

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 44 EMISSIONS TRADING FOR EMISSIONS SUBJECT TO A MAINTENANCE PLAN

20.11.44.1 ISSUING AGENCY: Albuquerque/Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[20.11.44.1 NMAC – Rp, 20 NMAC 11.44.I.1, 7/1/02]

20.11.44.2 SCOPE:

A. 20.11.44 NMAC establishes a system for approving, crediting, and trading emission offsets in Bernalillo County to be used in conjunction with 20.11.45 NMAC.

B. Exempt: 20.11.44 NMAC does not apply to stationary sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.
[20.11.44.2 NMAC – Rp, 20 NMAC 11.44.I.2, 7/1/02]

20.11.44.3 STATUTORY AUTHORITY: 20.11.44 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.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque ROA 1994 Section 9-5-1-4.
[20.11.44.3 NMAC – Rp, 20 NMAC 11.44.I.3, 7/1/02]

20.11.44.4 DURATION: Permanent.

[20.11.44.4 NMAC – Rp, 20 NMAC 11.44.I.4, 7/1/02]

20.11.44.5 EFFECTIVE DATE: 7/1/02, unless a later date is cited at the end of a section.

[20.11.44.5 NMAC – Rp, 20 NMAC 11.44.I.5, 7/1/02]

20.11.44.6 OBJECTIVE: The objective of 20.11.44 NMAC is to establish a stationary source emissions trading and offset program for those criteria pollutants for which Bernalillo County is subject to an attainment maintenance plan pursuant to 40 Code of Federal Regulations Part 51. The emissions trading and offset program of 20.11.44 NMAC is intended to provide market-based incentives for emissions reductions, offsets, and transfers, which are intended to keep Bernalillo County within the emissions budgets established by attainment maintenance plans approved by the Administrator. The specific purpose of 20.11.44 NMAC is limited to providing a means to achieve verifiable and enforceable emissions offsets and transfers to meet the requirements of 20 NMAC 11.45.
[20.11.44.6 NMAC – Rp, 20 NMAC 11.44.I.6, 7/1/02]

20.11.44.7 DEFINITIONS: In addition to the definitions in 20.11.44.7 NMAC, the definitions in 20.11.01 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.44.7 NMAC shall govern. Terms used in 20.11.44 NMAC but not defined in 20.11.44 NMAC or 20.11.01 NMAC shall have the meaning given them by the New Mexico Air Quality Control Act, the CAA, or applicable Environmental Protection Agency (EPA) regulations, in that order of priority.

A. “Bank” means the accounting repository for emission offsets, including the emission offset banking database, for those criteria pollutants for which Bernalillo County is subject to an attainment maintenance plan emission budget pursuant to 40 Code of Federal Regulations Part 51.

B. “Bankable Emission Offsets” means the emission offsets that meet the requirements of 20.11.44 NMAC.

C. “Banking” means a system for quantifying, recording, storing, and preserving emission offset information so that the offsets may be used or transferred and used at a future date.

D. “Banking Database” means the Division database that records all emission offset transactions including deposits, withdrawals, and transfers.

E. “Department” means the Albuquerque Environmental Health Department or its successor agency.

F. “Division” means the Air Quality Division of the City of Albuquerque Environmental Health Department, or the Division’s successor agency or authority, which administers and enforces the Board regulations and is staff for the Board.

G. "Emission Offsets" or "EOs" means an emission reduction that will be included in a permit for a proposed stationary source or modification of an existing source. Methods of reducing emissions to receive credit under 20.11.44 NMAC include but are not limited to, the following:

- (1) installation of add-on control equipment,
- (2) change in process(es),
- (3) permit provisions specifying a lower level of emissions accepted by the owner or operator,
- (4) shutdown of emission units or stationary sources,
- (5) production curtailment(s), and
- (6) reductions in operating hours.

H. "Emission Offset Credit" or "EOC" means an emission offset that is enforceable and quantifiable and is approved by the Division in accordance with the requirements of 20.11.44 NMAC.

I. "Emission Offset Credit Certificate" or "EOC Certificate" means a certificate documenting possession of a specified quantity and type of EOs, issued by the Division to the owner(s) identified on the certificate.

J. "Enforceable" means an emission limit that is established by a source-specific SIP revision, a limitation contained in a permit issued in accordance with 20.11.40 NMAC, 20.11.41 NMAC, or 20.11.42 NMAC, an order or other decision of a court, a final administrative decision, or an enforcement instrument such as a compliance or other settlement agreement.

K. "Potential Emission Rate" means the emission rate of a stationary source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the Division pursuant to the New Mexico Air Quality Act [Chapter 74, Article 2 NMSA 1978] or the federal Clean Air Act.

L. "Quantifiable" means the amount, rate, and characteristics of the emission reduction, which can be estimated through a reliable method, approved by the Division. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process parameters, production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions shall be used to quantify emission levels both before and after the reduction, unless the Division approves another method.

M. "Transfer" means the conveyance of an emission offset from one person to another. All banking transactions shall be recorded in the emission offset banking database and shown as debits and credits for the appropriate person(s).

