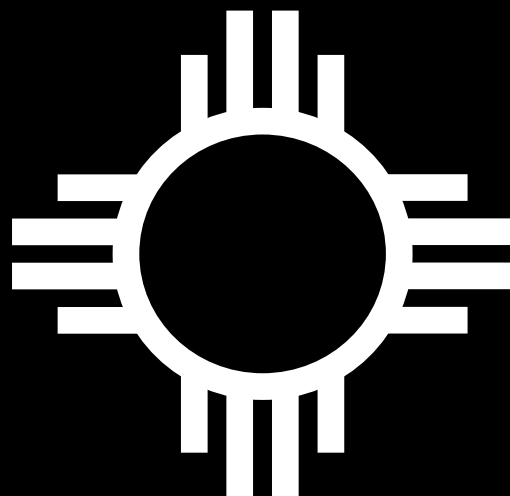


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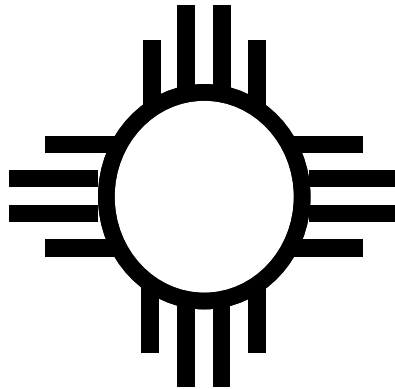


Volume XIX  
Issue Number 4  
February 29, 2008



# **New Mexico Register**

**Volume XIX, Issue Number 4  
February 29, 2008**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2008

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# New Mexico Register

Volume XIX, Number 4

February 29, 2008

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

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

***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

#### PUBLIC ACCOUNTANCY BOARD NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Thursday, March 27, 2008. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at [www.rld.state.nm.us/b&c/accountancy](http://www.rld.state.nm.us/b&c/accountancy). Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Tuesday, March 25, 2008; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Wednesday, February 20, 2008.

### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

#### New Mexico Board of Examiners for Architects

PO Box 509  
Santa Fe, NM  
505-982-2869

#### Public Hearing Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico, on Wednesday, April 2, 2008. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Suite C, Santa Fe, NM, 87505, beginning at 11 a.m. A public rules hearing will also be held to amend the architectural rules. Content will be amendments to the continuing education requirements for renewal of licensure, an amendment to procedures in disciplinary matters, and an amendment to procedures for renewal of an expired certificate. Proposed rules are available by contacting the Board office at (505) 982-2869.

If you are an individual with a

disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED CHANGES TO OCCUPATIONAL HEALTH AND SAFETY REGULATIONS, 11.5.1 NMAC, 11.5.2 NMAC, 11.5.3 NMAC, 11.5.4 NMAC AND 11.5.6 NMAC

The New Mexico Environmental Improvement Board (EIB) will hold a public hearing on May 5, 2008, at 10:00 am and continuing thereafter as necessary in Room 317, State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico 87501. The hearing location may change prior to the

hearing date and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/eib/index.html> prior to the hearing date for accuracy. The purpose of the hearing is to consider proposed amendments to 11.5.1 NMAC, 11.5.2 NMAC, 11.5.3 NMAC, 11.5.4 NMAC and 11.5.6 NMAC of the Occupational Health and Safety Regulations. The New Mexico Environment Department (NMED) Occupational Health and Safety Bureau (OHSB) is the proponent of these amendments.

The proposed rules are open for public comment and consideration of adoption by the EIB. The basis for the changes is to procedurally correct or update a number of regulatory provisions, as well as make several substantive changes, including:

\* 11.5.1 NMAC: General Provisions: allowing for private interviewing of employers and employees by NMED representatives to the exclusion of company counsel for employees.

\* 11.5.1 NMAC: General Provisions: allowing for informal conferencing and settlement of citations and penalties in advance of employers having to file a Notice of Contest.

\* 11.5.4 NMAC: Agriculture: clarifying that the same emergency medical care requirements that currently apply to all general industry employers in the state also apply to agricultural operations.

\* 11.5.6 NMAC: Convenience Stores: including language prohibiting view obstruction by product displays, shelving, equipment, and other similar items, and increasing the maximum allowable amount of cash in cash registers during late night hours from \$50.00 to \$150.00.

Please note formatting and minor technical changes in the regulations may occur. In addition, the EIB may make other amendments as necessary to accomplish the purpose of providing occupational health and safety in response to public comments submitted to the EIB and evidence presented at the hearing.

The EIB may make a decision on the proposed regulatory amendments at the conclusion of the hearing, or the EIB may convene a meeting after the hearing to consider action on the proposed rulemaking.

The proposed regulations may be reviewed during regular business hours at the Office of the Environmental Improvement Board,

Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM 87505. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at [joyce.medi-na@state.nm.us](mailto:joyce.medi-na@state.nm.us). Please refer to Docket No. EIB 07-15(R). The proposed regulations can also be found on the NMED website at [www.nmenv.state.nm.us/Common/regs\\_idx.html](http://www.nmenv.state.nm.us/Common/regs_idx.html). Written comments regarding the new regulations may be addressed to Ms. Medina at the above address, and should reference docket number EIB 07-15(R).

The hearing will be conducted in accordance with 20.1.1 NMAC, Rulemaking Procedures- Environmental Improvement Board, and the Environmental Improvement Act, NMSA 1978, Section 74-1-9. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses; however, persons intending to present technical testimony must file with the EIB a written notice of intent to do so.

The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

The notice of intent must be received in the Office of the Environmental Improvement Board by no later than 5:00 pm on April 18, 2008, and should reference the name of the regulation, the date of the hearing, and docket number EIB07-15(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina  
Board Administrator  
NMED Boards and Commissions  
Harold Runnels Building  
1190 St. Francis Drive, Room N-2153  
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the NMED Human Resources Bureau by April 21, 2008. The Human Resources Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872, TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside Albuquerque: 1-800-659-1779.)

## NEW MEXICO GAMING CONTROL BOARD

### NEW MEXICO GAMING CONTROL BOARD

#### NOTICE OF HEARING ON AMENDMENTS TO RULES

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 1:30 p.m. on March 31, 2008, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113 to consider amendments for the following rules: **15.1.5 NMAC, Application for Licensure Under the Gaming Control Act**, **15.1.8 NMAC, Accounting Requirements under the Gaming Control Act**, **15.1.9 NMAC, Internal Control Minimum Standards for Gaming Devices under the Gaming Control Act**, **15.1.10 NMAC, Conduct of Gaming under the Gaming Control Act**, **15.1.11 NMAC, List of Excluded Persons under the Gaming Control Act**, **15.1.14 NMAC, Enforcement Proceedings Under the Gaming Control Act**, **15.1.19 NMAC, Payment of Winnings Over \$1,200.00 under the Gaming Control Act**

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113, or by calling (505) 841-9733. The proposed changes are also available on our website at [www.nmgcb.org](http://www.nmgcb.org). The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing

and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

### STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION

#### of the Regulation and Licensing Department

#### NOTICE OF PUBLIC HEARING

A Public Hearing on the proposed amendment to the 2006 New Mexico Residential Building Code will be held on **MONDAY March 31, 2008, FROM 9:00 A.M. TO 12:00 NOON**, at the following location:

\* **SANTA FE, NM - CID**  
Conference Room, 2550 Cerrillos Road,  
3rd Floor, Santa Fe

Copies of the draft rule will be available at the Construction Industries Division offices beginning March 14, 2008

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., March 31, 2008.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than March 14, 2008. Telephone: 505-476-4700. Email: [www.rld@state.nm.us/cid](mailto:www.rld@state.nm.us/cid)

## End of Notices and Proposed Rules Section



## Adopted Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

Albuquerque-Bernalillo County Air Quality Control Board hereby repeals rule 20.11.20 NMAC, named Fugitive Dust Control and (filed 1/28/04), repealed 3/17/08.

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

**20.11.20.1 ISSUING AGENCY:**  
Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.  
[20.11.20.1 NMAC - Rp, 20.11.20.1 NMAC, 3/17/08]

**20.11.20.2 SCOPE:**  
**A.** 20.11.20 NMAC is applicable to all sources of fugitive dust in Bernalillo county, unless otherwise exempt.  
**B. Exempt:** 20.11.20 NMAC does not apply to sources within Bernalillo county that are:

(1) located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction;  
(2) hard rock mining pits and operations contained within the mining pit and permitted pursuant to the state of New Mexico Mining Act; for the purposes of 20.11.20 NMAC, sand and gravel mining operations are not exempt;

(3) emergency maintenance operations that are intended to address an imminent threat to property or persons; however, reasonably available control measures must be employed once the emergency has been addressed, if appropriate, and a report of all activities shall be filed with the department no later than 10 days after the incident has been concluded and the department shall determine if additional action, including a permit application submittal, is required before additional non-emergency activities occur at the site; and  
(4) stationary source operations

subject to 20.11.41 NMAC, *Authority to Construct*, or 20.11.42 NMAC, *Operating Permits*, that produce fugitive dust as defined in 20.11.20 NMAC, but only if the source of fugitive dust is addressed and controlled through permit conditions required by a 20.11.41 NMAC or 20.11.42 NMAC permit; however construction at a stationary source site, whether it involves new construction or a site modification, is subject to 20.11.20 NMAC.

