclose the following
22 information:

- 23
- 24 1. Adult asthma rates in the impacted census tract and all contiguous census
- 25 tracts compared to the County average; and
- 26 2. Child asthma rates in the impacted census tract and all contiguous census
- 27 tracts compared to the County average; and
- 28 3. The percentage of adults over the age of 65 in the impacted census tract
- 29 and all contiguous census tracts compared to the County average; and
- 30 4. The percentage of children under the age of 18 in the impacted census
- 31 tract and all contiguous census tracts compared to the County average; and
- 32 5. Emergency department admissions rates in the impacted census tract and
- 33 all contiguous census tracts compared to the County average; and
- 34 6. Cancer rates or cancer mortality rates in the impacted census tract and all
- 35 contiguous census tracts compared to the County average; and
- 36 7. Cardiovascular disease incidence or cardiovascular disease mortality rates
- 37 in the impacted census tract and all contiguous census tracts compared to
- 38 the County average; and

- 1 8. Autoimmune disease incidence or autoimmune disease mortality rate in
2 the impacted census tract and all contiguous census tracts compared to the
3 County average; and
- 4 9. Overall mortality rate in the impacted census tract and all contiguous
5 census tracts compared to the County average.

6

7 B. **Application Denial.** The Department shall deny the permit application if the location of
8 the proposed project meets the definition of “overburdened community” and exceeds the
9 County average for any of the stressors listed in Section 20.11.72.9.A.

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11 C. **Health, Environment and Equity Impact Analysis and Report.** If the Department is
12 not required to deny the permit application pursuant to 20.11.72.9.B and the proposed
13 operation will be in a location that meets the definition of “overburdened community,”
14 the Applicant shall prepare a Health, Environment and Equity Impact Report. The
15 Applicant shall review the impacted census tract and all contiguous census tracts and
16 prepare a report as required by this Section. If no data are available for a listed stressor,
17 the Applicant must indicate “no data” in the report and disclose which data source or
18 sources were consulted. For each stressor, the Applicant must indicate where the relied
19 upon data was found, as well as the information comparing the analyzed census tract to
20 the county-wide percentage, state-wide percentage, and nation-wide percentage for each
21 stressor listed below, where such data is available. Any data relied upon must be from
22 either the United States Environmental Protection Agency, the United States Census
23 Bureau, the United States Centers for Disease Control and Prevention, or the New
24 Mexico Department of Health.

- 25
- 26 1. Languages spoken at home, other than English, expressed as percentages;
27 and
- 28 2. Race, expressed as percentages; and
- 29 3. Ethnicity, expressed as percentages; and
- 30 4. Median income; and
- 31 5. Tons per year of permitted emissions; and
- 32 6. Percentage of the population living more than one mile from a grocery
33 store; and
- 34 7. Extreme heat risk, expressed as the number of days where the temperature
35 is at least ten degrees over the County average; and
- 36 8. Unemployment rate; and
- 37 9. Education rate; and
- 38 10. Housing cost burden, expressed as a percentage of a household’s gross
39 monthly income spent on housing; and

- 1 11. A description of the risk posed to cultural resources and cultural practices;
2 and
- 3 12. A description of the wildfire risk; and
- 4 13. Certification from the appropriate planning or zoning authority that the
5 land where the proposed operation will be located is appropriately zoned
6 for the proposed activity; and
- 7 14. Air dispersion modeling. The Applicant shall run its air dispersion
8 modeling according to up-to-date United States Environmental Protection
9 Agency guidelines, including but not limited to:
- 10 a. Refined air dispersion modeling grid spacing no greater than 25
11 meters at the fence line; and
- 12 b. The use of a three-year background concentration for comparison
13 with criteria pollutants; and
- 14 c. The use of data for source specific emissions:
- 15 i. If the source is an existing source, the Applicant must use
16 data from Continuous Emissions Monitoring Systems or
17 stack testing to determine expected emissions; or
- 18 ii. If the source is new, the Applicant must rely on data from
19 vendor guarantees and stack test data from similar facilities
20 to determine expected emissions; and
- 21 d. The Applicant shall not use AP-42 emissions factors unless the
22 Applicant can demonstrate by a preponderance of the evidence that
23 there is no feasible alternative; and
- 24 e. If the Applicant demonstrates that no feasible alternative to the use
25 of AP-42 emissions factors exists, the Applicant shall use the most
26 conservative data for the emissions factors chosen as a last resort;
27 and
- 28 f. The Applicant must combine all emissions sources within the
29 overburdened community to assess whether the cumulative impact
30 exceeds the NAAQS at any location outside the Applicant's
31 property boundary; and
- 32 15. Additional information regarding the following quality of life impacts:
- 33 a. Potential for odor generation; and
- 34 b. Potential for dust generation; and
- 35 c. Potential for noise generation; and
- 36 d. Potential for proliferation of other emissions sources in the area;
37 and
- 38 16. Compliance history of the Applicant, including all states in which the
39 Applicant, or parent or affiliated corporation, partnership, or other
40 affiliated legal entity operates; and

1 17. Proposed emissions control measures and operation and maintenance
2 procedures to ensure long-term compliance with permit conditions.

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4 D. **Public Hearing.** The Department shall hold a public hearing on the Applicant’s Health,
5 Environment and Equity Impact report consistent with the requirements of 20.11.41.15
6 NMAC, except that:

- 7
8 1. The Department shall follow the notice and comment requirements
9 applicable to the relevant permit application and this section. The
10 Applicant shall be responsible for arranging and paying all expenses of the
11 Public Information Hearing under this part.
12 2. At the public hearing, Community testimony, community based
13 participatory research data and community air monitoring data shall be
14 given the same weight as technical expertise provided by the Department
15 and the Applicant.