[20.11.44.7 NMAC – Rp, 20 NMAC 11.44.I.7, 7/1/02]

20.11.44.8 VARIANCES: [RESERVED]

20.11.44.9 SAVINGS CLAUSE: Any amendment to 20.11.44 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance or 20.11.44 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[20.11.44.9 NMAC – Rp, 20 NMAC 11.44.I.9, 7/1/02]

20.11.44.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.44 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.44 NMAC.

[20.11.44.10 NMAC – Rp, 20 NMAC 11.44.I.10, 7/1/02]

20.11.44.11 DOCUMENTS: Documents incorporated and cited in 20.11.44 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[20.11.44.11 NMAC – Rp, 20 NMAC 11.44.I.11, 7/1/02]

20.11.44.12 APPLICABLE REQUIREMENTS:

A. Emission Offset Credit Bank. The Division shall maintain a banking database that shall record all current EOC information, including applications, certificates issued, transfers, any other transactions that affect EOC ownership and totals, and all other pertinent information concerning current EOCs. The current total

stationary source emissions inventory shall also be included. Except for Confidential Business Information exempt under applicable federal, state, or local law, all data in the banking database shall be available to the public upon request consistent with the New Mexico Inspection of Public Records Act.

B. Criteria for Emissions Offset Credit Trade Approval:

(1) If an offset meets all requirements of 20.11.44 NMAC, the Division shall authorize banking and use of the offset as an EOC.

(2) An EOC may be used as an offset until the earlier of either the end of the term of the applicable maintenance plan or the date the applicable maintenance plan is no longer in effect. An EOC shall be no longer available for use or transfer as an EOC when the offsets are included as allowable emissions in a permit or permit modification.

C. Procedures for Calculating a Proposed Emission Offset. To calculate a proposed emission offset credit, the applicant shall:

(1) Calculate the potential emission rate that exists before the proposed offsets is produced.

(2) Subtract the new, proposed potential emission rate from the potential emission rate. The product will be the offset that is the proposed "emission offset credit".

D. Emission Offset Credit Bank Record Keeping Requirements. All records shall be maintained by the EOC owner as long as the emission offset credit is valid, and shall be available for inspection upon request by the Division. Amounts shall be recorded in tons per year.

(1) For each pending EOC application or approved EOC certificate, each EOC owner shall maintain records of the following:

(a) a complete description of all projects that produced or used EOCs, including the potential emission rate for the affected sources, the date of the actual emission offsets, potential emission rate or proposed potential emission rate, as appropriate, after the project (TPY),

(b) EOC deposits applied for, but not yet approved (i.e., applications),

(c) approved EOC deposits,

(d) EOCs used as offsets,

(e) EOCs transferred to another party,

(f) adjustments to the EOC balance to account for new emission offsets,

(g) The date of each transaction (for applications: the date on which the application was submitted); for deposits: the date the EOC Certificate was issued; for EOCs used: the date on which the permit was issued that included the EOCs; for transfers: the date of sale, and

(h) the current EOC balance.

(2) If transfer of an EOC is approved by the Division, the transferee shall maintain all records required in Subsection D of 20.11.44.12 NMAC, and shall make the records available for inspection upon request by the Division.

E. A person who wants the Division to approve designation of offsets as EOCs, transfer of EOCs to a new owner, or use of EOCs in a permit or permit modification shall submit to the Division an Emission Offset Credit Application on a form approved by the Division. The application, the information and the proposed use of the EOCs shall comply with 20.11.44 NMAC and all other applicable laws. The owner of an EOC shall pay the same annual emission fee per pollutant ton as an owner/operator of a permit subject to 20.11.02 NMAC.

F. Procedures for Division Review and Approval of EOCs.

(1) **EOC applications not related to a permitting action.** The applicant shall submit the EOC application on a form approved by the Division. The Division shall have thirty days from the date of receipt to review and rule the EOC application complete. The Division shall within thirty days after ruling the EOC application complete either: approve the EOC as submitted in the application; approve the EOC with conditions; or deny the EOC. The Division shall issue within forty-five days of ruling the EOC application complete an EOC certificate in accordance with Paragraph (3), of Subsection F of 20.11.44.12 NMAC for EOCs approved as submitted or approved with conditions. The Division shall issue a denial letter with a statement of basis for denial within forty-five days of ruling the EOC application complete for EOCs denied.

(2) **EOC applications related to a permitting action.** The applicant shall submit the EOC application on a form approved by the Division. The Division shall process the EOC application in conjunction with the processing of the permitting action in accordance with the permitting action timelines specified in 20.11.41 NMAC or 20.11.42 NMAC. For a permitting action requiring public notice, the Division shall include as part of the public notice a statement that emission offsets are involved, how the emission offsets are created or utilized; and the quantity of emission offsets involved in the permitting action. The Division shall issue a final decision on the EOCs within the timelines specified for the permitting action in accordance with 20.11.41 NMAC or 20.11.42 NMAC.