**C. Conditionally Exempt:** The following five sources of fugitive dust emissions in Bernalillo county shall be conditionally exempt from the requirements of 20.11.20 NMAC, unless the department determines that the fugitive dust emitted from a conditionally exempt source's active operations or inactive disturbed surface area may adversely and significantly affect human health within Bernalillo county:

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

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

(3) unpaved roadways on privately-owned easements serving residential dwellings;

(4) lots smaller than three-quarters of an acre used for any purpose; and

(5) unpaved roadways within properties used for ranching, or properties owned or controlled by the United States department of energy or department of defense, or United States department of agriculture forest service lands or United States department of interior park service lands if the public does not have motor vehicle access to the roadways.  
[20.11.20.2 NMAC - Rp, 20.11.20.2 NMAC, 3/17/08]

**20.11.20.3 STATUTORY AUTHORITY:** 20.11.20 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo county Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-4 and 9-5-1-5.  
[20.11.20.3 NMAC - Rp, 20.11.20.3 NMAC, 3/17/08]

**20.11.20.4 DURATION:** Permanent.  
[20.11.20.4 NMAC - Rp, 20.11.20.4 NMAC, 3/17/08]

**20.11.20.5 EFFECTIVE DATE:** March 17, 2008, unless a later date is cited at the end of a section.

[20.11.20.5 NMAC - Rp, 20.11.20.5 NMAC, 3/17/08]

**20.11.20.6 OBJECTIVE:** To ensure that every person shall use reasonably available control measures or other effective measures on an ongoing basis to prevent or abate fugitive dust, if the fugitive dust may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property, as required by 20.11.20 NMAC.  
[20.11.20.6 NMAC - Rp, 20.11.20.6 NMAC, 3/17/08]

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

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

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

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

**D. "Business day"** means Monday through Friday, except city of Albuquerque holidays.

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

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

**G. "Disturbed surface area" or "surface disturbance"** means the

natural or manmade area of the earth's surface that, as a result of anthropogenic activity, may become a source of transported material, track-out, or visible fugitive dust.

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

**I. "Dust suppressant"** means hygroscopic materials, or non-toxic chemical stabilizers used to reduce or control fugitive dust emissions during suspended operations and as a long term reasonably available control measure.

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

**K. "Fugitive dust" or "dust"** means organic or inorganic particulate matter. Water vapor, steam, or particulate matter emissions emanating from a duct or stack of process equipment are not fugitive dust.

**L. "Fugitive dust control construction permit" or "permit"** means a fugitive dust control permit approved by the department and issued pursuant to 20.11.20 NMAC that contains an approved fugitive dust control plan and authorizes active operations to begin when the permit is signed by a division manager, supervisor, scientist, field operations officer or health specialist.

**M. "Fugitive dust control plan" or "plan"** means the part or portion of the fugitive dust control construction permit or programmatic permit application that details the reasonably available control measures and other effective measures the permit applicant commits to use to reduce the quantity of visible fugitive dust, transported material, or track-out leaving the property or area under the control of the permittee and shall include contingency fugitive dust control measures, which shall be a requirement of every fugitive dust control permit.

**N. "Greenwaste"** means organic matter including, grass clippings, leaves, weeds, small shrub or tree limb cuttings, brush, stumps, and soils.

**O. "High wind event"** means a condition announced by the department consisting of wind speeds of approximately 30 miles per hour or greater that, when accompanied by dry soil conditions, that is likely to result in widespread reduced visibility due to blowing fugitive dust and that may result in elevated monitored particulate levels that may cause or contribute to an exceedance or violation of the national ambient air quality standards.

**P. "Inactive disturbed**

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

**Q. "Large area disturbance"** means a project or development, totaling more than 25 acres upon which active operations have been conducted and includes areas used for storage of bulk material, building or construction materials, machinery or vehicles.

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

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

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

**U. "Paved" or "paving" or "paved roadway"** means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely-maintained asphalt millings, or combinations thereof, that cover a surface traveled or used by motor vehicles.

**V. "Permittee"** means a person and all legal heirs, successors, and assigns who has applied for and obtained a fugitive dust control construction or programmatic permit issued by the department pursuant to 20.11.20 NMAC.

**W. "Person"** means an individual, firm, partnership, corporation, association, organization, company, joint stock association, business trust, owner, or body politic, including a municipality, local, state or federal government agency or political subdivision, and includes an employee, officer, operator, contractor, supplier, installer, user, leaseholder, trustee, receiver, assignee or other person acting in a similar representative capacity with the authority to control transported material or emissions of particulate matter generated at a disturbed surface area or generated by activities associated with a disturbed surface area or inactive disturbed surface area.

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

**Y. "Programmatic permit"** means a fugitive dust control permit valid for up to five years issued to a permittee that performs routine maintenance or routine ongoing active operations on real property, but does not include full depth reconstruction of a roadway or substantial removal and replacement of a manmade facility. A programmatic permit shall include an approved fugitive dust control

plan and shall be effective when signed by a division manager, supervisor, scientist, field operations officer or health specialist.

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

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

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

**CC. "Reasonably available control measure" or "control measure"** means a device, system, process modification, apparatus, technique, work practice, or combination thereof, that mitigates fugitive dust and includes the measures in 20.11.20.23 NMAC and any other regulatory control program that results in equivalent protection of a disturbed surface or inactive disturbed surface area, whether or not the purpose of the control measure is to mitigate dust or to meet another requirement of 20.11.20 NMAC or any other statute or regulation.

**DD. "Responsible person"** means the person designated in a fugitive dust control permit application or permit amendment who agrees to be and shall be responsible for complying with 20.11.20 NMAC, and with the permit and plan to the extent specified in the permit.

**EE. "Short cut"** means a non-dedicated roadway or route used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway.

**FF. "Silt"** means bulk material that passes through a 200-mesh screen using the ASTM-D 2487-93, "*classification of soils for engineering purposes (united soil classification system)*" method, or most current ASTM (American society for testing and materials) method. Material that will pass through a 200-mesh screen is 74 microns or less in size.

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

**HH. "Stabilized" or "stabilization"** means ongoing practices that are sufficient to prevent elevated monitored particulate levels that may cause or contribute to an exceedance or violation of the

national ambient air quality standards by meeting the objective established in 20.11.20.6 NMAC and the requirements of the general provisions established in 20.11.20.12 NMAC.

**II. "Stockpile"** means the depositing of bulk material by mechanical means for the purpose of creating a pile formation on top of an existing natural or man-made surface.

**JJ. "Stop work order"** means an order issued by the department pursuant to the provisions of 20.11.20 NMAC that requires a person to cease active operations.

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

**LL. "Transfer of permit"** means an agreement approved in writing by the department that meets the conditions outlined in Paragraphs (1) through (6) of Subsection D of 20.11.20.14 NMAC.

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

**NN. "Unpaved roadway"** means an unpaved route traveled by a motorized vehicle.

**OO. "Visible fugitive dust"** means airborne particulate matter from a source, resulting in particulate matter emissions that can be detected by the human eye or a detection method approved by the department. Visible fugitive dust can be an indicator of PM<sub>10</sub>.

**PP. "Visible fugitive dust detection method"** means the method described in 20.11.20.26 NMAC, which is one method used to determine compliance with 20.11.20 NMAC.

[20.11.20.7 NMAC - Rp, 20.11.20.7 NMAC, 3/17/08]

**20.11.20.8 VARIANCES:** A person may request a variance from 20.11.20 NMAC in accordance with the procedures established in 20.11.7 NMAC.

[20.11.20.8 NMAC - Rp, 20.11.20.8 NMAC, 3/17/08]

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

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

[20.11.20.9 NMAC - Rp, 20.11.20.9 NMAC, 3/17/08]

**20.11.20.10 SEVERABILITY:** If any section, subsection, sentence, phrase, clause or wording of 20.11.20 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.20 NMAC.

[20.11.20.10 NMAC - Rp, 20.11.20.10 NMAC, 3/17/08]

**20.11.20.11 DOCUMENTS:** Documents incorporated and cited in 20.11.20 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.10.20.11 NMAC - Rp, 20.11.20.11 NMAC, 3/17/08]

**20.11.20.12 GENERAL PROVISIONS:**

**A.** Each person shall use reasonably available control measures or any other effective control measure during active operations or on inactive disturbed surface areas, as necessary to prevent the release of fugitive dust, whether or not the person is required by 20.11.20 NMAC to obtain a fugitive dust control permit. It shall be a violation of 20.11.20 NMAC to allow fugitive dust, track out, or transported material from any active operation, open storage pile, stockpile, paved or unpaved roadway disturbed surface area, or inactive disturbed surface area to cross or be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust may:

(1) with reasonable probability injure human health or animal or plant life;

(2) unreasonably interfere with the public welfare, visibility or the reasonable use of property; or

(3) be visible for a total of 15 minutes or more during any consecutive one hour observation period using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method approved in writing by the department.

**B.** Failure to comply with 20.11.20.12 NMAC, a fugitive dust control permit, plan, term or condition shall be a violation of 20.11.20 NMAC.

**C.** Prior to issuing a fugi-

tive dust control construction permit authorizing commencement of active operations, the department shall:

(1) document, in the form of photographs in electronic or hard copy formats or video recordings, the conditions of the properties that are closest to the property subject to the permit and any other properties the department believes are appropriate;

(2) maintain the documentation for one year after completion of the permitted project;

(3) include in the permit a requirement that the permittee remedy damage to real properties caused by a violation of the permit; and

(4) make the documentation available as evidence, upon request, to all parties involved in a property damage dispute allegedly caused by fugitive dust.