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17 E. **Application Denial.** The Department shall deny the application if:

- 18
19 1. The Health, Environment and Equity Impact Report and analysis indicates
20 the facility will violate the NAAQS; or
21 2. The Health, Environment and Equity Impact Report and analysis indicates
22 the facility will cause the total hazardous air pollutant emissions in the
23 impacted census tract and all contiguous census tracts to exceed 10 tons
24 per year; or
25 3. The Health, Environment and Equity Impact Report and analysis indicates
26 that the Applicant or any affiliated corporation, partnership, or other
27 affiliated legal entity is not in compliance with any permit condition at any
28 operation within Bernalillo County or is currently or has in the last ten
29 (10) years failed to comply with any environmental law of any state or the
30 United States.

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32 F. **Mitigation.** If the Applicant can demonstrate that the proposed facility will not meet any
33 conditions found in 20.11.72.9.E, the Department may issue the permit. Mitigation
34 measures shall be informed by the findings reported in the Health, Environmental and
35 Equity Impacts Report. The Department shall apply the following mitigation procedures:

- 36
37 1. At a minimum, mitigation shall satisfy the following conditions:
38 a. Permitted emissions for criteria pollutants shall not exceed the
39 World Health Organization’s air quality guidelines; and

- b. The Applicant’s permitted hazardous air pollutants, when combined with the existing permitted hazardous air pollutants in the impacted census tract and all contiguous census tracts shall not exceed 10 tons per year; and
 - c. The Applicant must guarantee continuous emissions monitoring, as appropriate, for the life of the operation; and
 - d. Any additional mitigation measures as determined by the Department; and
 - e. All mitigation measures must be written into any issued permit as conditions; and
 - f. The Department shall establish a resident advisory committee (“Committee”) of impacted residents from the impacted census tract and contiguous census tracts to meet twice per year and provide feedback on the facility’s compliance with permit conditions:
 - i. The applicant shall share all applicable compliance information with the Committee in advance of each meeting, but no later than one week before the meeting; and
 - ii. The Committee shall be self-selecting and consist of residents of the impacted census tract and contiguous census tracts identified; and
2. The Applicant shall perform mitigated air dispersion modeling to ensure that all proposed mitigation measures achieve the intended effects; and
 3. The Department shall hold an additional public information hearing on any proposed mitigation measures pursuant to 20.11.72.9.D.

20.11.72.10 NOTICE–OPPORTUNITY TO COMMENT–AVAILABILITY TO THE GENERAL PUBLIC.

- A. Whenever a health, environmental and equity impact analysis must be conducted for a permit application, notice of the analysis shall be:
 1. Provided by certified mail in both English and Spanish to the owners of record, as shown by the most recent property tax schedule, of all properties within one hundred feet of the property on which the project or proposed project is located or proposed to be located; and
 2. Posted on the project property in both English and Spanish and clearly visible to the public; and

- 1 3. Posted in both English and Spanish in at least three other conspicuous places in
2 the immediate vicinity of the project such as post office, library, or grocery store
3 notice board; and
- 4 4. Provided to all local neighborhood associations; and
- 5 5. Posted in both English and Spanish in an easily accessible location on the
6 Department’s website; and
- 7 6. Posted in both English and Spanish on all Department social media accounts.
- 8 7. Mailed directly to Sandia Pueblo and Isleta Pueblo, with an offer to conduct a
9 tribal consultation on the permit application.

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11 B. Any member of the general public may request a copy of the health, environmental and
12 equity impacts analysis by requesting a copy from the Department. Upon receiving a
13 request for a copy of a health, environmental and equity impacts analysis, the Department
14 shall either provide the requestor with a copy of the analysis, free of charge, within
15 fifteen (15) calendar days of receiving the request or direct the requestor to a publicly
16 available copy. If the requestor needs a copy of the health, environmental and equity
17 impacts analysis translated into Spanish or any other language necessary, the Department
18 shall provide an adequate translation of the analysis.

19
20 C. The requirements of this Section represent the minimum notice requirements. The
21 Department may provide additional notice in additional forums as identified by either
22 residents of the impacted census tract or the Department.

23
24 D. In the event of a conflict with any other public participation provisions in this Chapter,
25 this provision prevails.

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27 20.11.72.11 EXEMPTIONS. Exempted from a cumulative impacts analysis under this part are:

- 28 A. Enforcement activities;
- 29 B. Emergency activities to protect public health, safety or the environment;
- 30 C. Purely ministerial actions;
- 31 D. Administrative or technical permit revisions, provided such administrative or technical
32 revisions meet the requirements of 20.11.41.28 NMAC;
- 33 E. Activities excluded from “modifications” as provided by 20.11.41.7.U(1)-(4) NMAC.

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36 20.11.72.12 ADMINISTRATIVE APPEALS–JUDICIAL REVIEW.

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38 A. Any person adversely affected by a health, environmental and equity impacts analysis
39 action by the Department under 20.11.72 NMAC may file a petition for hearing before
40 the Board for further relief pursuant to 20.11.81.1 et seq.

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B. Any person who is adversely affected by a final decision of the Board or who participated in an appeal to the Board of a Department decision and who is adversely affected by such action may appeal the Board’s final decision to the New Mexico Court of Appeals pursuant to NMSA 1978 § 74-2-9.

20.11.72.13 SEVERABILITY: If any part or application of this Part is held invalid, the remainder or its application to other situations or persons shall not be affected.