The Division's final decision on the EOCs include, but is not limited to: approval of utilization of the EOCs as requested, approval of utilization of the EOCs with conditions; issuance of an EOC certificate; and/or denial of the EOCs. The Division's letter of denial shall include a statement of basis of denial. The Division shall issue the EOC certificate in accordance with Paragraph (3), of Subsection F of 20.11.44.12 NMAC.

(3) Issuance of EOC Certificates.

(a) Issuance of EOC Certificates. For EOC applications not related to a permitting action, if the Division approves the EOC, the Division shall issue an EOC certificate(s) to the owner(s) within thirty days after the Division's final decision to issue the EOC certificate. For EOC applications related to a permitting action, if the Division approves the EOC, the Division shall issue an EOC certificate(s) to the owner(s) within thirty days after the Division's issuance of the permitting action. The Division shall retain a copy of the EOC certificate, and the original shall be delivered to the owner(s). The issued EOC certificate shall be recorded in the banking database, and the EOC balance(s) in the banking database shall be adjusted accordingly.

(b) At a minimum, each EOC certificate shall:

- (i) bear the date of issuance,
- (ii) be signed by the Division,
- (iii) include the owner(s)' name(s) and address(es),
- (iv) state the name and location of the stationary source where the emission reduction occurred,
- (v) describe the method of EOC creation,
- (vi) state the quantity of the EOC and pollutant, and
- (vii) state when the emission reduction occurred.

(4) Multiple EOC Certificates and Multiple Ownership. Single or multiple EOC certificates may be issued for a particular emission offset project. At the owner(s)' request, multiple EOC certificates shall be issued for each owner's proportional share.

(5) Transfer of EOCs. An EOC certificate may be transferred in whole or in part. The role of the Division in the transfer of an EOC certificate shall be limited to providing information to the public, documenting EOC transfers, and registering EOC certificates. After an owner of an EOC transfers all or part of EOCs to a new owner, the prior owner shall notify the Division of the transfer by a letter delivered to the Division within 30 days of the transfer. The letter shall include the name of the prior owner, the new owner and the new owner's address and contact information, the amount of EOC transferred, and the date of the transfer. The Division shall then issue a certificate documenting the new owner and the amount of the EOC transferred. In the case of a partial transfer, the Division shall issue a new certificate both to the new owner and to the owner transferring the EOCs. The certificates shall state the EOCs available to each owner. The EOC balance(s) in the banking database shall be adjusted accordingly.

(6) Request for Recalculation of EOCs. An applicant for EOC approval or an EOC owner may ask the Division to recalculate an EOC balance. For instance, an owner may ask for recalculation if more accurate emissions data (e.g., performance test data, etc.) is available. When the Division performs the review, the Division shall follow the same procedure used for reviewing an initial application for approval of EOCs.

G. Review Hearing.

(1) If an owner of an emission offset credit (EOC) or an applicant for an EOC disagrees with the Division's decision on an action regarding an EOC, the owner or applicant (requestor) may ask the Department Director to call a review hearing to review and reconsider the Division's initial decision. To obtain a review hearing, the requestor must deliver a written request for review and reconsideration to the Director within thirty days after receipt of the Division's initial decision. If the requestor does not request review by the Director within the thirty day deadline, the requestor cannot later appeal the decision.

(2) Upon receiving the written request for review and reconsideration, the Director shall set a date, time, and place for the review hearing. The hearing shall occur not more than thirty days after the Director received the written request. No fewer than ten days before the hearing, or sooner if agreed by the requestor and the Director, the Director shall inform the requestor by facsimile or telephone of the date, time, and place of the hearing. Notice shall also be sent by mail. The Director may designate a hearing officer who was not involved in making the Division's disputed initial decision. At the hearing, the requestor has the burden of proof and must demonstrate why the Division's initial decision was not correct and what action should be taken. The hearing shall be recorded. The party requesting a written transcript or other copy of the hearing shall pay the related cost.

(3) At the review hearing, if a hearing officer is appointed, the hearing officer will provide a recommended decision to the Director. The Director may sustain, modify, or reverse the Division's disputed initial

decision. The Director shall issue a written decision. The Director shall mail written notice of the decision to the requestor by certified mail no more than fifteen days after the close of the review hearing.
[20.11.44.12 NMAC – Rp, 20 NMAC 11.44.II.1, 2, 3, 4, 5, 6, 7/1/02]

HISTORY OF 20.11.44 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. 38, Emissions Trading, 6/3/91.

History of Repealed Material: 20 NMAC 11.44, Emissions Trading, filed 10/27/95 repealed effective 7/1/02.

Other History:

Regulation No. 38, Emissions Trading, filed 6/3/91 **renumbered, reformatted and replaced** by 20 NMAC 11.44, Emissions Trading, filed 10/27/95.

20 NMAC 11.44, Emissions Trading, filed 10/27/95 **replaced** by 20.11.44 NMAC, Emissions Trading For Emissions Subject To A Maintenance Plan; effective 7/1/02.