**D.** A permittee whose violation of 20.11.20 NMAC results in fugitive dust being deposited upon real property beyond the limits of the permitted area shall take all actions necessary to remedy damage caused by a violation proven with credible evidence. Such remedies may include, but not be limited to, compensation, removal of the fugitive dust and/or repair of any damage after obtaining permission from property owners or operators before doing any remedial work on the damaged property. It shall be a separate violation of 20.11.20 NMAC to fail to remove the fugitive dust and repair the damage as specified in a written schedule or any extension agreed to by the permittee and the owner of the damaged property. If the parties cannot agree to a schedule, the department may establish deadlines and failure to comply with the deadlines shall be a separate violation of 20.11.20 NMAC. No violation will occur if the failure to perform the corrective action is for reasons beyond the control of the person performing the work including without limitation acts of God or government preemption in connection with a national emergency or if the owner of the allegedly damaged property refuses to grant reasonable permission and access to conduct the remediation activities.

**E.** Stockpiles shall be no higher than 15 feet above the existing natural or man-made grade that abuts the stockpile, unless otherwise approved in advance and in writing by the department.

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

[20.11.20.12 NMAC - Rp, 20.11.20.12 NMAC, 3/17/08]

**20.11.20.13 FUGITIVE DUST**

**CONTROL PROGRAMMATIC PERMITS:**

**A.** A fugitive dust control programmatic permit is required for single or multiple facility locations to address real property totaling three-quarters of an acre or more that is subject to routine maintenance, routine surface disturbance activities, or routine ongoing active operations. A programmatic permit application and fugitive dust control plan shall be submitted on forms provided by the department. Programmatic permits are valid for up to five years. The permittee shall pay the annual programmatic permit fee required by 20.11.20.14 NMAC, *Fees*, for each year covered by the programmatic permit. Receipt of the annual fee by the department shall result in an automatic annual renewal of the programmatic permit. A new programmatic permit application and fugitive dust control plan shall be submitted every five years or sooner if the surface disturbance activities or fugitive dust abatement strategies are modified. A filing and review fee is not required for a programmatic permit.

**B.** A person responsible for sloped (i.e. slopes having a steepness of three-to-one or steeper) and bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood control facilities subject to routine maintenance or repair, sedimentation and water erosion shall obtain either a variance as provided by 20.11.7 NMAC or a programmatic permit as provided by Subsection A of 20.11.20.13 NMAC if the person does not elect to submit an application and obtain a fugitive dust control construction permit pursuant to 20.11.20.14 NMAC.

**C.** No signs or photographic documentation shall be required for the permits or activities subject to 20.11.20.13 NMAC. Appropriate permit application documentation shall be determined by the department.

[20.11.20.13 NMAC - Rp, 20.11.20.13 NMAC, 3/17/08]

**20.11.20.14 FUGITIVE DUST CONTROL CONSTRUCTION PERMITS:**

**A.** A person who does not elect to obtain or who does not qualify for a fugitive dust control programmatic permit pursuant to 20.11.20.13 NMAC and who plans to conduct active operations that will disturb three-quarters of an acre or more shall comply with either Subsection A or B of 20.11.20.18 NMAC and obtain a fugitive dust control construction permit. No active operations shall commence until a department manager, supervisor, scientist, field operations officer or health specialist signs the fugitive dust control construction permit (permit) and a copy of the signed permit is

available at the site of active operations. A permit shall consist of a complete permit application a fugitive dust control plan, any appended documents, any conditions attached to the permit by the department, and a signature and effective date affixed by a department manager, supervisor, scientist, field operations officer or health specialist.

**B.** The permittee shall comply with the terms of the permit unless the department approves a transfer of the permit or issues a new permit for the active or inactive disturbed surface area of operation to a new permittee. If three-quarters of an acre or more of the real property that is subject to the permit is transferred or sold the new owner is responsible for complying with either 20.11.20.13 NMAC or 20.11.20.14 NMAC unless exempt. Upon receipt of an amended permit signed by a department manager, supervisor, scientist, field operations officer or health specialist, the permittee who transferred or sold the real property no longer will be responsible for control of fugitive dust originating from the real property that has been transferred or sold. Permit amendment fees shall be paid as required by 20.11.20.14 NMAC.

**C.** If a person other than the permittee will be responsible for complying with the permit and 20.11.20 NMAC, then the permittee shall designate the responsible person or persons in the permit application who shall be responsible for active operations and inactive disturbed surface areas to the extent specified in the application. Before a responsible person shall be liable for a violation of the permit or 20.11.20 NMAC, the responsible person shall agree in writing to accept responsibility for compliance with the permit conditions. The responsible person shall be the first person the department attempts to contact regarding a violation of the permit or 20.11.20 NMAC. In addition, the department may approve, in writing, a permit amendment that adds or changes the responsible person who has agreed in writing to be responsible for complying with the permit and plan, to the extent specified in the permit. If the responsible person and permittee fail to comply with the provisions of 20.11.20 NMAC, the owner or operator, if different from the responsible person or permittee, shall be responsible for compliance with the permit.

**D.** An approved permit shall be valid for one year from the date of issuance by the department or until the project expiration date provided in the permit application, whichever is longer, but no more than five years from the date of issuance. If the project plan, expiration date, total disturbed surface area, completion date or the proposed control measures change in any manner, an amended or new permit is required. At least 10 business

days before the expiration date, a fugitive dust control permit shall be renewed by the then-current permittee, or the permit shall expire as of the expiration date. Permit amendment or renewal fees shall be paid as required by Subsection H of 20.11.20.14 NMAC. Permits may be transferred to legal heirs, successors, and assigns, who shall become the new permittee. Permit transfers may qualify as an administrative amendment if:

(1) the department has received, on a form provided by the department, a written transfer agreement signed by the current and new permittee, and, if different than the new permittee, by the owner of the real property subject to the permit;

(2) a specific date of the transfer of the permit and plan responsibility, coverage, and liability is established in the transfer agreement;

(3) the department has determined that no change to the permit and plan other than the administrative change is necessary;

(4) the new permittee and owner have submitted the application information required by 20.11.20.15 NMAC if changes have been made to the permit and plan as deemed necessary by the department;

(5) no grounds exist for permit termination, as otherwise provided by 20.11.20 NMAC; and

(6) the transfer agreement has been approved in writing by the department.

**E.** After a permit is issued and before the start of active operations, the permittee shall install and maintain a project sign provided by the department or a project sign that meets the requirement of 20.11.20.14 NMAC. The department will establish uniform design guidelines for the sign to ensure that the sign is reasonably legible to the public. If the required information is provided in an existing project sign that has been established for another purpose, an additional sign shall not be required to comply with 20.11.20 NMAC. At a minimum, the sign shall contain the following:

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

**F.** The permittee or responsible person shall make the permit available to all employees, agents, sub-con-

tractors, and other persons performing work in the area of active operations or inactive disturbed surface areas to assist in maintaining compliance with 20.11.20 NMAC. The permittee or responsible person shall explain the requirements of the permit to appropriate employees, contractors and agents working at the site. Upon request, the permittee shall provide information regarding how to obtain a copy of the permit from the department.

**G.** It is the responsibility of the permittee or responsible person to ensure that the permit or amended permit contains current contact information and that a copy is maintained at the work site and is provided to the department upon request. Failure to maintain and provide up-to-date contact information shall be a violation of 20.11.20 NMAC.

**H.** The department may amend or renew the permit if requested to do so by the permittee. No fee shall be charged for amending or renewing a permit, unless there will be an increase in the number of acres subject to surface disturbance. Both the department and the permittee must sign an amended permit before it will be effective. The department is not required to sign a renewed permit unless the renewed permit increases the number of acres subject to surface disturbance. An amended or renewed permit that involves an increase in the number of acres subject to surface disturbance shall require payment of fees as required by 20.11.2 NMAC.

[20.11.20.14 NMAC - Rp, 20.11.20.14 NMAC, 3/17/08]

#### **20.11.20.15 FUGITIVE DUST CONTROL CONSTRUCTION PERMITS; MINIMUM PERMIT APPLICATION REQUIREMENTS:**

Proposed fugitive dust control construction permit applications shall be submitted on forms provided by the department. Fugitive dust control plans may be submitted in any format including a copy of a program that complies with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If extraneous information is supplied that does not apply to mitigation of fugitive dust, then the dust control measures shall be clearly identified in the plan or the permit application shall be deemed incomplete and shall be rejected. An incomplete permit application shall be processed as described in Subsection C of 20.11.20.18 NMAC. Proposed fugitive dust control permit applications shall include the following:

**A.** name, address, telephone number and fax number of permittee;

**B.** owner's name, address,

telephone number and fax number if different from permittee;

**C.** if different than the permittee, the name, address, telephone number and fax number of the responsible person who is agreeing to, and shall be responsible for activities on the permitted site; the department shall first attempt to contact the responsible person regarding a violation of the permit;

**D.** anticipated project start date which shall be no fewer than 10 business days from the department's receipt of the permit application for areas containing greater than three quarters of an acre but no greater than 25 acres, and no fewer than 20 business days from the department's receipt of the permit application for areas containing more than 25 acres;

**E.** anticipated project completion date;

**F.** project description;

**G.** project location including, if available, street address, major cross streets or nearby intersection;

**H.** total area of disturbance in acres or square feet;

**I.** a check or money order for the fees due, calculated using the tables provided on the permit application form, payable to the 'city of Albuquerque permits program' (fund 242);

**J.** a description of the sequencing of the active operations, if phasing is used to reduce the total disturbed area at any time;

**K.** estimated total volume of bulk material being handled in cubic yards, including any bulk material being imported, exported or relocated;

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

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

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

**O.** site map (e.g. zone atlas page, aerial photograph);

**P.** type of work being performed and appropriate reasonably available control measures, as described in 20.11.20.23 NMAC, or other effective control measures proposed to be used in the

fugitive dust control plan;

**Q.** a statement that effective contingency fugitive dust control measures shall be taken by the permittee if the control measures required by Subsection P of 20.11.20.15 NMAC are not effective in maintaining compliance with 20.11.20 NMAC;

**R.** a commitment to comply with provisions of Subsection B of 20.11.20.16 NMAC if the permittee chooses to preserve the ability to qualify for a high wind affirmative defense;

**S.** high wind contingency measures that will be implemented when high winds occur;

**T.** a description of the actions the permittee will take to mitigate damage caused by fugitive dust if generated by active operations or an inactive disturbed surface area on the permitted site;

**U.** other proposed conditions;

**V.** signature of the permittee, and, if a different person, signature of the owner, operator and/or any responsible person certifying that the information in the fugitive dust control permit application is true, accurate and complete, and certifying that all actions necessary to comply with 20.11.20 NMAC will be taken, including suspending active operations if necessary to comply with the provisions of 20.11.20 NMAC; and

**W.** a statement regarding whether bulk material will be stockpiled at the project site, the dimension of each stockpile, and the reasonably available control measures or other effective control measures that will be used at the stockpile area to comply with 20.11.20 NMAC.

[20.11.20.15 NMAC - Rp, 20.11.20.15 NMAC, 3/17/08]

#### **20.11.20.16 HIGH WIND EVENT REQUIREMENTS; HIGH WIND EVENT AFFIRMATIVE DEFENSE:**

**A. General requirements:** during a high wind event, all persons responsible for fugitive dust control activities on publicly or privately-owned real property where active operations are occurring or inactive disturbed surface areas exist shall use reasonably available control measures or other effective measures to prevent fugitive dust from leaving the property. All such persons shall implement the control measure required by Paragraph (5) of Subsection C, of 20.11.20.16 NMAC.

**B. High wind affirmative defense:** if the department initiates an administrative enforcement action against either a permittee or a responsible person, or both (respondent) alleging a violation of a permit or 20.11.20 NMAC during a high wind event, the respondent may assert an

affirmative defense in the enforcement action if the respondent establishes by credible evidence that respondent complied with the requirements established in Subsection C of 20.11.20.16 NMAC. In order to successfully assert the affirmative defense, during the entire duration of a permit the respondent shall utilize the applicable controls described in Subsection C of 20.11.20.16 NMAC, regardless of whether or not a high wind event exists, with the exception of Paragraph (5) of Subsection C of 20.11.20.16 NMAC, which shall be required during a high wind event. The affirmative defense shall not be available if respondent has failed to diligently perform the control measures specified in Paragraphs (1) through (5) of Subsection C of 20.11.20.16 NMAC. The availability of the affirmative defense shall not change the respondent's potential liability for any damage caused by fugitive dust leaving the permitted property, and the affirmative defense shall not change the permittee's obligation to remove fugitive dust originating from the permitted source, or otherwise remedy the damage, as required by Subsection D of 20.11.20.12 NMAC. The board, its members, and employees and officials of the city of Albuquerque and the county of Bernalillo shall not incur individual liability for damage to persons or property caused by fugitive dust leaving the permitted property.

**C. Mandatory control measures:** to assert a high wind event affirmative defense as described in Subsection B of 20.11.20.16 NMAC, a permittee shall utilize the applicable control measures in Paragraphs (1) and (2) of Subsection C of 20.11.20.16 NMAC on an ongoing basis. Without prior notice to the department, the permittee may use the measure in Paragraph (3) of Subsection C of 20.11.20.16 NMAC in place of the measure in Paragraph (1) of Subsection C of 20.11.20.16 NMAC. After receiving written permission from the department, the permittee may substitute the measures in Paragraph (4) for the measures in Paragraphs (1) and (2), or (2) and (3) of Subsection C of 20.11.20.16 NMAC. All permittees, whether or not they intend to assert a high wind affirmative defense, shall implement the measure in Paragraph (5) of Subsection C of 20.11.20.16 NMAC during a high wind event.

(1) Use of wet suppression sufficient to attain and maintain eighty percent of the optimal moisture content of the soil as determined by a proctor analysis performed by a certified public or private materials testing laboratory. For proctor analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be used. Daily, representative testing of the soil moisture content shall be taken on exposed new surfaces after the top one-half to one inch of the soil is removed

at the sampling area. Three times each day, at intervals that are equally spaced throughout the work day, the respondent shall test and record the soil moisture content at three separate representative locations on the permitted property, which will result in a minimum of nine tests each day. To demonstrate compliance, any set of three tests shall average 80 percent of the optimal moisture content of the soil and no individual test shall be less than 70 percent of the optimal moisture content of the soil. Failure to meet the soil moisture content standards as required by Subsection C of 20.11.20.16 NMAC for any set of three tests shall require that the respondent immediately apply necessary control measures at the portion or portions of the representative area where the soil moisture content tested as insufficient, and re-test the same representative locations, as necessary, until the soil moisture content complies with the standards as required by Subsection C of 20.11.20.16 NMAC. The respondent or the department shall use a reasonably accurate commercially-available instrument to determine soil moisture content. Where possible, methods for determining soil moisture content shall be consistent with ASTM standards (e.g. ASTM D-1556-90 - sand cone test, ASTM D2922-91 - nuclear density). All tests for soil moisture content shall be documented and retained for the duration of the permit, and shall be made available to the department upon request.

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

(3) Use of chemical dust suppressants applied in amounts, frequency and rates recommended by the manufacturer,

and maintained as recommended by the manufacturer sufficient to substantially reduce fugitive dust leaving the fugitive dust source while active operations are idle, usually used when active operations are suspended for more than 48 hours.

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

(5) Stopping active operations that are capable of producing fugitive dust.

**D. Active operations during an announced high wind event:** The department shall use national weather service (NWS) data, recorded at either the Albuquerque international airport (Sunport) or Double Eagle II airport, in order to determine forecasted or actual wind speeds when announcing that a high wind event may or will occur. Wind velocity measurements taken in the field by the department, the responsible person, or permittee shall be taken at a representative active operation area on the permitted property or by the department within 200 feet of the permitted property being evaluated to determine whether active operations can be continued, resumed or initiated. Wind measurement results shall be documented and retained throughout the duration of the permit, and shall be made available to the department and the permittee and/or person responsible for controlling fugitive dust at the permitted property. A continuous one-hour wind velocity measurement with an average wind speed of less than 20 miles per hour, along with on-site stable soil conditions and effective dust control measures, as stated in the fugitive dust control plan, shall be sufficient to allow active operations during an announced high wind event. However, fluctuations in average wind speed and high wind gusts may re-occur and can cause ineffective dust control during active operations, which may result in a violation of 20.11.20 NMAC. Therefore, the responsible person or permittee shall continuously assess wind conditions and on-site soil conditions during an announced high wind event and shall maintain the reasonably available control measures which include stopping active operations as required by Paragraph (5) of Subsection C of 20.11.20.16 NMAC.

**E. Limitations on use of affirmative defense:** A respondent may not assert the affirmative defense described in 20.11.20.16 NMAC:

(1) against an action for injunctive relief; or

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

[20.11.20.16 NMAC - Rp, 20.11.20.16 NMAC, 3/17/08]

**20.11.20.17 FILING, REVIEW AND INSPECTION FEES:** The fees required by 20.11.20 NMAC are located in 20.11.2 NMAC, Fees. The filing and review fee portion of the total permit application fee due when a fugitive dust control construction application is filed is non-refundable.

[20.11.20.17 NMAC - Rp, 20.11.20.17 NMAC, 3/17/08]

**20.11.20.18 FUGITIVE DUST CONTROL CONSTRUCTION PERMIT APPLICATION PROCESSING:**

**A.** A person who is required to submit a fugitive dust control construction permit (permit) application and plan for active operations that will disturb at least three-quarters of an acre, but no more than 25 acres, shall submit the permit application and plan with the applicable fees to the department no fewer than 10 business days prior to the start of active operations. Within 10 business days of the department receiving the permit application, plan and fees, the department will approve the permit, approve the permit with conditions or deny the permit.

**B.** A person who is required to submit a permit application and plan for active operations that will disturb more than 25 acres shall submit the permit application and plan with the applicable fees to the department no fewer than 20 business days prior to the start of active operations. Within 20 business days of the department receiving the permit application, plan and fees, the department will approve the permit, approve the permit with conditions or deny the permit.

**C.** The fugitive dust control plan may be in any form including a copy of a program that complies with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If the plan does not specifically enumerate the control measures proposed to mitigate fugitive dust, the permit application shall be deemed incomplete and shall be rejected. If an incomplete application is rejected, a new or amended application may be filed and the time limits in Subsections A or B of 20.11.20.18 NMAC shall apply as if the initial application had not been filed.

**D.** If all requirements of 20.11.20 NMAC have been met by the applicant, the department shall issue a per-

mit to the permittee, which shall authorize commencement of active operations. If the department has not approved, denied, or notified the applicant regarding the permit application within 30 business days of the department's receipt of the permit application, plan and fees, then the permit shall be automatically approved and operations may commence if the permittee uses the reasonably available control measures and fugitive dust control plan as submitted in the application. However, if the measures and plan are not effective, the department may initiate an enforcement action for violation of 20.11.20 NMAC.

[20.11.20.18 NMAC - Rp, 20.11.20.18 NMAC, 3/17/08]

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

**A.** No unpaved roadway greater than one-quarter mile in length and no unpaved parking areas may be constructed or allowed to be constructed or reconstructed on any publicly-owned land or privately-owned real property, unless the owner has applied for and received a permit pursuant to 20.11.20.13 NMAC or 20.11.20.14 NMAC. Owners in possession of a valid fugitive dust control permit that wish to construct additional unpaved roadways shall apply for an amendment to their permit which shall include payment of any fees required by 20.11.2 NMAC. In addition, no unpaved short-cut of any length on private or public property may be constructed or be allowed to remain usable when it is evident the short cut is being used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway. A variance from Subsection A of 20.11.20.19 NMAC may be granted by the board in a manner consistent with the variance procedures provided in 20.11.7 NMAC.

**B.** Owners or operators shall use reasonably available control measures on all unpaved roadways and unpaved parking areas and shall comply with the general provisions established in 20.11.20.12 NMAC.

**C. Public unpaved roadway; complaints.** If the department receives a fugitive dust complaint regarding an unpaved public roadway, the department will forward the complaint by hand delivery, inter-office mail delivery or certified mail, return receipt requested, to the governmental agency responsible for maintenance of the roadway. Within 45 calendar days from the date the complaint was received by the responsible agency, the responsible agency shall make a reasonable effort to address the complaint, and the governmental agency shall provide the depart-

ment with a written report of the actions taken to resolve the complaint. Failure of the responsible agency to submit a timely report shall be a violation of 20.11.20 NMAC.

[20.11.20.19 NMAC - Rp, 20.11.20.19 NMAC, 3/17/08]

**20.11.20.20 ABRASIVE PRESSURE BLASTING OPERATIONS:** A person who performs abrasive pressure blasting operations shall employ reasonably available control measures or other effective control measures at all times to comply with 20.11.20.12 NMAC and shall substantially reduce fugitive dust emissions that are leaving the property where the abrasive pressure blasting operations are taking place. A person who is conducting abrasive pressure blasting operations is not required to obtain a fugitive dust control permit from the department. However, stationary source permitting regulations, such as 20.11.41 NMAC and 20.11.42 NMAC, may apply to pressure blasting operations.

[20.11.20.20 NMAC - Rp, 20.11.20.20 NMAC, 3/17/08]

**20.11.20.21 CONTROL OF GREENWASTE MATERIAL:** To prevent greenwaste from becoming ground up by the abrasive action of tires, which may then be entrained into the atmosphere as particulate matter, all persons causing, directing or authorizing greenwaste to be deposited on publicly-owned real property shall promptly remove or cause the removal of the greenwaste.

[20.11.20.21 NMAC - Rp, 20.11.20.21 NMAC, 3/17/08]

**20.11.20.22 DEMOLITION AND RENOVATION ACTIVITIES; FUGITIVE DUST CONTROL CONSTRUCTION PERMIT AND ASBESTOS NOTIFICATION REQUIREMENTS:** No person shall demolish any building containing over 75,000 cubic feet of space without first delivering to the department a fugitive dust control construction permit application and fugitive dust control plan with the fee required by 20.11.2 NMAC. No active operations shall commence until a department manager, supervisor, scientist, field operations officer or health specialist signs a fugitive dust control construction permit and a copy of the signed permit is available at the site of active operations. Failure to obtain a fugitive dust control construction permit prior to commencement of demolition activities as described in 20.11.20.22 NMAC shall be a violation of 20.11.20 NMAC. All demolition and renovation activities shall employ reasonably available control measures at all times, and, when removing asbestos containing materials



(ACM), shall also comply with the federal standards incorporated in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*. A person who demolishes or renovates any commercial building, residential building containing five or more dwellings, or a residential structure that will be demolished in order to build a nonresidential structure or building shall file an asbestos notification with the department no fewer than 10 calendar days before the start of such activity. Written asbestos notification certifying to the presence of ACM is required even if regulated ACM is not or may not be present in such buildings or structures. Failure to provide proper asbestos notification shall be a violation of the requirements of 20.11.64 NMAC. Knowingly violating provisions of 20.11.64 NMAC is a fourth-degree felony pursuant to the New Mexico Air Quality Control Act, 74-2-14.C.3 NMSA 1978. [20.11.20.22 NMAC - Rp, 20.11.20.22 NMAC, 3/17/08]

#### **20.11.20.23 REASONABLY AVAILABLE CONTROL MEASURES FOR FUGITIVE DUST:**

The permittee may include in the permit application one or more of the reasonably available control measures included in 20.11.20.23 NMAC or one or more alternative fugitive dust control measures, including measures taken to comply with any other statute or regulation if the measures will effectively control fugitive dust during active operations or on inactive disturbed surface areas. At minimum, all projects requiring a fugitive dust control construction permit shall utilize paved or gravel entry/exit aprons, steel grates or other devices capable of removing mud and bulk material from vehicle traffic tires, and erect a properly-maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately 30 or more inches above the existing natural or man-made surface. To maintain effectiveness of the entry/exit apron, steel grate or other similar device (device), accumulated materials shall be removed promptly. To maintain effectiveness of the fence, fugitive dust that accumulates on either side of the fencing shall be removed promptly.

##### **A. Unpaved roadways:**

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

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

er;

(3) using wet suppression; or

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

##### **B. Paved roadways:**

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

(2) using on-site wheel washes; or

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

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

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

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

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

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

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

##### **D. Active operations in construction areas and other surface disturbances:**

(1) Short term control measures may include:

(a) wet suppression;

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

(c) watering the site at the end of each workday sufficiently to stabilize the work area;

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

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

(f) stopping active operations during high wind; or

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

(2) Long term control measures may include:

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

(b) reseeding using native grasses as specified in 20.11.20.24 NMAC;

(c) xeriscaping;

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

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

(f) mulching and crimping of straw or hay as specified in Subsection D of 20.11.20.24 NMAC;

(g) installing permanent perimeter and interior walls;

(h) using conventional landscaping techniques; or

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

##### **E. Bulk material handling:**

(1) using spray bars;

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

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

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

(5) stopping bulk material handling, processing, loading or unloading during high wind conditions;

(6) reducing process speeds; or

(7) reducing drop heights.

##### **F. Industrial sites:**

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

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

(3) regularly using wet suppression on unpaved areas;

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

(5) installing wind breaks;

(6) installing enclosures;

(7) installing on-site anemometers to measure wind speed; the anemometers



ter should trigger a suitable warning mechanism such as a strobe light or an audible alarm (that will not violate any applicable noise ordinance) to notify on-site personnel of high wind conditions;

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

(9) stopping active operations during high wind conditions.

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

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

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

(3) using enclosures;

(4) using curtains or shrouds;

(5) using negative pressure dust collectors; or

(6) stopping demolition during high wind conditions.

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

(1) constantly using wet suppression;

(2) continuous wet sweeping during milling, grinding, or cutting operations;

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

(4) using enclosures; or

(5) using curtains or shrouds.

**I. Pressure blasting operations:**

(1) using non-friable abrasive material;

(2) using curtains, enclosures or shrouds;

(3) using negative pressure dust collectors;

(4) using constant wet suppression;

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

(6) stopping active operations during high wind conditions.

**J. Spray painting and other coatings:**

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

(2) using curtains, enclosures or shrouds.

**K. High wind contingency measures:**

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

sonnel of high wind conditions;

(2) using constant wet suppression;

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

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

(5) slowing down process; or

(6) shutting down active operations.

**L. Stockpile Formation:**

**(1) Active stockpiles:**

(a) applying wet suppression on a regular basis;

(b) utilizing wind breaks (fabric fencing or other materials);

(c) reducing vehicle speeds or using other traffic calming measures (e.g. sculpted piles); or

(d) restricting access to stockpile areas during non-work hours.

**(2) Inactive stockpiles:**

(a) maintaining a stable outer crust over stockpile area;

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

(c) restricting access to stockpile areas; or

(d) utilizing wind breaks (fabric fencing or other materials).

[20.11.20.23 NMAC - Rp, 20.11.20.23 NMAC, 3/17/08]

**20.11.20.24 NATIVE GRASS SEEDING AND MULCH SPECIFICATIONS:**

**A.** If the fugitive dust control permit includes provisions to revegetate a disturbed area, the permittee may use the specifications described in 20.11.20.24 NMAC. When properly applied and maintained, these specifications have provided reasonably successful results in the past in Bernalillo county. They are included here as a reference for permittees and others who choose to use native revegetation as a long-term reasonably available control measure. However, use of these specifications does not guarantee success. Failure of any revegetation method as a long-term reasonably available control measure requires re-application or other control method approved by the department. The disturbed area shall maintain compliance with 20.11.20 NMAC.

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

(a) If the area to be seeded is along a recreational trail of any type, the seed mixes for either type of soil listed in Subsection F of 20.11.20.24 NMAC should

not include four-wing saltbush and the seeding rate should be reduced by one pound per acre.

(b) Seeds may be pre-mixed by a seed dealer. Each pre-mixed bag of seed should be sealed and labeled by the seed dealer in accordance with federal seed laws and New Mexico department of agriculture labeling laws. The label should include: variety, kind of seed, lot number, purity, germination, percent crop, percent inert, percent weed (including noxious weeds), origin, test data and net weight. Federal seed laws require that analysis shall be no older than five months for seed shipped interstate and no older than nine months for seed shipped intra-state.

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

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

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

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

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

**(c) Gravel mulch:** gravel mulch should be a maximum of three-quarter to

one inch in diameter and must have been crushed or screened with a minimum of one angular face. Experience has demonstrated that gravel mulch provides very successful results on steep slopes and other areas that may be difficult to stabilize.

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

**B. Seed bed preparation:**

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

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

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

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

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

**C. Seeding:**

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

(2) **Seed application:**

(a) **Drill seeding:** drill seeding is highly recommended. Seed should be applied with a "rangeland" type seed drill equipped with packer wheels. Seed should

be drilled to a maximum depth of one-half inch. Direction of seeding should be across slopes and on the contour whenever possible.

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

(c) **Seeding with gravel mulch:** areas to be gravel mulched should be seeded at double the standard seed rate with one-half the seed applied prior to application of gravel and one-half of the seed applied on the surface of the gravel. Water should be applied in a quantity sufficient to wash seed from the surface and into the gravel.

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

**D. Hay or straw mulching:**

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

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

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

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

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

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

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

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

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

(f) The crimping operations should be across the slope where practical, but not parallel to prevailing winds. In general, crimping should be in a north-south direction or in tight interlocking "S" curves to avoid straight east-west crimp lines.

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

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

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

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

**E. Protection of native grass seeded area:** the person, owner or operator who has elected to use native seeding as a control measure shall be responsible for protecting and caring for the seeded area until plants are fully established. After project completion, the owner or operator shall repair any damage to seeded areas caused by pedestrian or vehicular traffic or vandalism. During periods of low rainfall, supplemental watering may be required to successfully establish the native grass seed. Because the owner is responsible for the fugitive emissions leaving the property, failure of the reseeding project shall not be a defense to enforcement of 20.11.20 NMAC. The owner or operator may find it necessary to reseed or use other reasonably available control measures to bring the property into compliance. The department strongly recommends that any area being seeded or mulched be adequately fenced and posted to prevent trespass traffic.

**F. Seed specifications and rates** should be used as established by the most recent edition of "*city of Albuquerque standard specifications for public works construction - native grass seeding*" section as updated by the city or as approved in writing by the department.

**G. Variations in seeding due to special environmental conditions:** the owner or operator may use a different seeding mixture in order to address special environmental conditions that make it unlikely for success of the reseeding effort. Use of an annual rye (*Lolium sp.*) or cool season grasses (e.g. barley at 10 pounds per acre) may be added to the seed specification in order to help stabilize soils, especially for disturbed areas comprising 25 acres or more when a significant amount of the publicly-owned land or privately-owned real proper-

ty is not expected to be built upon within one year.

[20.11.20.24 NMAC - Rp, 20.11.20.24 NMAC, 3/17/08]

**20.11.20.25 REVIEW MEETING: TIMELY PETITION FOR HEARING BEFORE THE BOARD:**

If a permit applicant or permittee (requestor) asks the department to meet informally to review and reconsider the department's decision regarding the applicant's permit application in the manner provided by 20.11.20.25 NMAC, the process shall not extend the 30-day deadline for filing a timely petition for a hearing before the board as provided by 20.11.81 NMAC. If a requestor is adversely affected by, or disagrees with the department's decision regarding the requestor's permit application, the requestor may request an informal review meeting to discuss the department's decision. The request shall be in writing or on a form provided by the department. Within five business days after the requestor receives the department's decision regarding the permit application, the requestor shall deliver the written request to a division manager. Within five business days after a division manager receives the request, a division manager or designee shall hold an informal review meeting with the requestor and an additional division representative (e.g. the person assigned to the permit application review) in an attempt to resolve disagreements. Within two business days after the informal review meeting, a division representative shall mail, hand deliver or deliver by facsimile a statement to the requestor stating whether the department has changed its decision regarding the permit application, and, if so, specifying the change and the reason for the change. A person who participated in a 20.11.20 NMAC permitting action before the department and who is adversely affected by the decision made by the department, may follow the procedures described in 20.11.81 NMAC to petition for a hearing before the board.

[20.11.20.25 NMAC - Rp, 20.11.20.25 NMAC, 3/17/08]

**20.11.20.26 VISUAL DETERMINATION OF FUGITIVE DUST EMISSIONS:**

The following method, hereafter called the "visible fugitive dust detection method", is used to visually determine the total amount of time that fugitive dust emissions are visible during a continuous one-hour observation period. If a trained department observer records visible fugitive dust crossing a property line of the property being investigated, for a total of 15 minutes or more during a continuous one-hour period, a violation of 20.11.20 NMAC has occurred. The observer does not have to be

certified in procedures found in 40 CFR 60, Method 9, *Visual Determination of the Opacity of Emissions from Stationary Sources* (EPA Method 9). However, the observer shall receive training regarding how to identify a violation of 20.11.20 NMAC that is caused by anthropogenic activities and to distinguish fugitive dust that emanates from a source that is not required by a board regulation other than 20.11.20 NMAC to obtain a permit. Training shall consist of attendance at and completion of the lecture portion of a Method 9 certification course and familiarity with the written materials provided during the course. The method described in Subsections A through D of 20.11.20.26 NMAC does not require the opacity of emissions to be determined during the observation period.

**A.** To correctly perform this method, the observer shall use two stopwatches. One stopwatch shall be used to record the continuous one-hour time period during which the observation is conducted. This period shall be known as the "observation period." The second stopwatch shall be used to record the total accumulated amount of time that visible fugitive dust is crossing a property line during the observation period. The second stopwatch shall establish the "visible fugitive dust emission time".

**B.** Prior to the observation, the observer shall:

(1) determine the location of potential fugitive dust source(s) and the location of the downwind property line for the source;

(2) sketch the location of the fugitive dust source(s), and, when available during the observation, record the observer's location on a copy of the fugitive dust control permit map or aerial photograph;

(3) sketch or photograph the location of the downwind property line and physical features that help define the property line;

(4) sketch or photograph the observer's location during the observations;

(5) sketch the position of the sun relative to the observer;

(6) document that the visible fugitive dust is not originating from an upwind source other than the source being evaluated; and

(7) maintain a minimum distance of at least 15 feet from the visible fugitive dust being observed, and a maximum distance of no more than one-quarter mile away.

**C.** The observer shall record:

(1) observer's name and affiliation;

(2) date of observation;

(3) company name, property owner or operators, if known;

(4) description of the fugitive dust sources;

(5) wind speed and direction (explain method of determining the wind speed, i.e., hand-held anemometer); and

(6) sky conditions.

**D.** The observer shall record the time of day when the observation begins. The observer shall start the first stopwatch to begin recording the observation period and shall observe along the property line. With the second stopwatch, the observer shall record the length of time visible fugitive dust is crossing the property line. The observer shall stop the second stopwatch when the visible fugitive dust is no longer detected crossing the property line. The observer shall continue this procedure during the continuous one-hour observation period or until the visible fugitive dust emission time totals 15 minutes or greater during the continuous one-hour observation period, which is a violation of 20.11.20 NMAC. The observer shall record the time of day when the observation ends. If the observer determines that the visible fugitive dust being observed is of an intensity that may cause immediate danger to human health or safety, then, before the observation period is completed, the observer shall attempt to immediately contact the responsible person, permittee or owner.

[20.11.20.26 NMAC - Rp, 20.11.20.26 NMAC, 3/17/08]

**20.11.20.27 ENFORCEMENT:**

**A.** All persons shall use control measures that are effective in maintaining compliance with 20.11.20 NMAC. Violation of a fugitive dust control permit or fugitive dust control plan approved by the department is a violation of 20.11.20 NMAC. If a violation occurs or is occurring, the department may issue a verbal warning, issue a written warning, initiate an administrative enforcement action and assess an administrative civil penalty, and take all other actions authorized by law and equity, including issuing a stop work order as authorized by 20.11.20.27 NMAC.

**B.** If the department determines a person has violated or is violating a requirement or prohibition of 20.11.20 NMAC, the department may initiate an administrative enforcement action and assess an administrative civil penalty for a past or current violation, or both, as authorized by 74-2-12.A.(1) NMSA. As also authorized by 74-2-12.A.(2) NMSA and 74-2-12.1 NMSA, the department may commence a civil action in New Mexico district court for appropriate relief, including a temporary or permanent injunction. In addition,

tion, as authorized by 74-2-14 NMSA, the department also may commence or cause a criminal action to be commenced.

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

**D.** If a person (requestor) asks the department for an informal review meeting to consider the department's decision regarding an administrative compliance order in the manner provided by 20.11.20.27 NMAC, the process shall not extend the 30-day deadline for submitting a written request to the department director requesting a public hearing as provided by 74-2-12.C NMSA. If a person receives an administrative compliance order from the department, that person ("requestor") may request an informal review meeting to discuss the administrative compliance order. The request shall be in writing or on a form provided by the department. The requestor shall deliver the written request for an informal review meeting to the director and a division manager within five business days after the requestor has received the administrative compliance order. Within five business days of receiving the request, a division manager or designee shall hold an informal review meeting with the requestor and a division representative (e.g. division manager, compliance officer, or person issuing the order) in an attempt to resolve the administrative compliance order. Within two business days after the informal review meeting, a division representative shall mail, hand deliver or deliver by facsimile a statement to the requestor with the department's final decision regarding the administrative compliance order and the reasons for the decision. If the requestor is adversely affected by the final decision made by the department, the requestor may follow the procedures described in Subsection E of 20.11.20.27 NMAC.

**E.** A person who receives an administrative compliance order and chooses not to sign the compliance order or similar document as requested by the department, and comply with its terms, may request a hearing consistent with 74-2-12.C NMSA. The decision following the hearing may be appealed consistent with 74-2-9.A NMSA.

**F.** Payment of an administrative civil penalty shall not prevent the department from taking additional enforcement actions, if the violation is repeated or an additional violation occurs. Payment of an administrative civil penalty for a prior or additional violation shall not be a defense to a subsequent action taken by the department to resolve an additional violation. Actions

by the department may include suspension or revocation of a permit, as provided by 74-2-12.B NMSA, and issuance of a stop work order.

**G.** The permittee or responsible person as identified in the permit shall take all actions required by the permit to prevent a violation of 20.11.20 NMAC, including stopping active operations, if necessary. If the permittee or responsible person as identified in the permit fails to take all required actions, the owner or operator, if different, shall take all actions required to prevent or satisfactorily resolve a violation of 20.11.20 NMAC, including stopping active operations, if necessary.

**H.** The department may issue a stop work order, which shall suspend all active operations except for the required application of reasonably available control measures. The department also may revoke a permit issued by the department if the permittee fails to implement the reasonably available control measures required by the fugitive dust control permit.

**I.** If a person fails to obtain a permit as required by 20.11.20 NMAC, the department may issue a stop work order which shall require all active operations at a site to stop except for application of reasonably available control measures.

**J.** The stop work order, which shall be effective 24 hours after the person, permittee, owner, operator, or responsible person named in a permit receives the stop work order, unless an earlier deadline for stopping work or other activities is imposed by the department for good reason. The stop work order shall remain in effect until the person, permittee, owner, operator, or responsible person named in the permit demonstrates to the satisfaction of the department that the activities of the person, permittee, owner, operator or responsible person named in the permit comply with the provisions of 20.11.20 NMAC.

[20.11.20.27 NMAC - Rp, 20.11.20.27 NMAC, 3/17/08]

#### **20.11.20.28 PUBLIC OUT-REACH AND TRAINING:**

**A.** The department shall provide or approve public education regarding reducing fugitive dust. The department shall maintain an electronic information system using the Internet in order to provide access to the general public and regulated business community regarding fugitive dust control programs, activities, regulations, regulatory requirements, forms and information.

**B.** The department shall implement a program to provide training at no cost to individuals who are or may be

required to comply with provisions of 20.11.20 NMAC. Approximately twice per year, the department shall provide or approve training workshops on fugitive dust and its control to persons who conduct or participate in projects involving active operations and to other interested persons. When a person attends the training and successfully passes a test, the department or approved trainer shall issue a certificate stating that the person has successfully completed the training.

[20.11.20.28 NMAC - Rp, 20.11.20.28 NMAC, 3/17/08]

**20.11.20.29 COMPLAINTS:** The department shall respond to complaints from residents, businesses and others in a timely manner, but in no case shall the initial response take longer than three business days.

[20.11.20.29 NMAC - Rp, 20.11.20.29 NMAC, 3/17/08]

#### **HISTORY OF 20.11.20 NMAC:**

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

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

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

#### **History of Repealed Material:**

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

20.11.20 NMAC, Fugitive Dust Control (filed 1/28/04) repealed 3/17/08.

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

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

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

20.11.20 NMAC, Fugitive Dust Control (filed 1/28/04) replaced by 20.11.20 NMAC, Fugitive Dust Control, effective 3/17/08.

## NEW MEXICO CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION

### Notice of Renumbering

The Cumbres and Toltec Scenic Railroad Commission has reformatted and renumbered the following rules to comply with current NMAC requirements, effective 2-29-2008.

- 4.21.1 NMAC, General Provisions
- 4.21.2 NMAC, Officers
- 4.21.3 NMAC, Principal Office
- 4.21.4 NMAC, Meetings
- 4.21.5 NMAC, Committees
- 4.21.6 NMAC, Rules and Regulations
- 4.21.9 NMAC, Fiscal
- 4.21.10 NMAC, Annual Report
- 4.21.11 NMAC, Seal

In Section 5, in each part the words *or paragraph*, are deleted, as they are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.

## NEW MEXICO CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION

This is an amendment to 4.21.4 NMAC, Section 8, effective February 29, 2008.

### 4.21.4.8 MEETINGS:

A. The commission shall hold at least four quarterly meetings per calendar year.

B. Special meetings of the commission may be called by the chairman at any time, or upon written request of two members of the commission.

C. Notice of all special meetings of the commission shall be sent by the executive director to all members of the commission by ordinary mail at least seven days in advance of each meeting and such notice shall state the purpose thereof. At such special meeting only the matters specified in the notice shall be considered.

D. All meetings of the commission shall be held at such place as shall be agreed upon by the commissioners.

E. Minutes of the commission's meetings shall be preserved in a suitable manner. Minutes, until approved, shall not be official.

F. Three members of the commission must be present to constitute a quorum.

G. The commissioners of each signatory state shall have the right to vote in any of the deliberations of the com-

mission.

H. Three of the commissioners of the signatory states must concur in any action taken by the commission.

I. At each regular or special meeting of the commission, the order of business, unless agreed otherwise, shall be as follows:

- (1) call to order;
- (2) approval of unapproved minutes;
- (3) reports;
- (4) action items;
- (5) other business;
- (6) adjournment.

J. All meetings of the commission, except executive sessions, shall be open to the public. Executive sessions shall be open only to members of the commission and such advisers as may be designated by each member and employees as permitted by the commission; provided, however, that the commission may call witnesses before it when in such sessions.

K. Any meeting of the commission may be recessed from time to time and from the place set for the meeting to another place by the vote of a majority of the commissioners present.

L. When it is difficult or impossible for a commission member to attend a commission meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the New Mexico Open Meetings Act and as provided by the commission's rules and regulations.  
[6-15-84, 7-15-96; 4.21.4.8 NMAC - Rn & A, 4 NMAC 21.4.8, 02-29-08]

## NEW MEXICO DEPARTMENT OF HEALTH

### TITLE 7 HEALTH CHAPTER 27 EMERGENCY MEDICAL SERVICES PART 9 TRAUMA SYSTEM FUND

**7.27.9.1 ISSUING AGENCY:**  
New Mexico Department of Health.  
[7.27.9.1 NMAC - N, 02/29/2008]

**7.27.9.2 SCOPE:** The Trauma System Fund Authority shall apply to requests made for funds available pursuant to the Trauma System Fund Authority Act, Sections 24-10E-1, et seq, NMSA 1978.  
[7.27.9.2 NMAC - N, 02/29/2008]

**7.27.9.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to the following statutory authorities 1) the Department of Health Act, Section 9-7-6E., NMSA 1978, which authorizes the secretary of the department

of health to "make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions", and 2) the Trauma System Fund Authority Act, Section 24-10E-7., NMSA 1978, which authorizes the department of health to adopt rules to carry out the provisions of the act.  
[7.27.9.3 NMAC - N, 02/29/2008]

**7.27.9.4 DURATION:**  
Permanent.  
[7.27.9.4 NMAC - N, 02/29/2008]

**7.27.9.5 EFFECTIVE DATE:**  
02/29/2008, unless a later date is cited at the end of a section.  
[7.27.9.5 NMAC - N, 02/29/2008]

**7.27.9.6 OBJECTIVE:** The objective of Part 9, Chapter 27 is to establish standards and procedures for funding programs under the Trauma System Fund Authority Act. These standards and procedures are designed for the purpose of making funds available to sustain existing trauma centers, support the development of new trauma centers, and develop a statewide trauma system. This rule will inform New Mexico hospitals and other trauma system stakeholders of the procedures to access funds. The department of health through the emergency medical systems bureau, will administer the fund pursuant to the Trauma System Fund Authority Act and this rule.  
[7.27.9.6 NMAC - N, 02/29/2008]

**7.27.9.7 DEFINITIONS:**  
**A. "Accumulation"**  
defined as the prior approved expenditure or disposition in the current fiscal year of funds distributed in the fiscal year.

**B. "Act"** defined as the Trauma System Fund Authority Act, Section 24-10E-1, et seq, NMSA 1978.

**C. "Authority"** defined as those individuals, representing specific agencies, organizations and individuals appointed by the governor to serve on the Trauma System Fund Authority pursuant to Section 24-10E-4, B., NMSA 1978.

**D. "Bureau"** defined as the emergency medical systems bureau of the epidemiology and response division, New Mexico department of health.

**E. "Chief"** defined as the chief of the emergency medical systems bureau.

**F. "Department"** defined as the New Mexico department of health.

**G. "Designated trauma centers"** defined as those hospitals or other healthcare facilities designated by the department as having met the requirements of the rule 7.27.7 NMAC, "Trauma Care System" as a level I, II, III, or IV trauma

center.

**H. "Director"** defined as the director of the epidemiology and response division.

**I. "Division"** defined as the epidemiology and response division.

**J. "Emergency medical services (EMS)"** defined as the services rendered by emergency medical technicians, licensed emergency medical services first responders or emergency medical dispatchers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

**K. "Fiscal year"** defined as the state fiscal year that runs from July 1 through June 30 each year.

**L. "Fund"** defined as the trauma system authority fund.

**M. "Injury prevention program"** defined as a planned activity with a defined purpose, stated objectives, implementation schedule and an evaluation component that seeks to prevent or reduce illness or injury. Examples include but not limited to bicycle helmet promotion, seat belt awareness campaign, child care seat distribution program, driving while intoxicated (DWI) prevention and first aid training.

**N. "Secretary"** defined as the secretary of the New Mexico department of health.

**O. "Trauma registry"** defined as a database that documents and integrates medical and system information related to the provision of trauma care by hospitals or healthcare facilities.

**P. "Trauma advisory system stakeholders committee (TAC)"** defined as the statewide committee on trauma comprised of pre-hospital, hospital, rehabilitation, injury prevention and system support staff involved in trauma care established pursuant to the EMS Act.

**Q. "Uncompensated trauma care"** defined as the difference between the costs incurred by a hospital in providing the service and the amount that the hospital has been paid for providing the service.

[7.27.9.7 NMAC - N, 02/29/2008]

**7.27.9.8 DUTIES OF THE BUREAU:** On behalf of the department, the bureau shall provide administrative and staff support to the authority, including the administration and distribution of the fund, pursuant to oversight by the authority in conformance with the act and this rule.

[7.27.9.8 NMAC - N, 02/29/2008]

**7.27.9.9 DUTIES OF THE AUTHORITY:** The authority shall:

**A.** develop criteria by which distribution of funds to existing trauma

centers and potential new centers will occur;

**B.** receive applications and determine and monitor the actual distribution of money from the fund that will support the development of a statewide system of trauma care;

**C.** oversee the department's administration of the fund and development of a trauma system;

**D.** report annually to the interim legislative health and human services committee and the legislative finance committee.

[7.27.9.9 NMAC - N, 02/29/2008]

#### **7.27.9.10 ANNUAL REPORT:**

The authority shall prepare an annual written report that includes a summary of the current fiscal year distribution from the fund, including the number of approved applications and amount awarded to sustain existing trauma centers, support the development of new trauma centers, and develop a statewide trauma system. In addition, the report will include an assessment of progress and remaining challenges to achieve the purposes of the act. The report shall be made to the interim legislative committees and made available to public entities and the public on request.

[7.27.9.10 NMAC - N, 02/29/2008]

**7.27.9.11 EXISTING TRAUMA CENTER FUNDING PROGRAM:** The purpose of this program is to sustain existing New Mexico trauma centers to ensure optimal care for those who suffer traumatic injuries.

**A. Eligibility:** subject to the availability of the funds in the trauma system fund, facilities that are currently designated by the department as trauma centers may apply for financial support under this rule.

**B. Application process:** annually, prior to the start of each state fiscal year, eligible trauma centers may apply to participate in the existing trauma center funding program by submitting the application forms in a timely manner, as prescribed by the authority and distributed by the bureau. Such application forms will include, but not be limited to:

(1) identifying information;

(2) assurances from the trauma center's governing authority;

(3) de-identified data regarding trauma patients served during a specified previous time period according to the case-inclusion criteria of the trauma registry;

(4) financial data associated with those trauma patients including charges, collections, and uncompensated trauma care;

(5) a plan of expenditure for the amount requested from the fund.

#### **C. Funding amounts:**

Based upon the allocation decision by the authority in 7.27.9.12 NMAC, the following formula will be applied to determine the annual funding for each existing trauma center with an approved application:

(1) an allocation will be made to each trauma center based on their level of designation subject to the availability of funds;

(2) additionally, level I, II, and III trauma centers will receive their share of the remaining dollars in the existing trauma center funding program, based upon their relative share of uncompensated trauma care for these centers as determined by the authority.

**D. Award of funds:** The authority shall approve the applications and the funding amounts for each existing trauma center no later than July 31st. The department shall prepare a written agreement with each existing trauma center awarded funding under this rule that reflects the term and amount of the award, and the expectations and conditions for receiving the award, including fiscal accountability and reporting requirements.

**E. Use of funds:** Funds awarded under the existing trauma center funding program must be used to support, sustain, or enhance the trauma program including support for trauma-related clinical and administrative personnel on-call costs for trauma program as determined by the authority.

**F. Accumulation:** It is anticipated that the entire amount of the annual award to each existing trauma center will be spent during the fiscal year in which it is awarded. In the event that the entire amount cannot or will not be expended, the trauma center must return the unexpended balance to the department, unless it submits an accumulation and expenditure plan that is approved by the authority prior to the close of the fiscal year in which it was awarded. The authority may approve up to one additional fiscal year to expend the balance.

**G. Change in trauma center designation status:** If an existing trauma center fails to maintain its level of trauma center designation following an award under this rule, the authority shall review all the pertinent information and determine what amount, if any, the department shall recover from the trauma center.

[7.27.9.11 NMAC - N, 02/29/2008]

**7.27.9.12 DEVELOPING TRAUMA CENTER FUNDING PROGRAM:** The purpose of this program is to support the development of new trauma centers to enhance the overall statewide trauma system.

**A. Eligibility:** Any facility

ty that has submitted a letter of intent to the bureau to become a designated trauma center under 7.27.9 NMAC prior to the issuance of the application for this developing trauma center funding program shall be deemed eligible to apply.

**B. Application process:**

Annually prior to the start of each state fiscal year, hospitals or healthcare facilities that have submitted a timely letter of intent to become a designated trauma center and desired level of designation, may apply to participate in the developing trauma center funding program. Such hospitals/healthcare facilities shall submit the application forms in a timely manner, as prescribed by the authority and distributed by the bureau. Such application forms will include, but not be limited to:

- (1) identifying information;
- (2) assurances from the trauma center's governing authority;
- (3) a detailed plan to become a designated trauma center with time frames, milestones, and an associated budget which specifically indicates how funding under the program will be utilized in the coming fiscal year.

**C. Funding amounts:**

Based upon the allocation decision by the authority in 7.27.9.2 NMAC, the authority will annually establish an award for each developing trauma center. The authority will consider the merits of each application under the developing trauma center funding program and will determine the actual award for each applicant.

**D. Award of funds:** The authority shall approve the applications and the funding amounts for each developing trauma center no later than July 31st. The department shall prepare a written agreement with each developing trauma center awarded funding under this rule that reflects the term and amount of the award, and the expectations and conditions for receiving the award, including fiscal accountability and reporting requirements.

**E. Use of funds:** Funds awarded under the developing trauma center funding program must be used to support the developing trauma program as determined by the authority.

**F. Accumulation:** It is anticipated that the entire amount of the annual award to each developing trauma center will be spent during the fiscal year in which it is awarded. In the event that the entire amount cannot or will not be expended, the developing trauma center must return the unexpended balance to the department, unless it submits an accumulation and expenditure plan that is approved by the authority, prior to the end of the fiscal year in which it is awarded. The authority may approve up to one additional fiscal

year to expend the balance.

**G. Eligibility limit:**

Under the developing trauma center program there is a limit of two fiscal years during which designation as a trauma center must be achieved by a developing trauma center. If designation is not achieved during this time period, the authority shall review the circumstances and all pertinent information determining what amount if any, the department shall recover, from developing trauma center.

[7.27.9.12 NMAC - N, 02/29/2008]

**7.27.9.13 TRAUMA SYSTEM DEVELOPMENT PROGRAM:**

The purpose of this program is to provide financial support to various statewide system development activities, initiatives, agencies, or programs, as prioritized annually by the authority. The amount of funds available in a given fiscal year will be based upon the allocation decision by the authority in 7.27.9.11 NMAC.

**A. System development**

**priorities:** Prior to each fiscal year, the authority shall establish priorities for statewide system development activities and initiatives. These priorities shall be communicated to the (TAC) and to the bureau.

**B. Proposals solicited**

**and reviewed:** Early each fiscal year, the bureau, with guidance from the TAC, will widely distribute a request for applications to meet the system development priorities as specified by the authority. All applications received in a timely manner on the forms specified by the bureau will be reviewed and considered by the TAC.

**C. Recommendations to**

**the authority:** Based upon their review, the TAC will make written recommendations to the authority for which system development applications warrant funding and at what levels.

**D. Funding decisions:**

The authority will review the system development applications and the recommendations from the TAC, in making their funding decisions under the trauma system development program.

**E. Award of funds:**

The authority shall approve the trauma system development applications and the funding amounts no later than July 31st.

[7.27.9.13 NMAC - N, 02/29/2008]

**7.27.9.14 GENERAL PROVISIONS:**

**A. Spending flexibility:**

If in any fiscal year, the authority decides not to spend the entire amount allocated under any of the three trauma system funding programs as initially decided in 7.27.9.12 NMAC, the authority, at their dis-

cretion, may re-allocate that amount to either or both of the remaining funding programs for expenditure in that fiscal year.

**B. Procedures for recon-**

**sideration:** Applications applying for and funding under this rule may request a reconsideration of their funding amount by notifying the bureau in writing within ten (10) working days after notification to the applicant of the authority's funding determination. The authority must review the reconsideration request within thirty (30) working days and issue a final written determination within ten (10) working days of their review.

**C. Oversight, inspection,**

**and audit:** The authority, working with and through the department, is responsible for the oversight of expenditures from the fund and the development of the statewide trauma system. All recipients of trauma funds under the act shall be subject to reasonable oversight and as needed, visitation by authorized representatives of the bureau or the authority. Records of purchases, training programs, or personnel expenditures accomplished with awards from the fund shall be open for inspection. This oversight may include an objective audit if deemed necessary. Findings from all oversight activities will be shared with the fund recipient and as appropriate a written deficiency correction report may be requested.

**D. Monitoring and**

**accountability:** The bureau will be responsible for monitoring the trauma system development program and for periodically, but no less than annually, reporting the progress or results to both the TAC, and the authority.

[7.27.9.14 NMAC - N, 02/29/2008]

**HISTORY OF 7.27.9 NMAC:  
[RESERVED]**

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**End of Adopted Rules Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

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Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
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Issue Number 10	May 16	May 30
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Issue Number 20	October 16	October 30
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Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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