

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 102 OXYGENATED FUELS

20.11.102.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [11/1/89. . .12/1/95; 20.11.102.1 NMAC - Rn, 20 NMAC 11.102.I.1, 10/1/02; A, 9/1/04]

20.11.102.2 SCOPE: 20.11.102 NMAC is applicable to gasoline motor fuel sold retail or wholesale or supplied for use in motor vehicles in Bernalillo County except Indian lands. [12/1/95; 20.11.102.2 NMAC - Rn, 20 NMAC 11.102.I.2, 10/1/02; A 12/11/05]

20.11.102.3 STATUTORY AUTHORITY: 20.11.102 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.B; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 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. [11/1/89. . .12/1/95; 20.11.102.3 NMAC - Rn, 20 NMAC 11.102.I.3, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.4 DURATION: Permanent. [12/1/95; 20.11.102.4 NMAC - Rn, 20 NMAC 11.102.I.4, 10/1/02]

20.11.102.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section. [12/1/95; 20.11.102.5 NMAC - Rn, 20 NMAC 11.102.I.5 & A, 10/1/02]

20.11.102.6 OBJECTIVE: To provide for the use of oxygenated fuels in Bernalillo county to reduce tail pipe emissions from gasoline powered motor vehicles and to establish a contingency measure in the event that monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards. [6/15/95. . .12/1/95; 20.11.102.6 NMAC - Rn, 20 NMAC 11.102.I.6, 10/1/02; A, 9/1/04]

20.11.102.7 DEFINITIONS: In addition to the definitions in 20.11.102.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.102.7 NMAC shall govern.

- A. “Department”** means the Albuquerque environmental health department or its successor agency.
- B. “Ethanol”** means a colorless volatile flammable alcohol with the molecular composition of $\text{CH}_3\text{CH}_2\text{OH}$.
- C. “Facility” or “facilities”** means a place or places of business which sells or supplies for wholesale or retail purposes gasoline motor fuel, including fuel-transporting businesses.
- D. “Gasoline motor fuels”** means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, but does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines.
- E. “Manager”** means the manager of the vehicle pollution management division (VPMD).
- F. “MTBE”** means methyl tertiary butyl ether.
- G. “Methanol”** means a light volatile flammable poisonous liquid alcohol CH_3OH formed by the destructive distillation of wood or manufactured from natural gas or coal, and used in combination with heavier co-solvent alcohols as an octane enhancer for addition to gasoline.
- H. “Motor vehicle”** means any vehicle propelled by a spark ignited internal combustion engine which is designed primarily for travel on public highways and which is generally and commonly used to transport persons and property over the public highways.
- I. “Oxygen content by weight”** means a measurement of the percentage of oxygen in an oxygenated fuel.
- J. “Oxygenate”** means any oxygen-containing ashless, organic compound which may be used as a fuel or as a gasoline blending component and which was approved as a blending agent under the provisions of a waiver issued by the U.S. environmental protection agency pursuant to the Clean Air Act, Section 211 (f) (4).
- K. “Oxygenated fuel”** means a motor vehicle fuel blend, whether leaded or unleaded, consisting primarily of gasoline and a substantial amount of one or more oxygenates, generally an alcohol or ether.

L. “Vehicle pollution management division (VPMD)” means the division within the department responsible for the administration of 20.11.102 NMAC.

M. “Winter pollution season” means the annual period beginning the first day of November and ending at the conclusion of the last day of February of the immediately following year.
[11/10/93; 20.11.102.7 NMAC - Rn, 20 NMAC 11.102.I.7, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.8 VARIANCES: [Reserved]
[12/1/95; 20.11.102.8 NMAC - Rn, 20 NMAC 11.102.8, 10/1/02]

20.11.102.9 SAVINGS CLAUSE: Any amendment of 20.11.102 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or prior versions of 20.11.102 NMAC. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, part or permit in effect at the time the violation was committed.
[11/10/93. . .12/1/95; 20.11.102.9 NMAC - Rn, 20 NMAC 11.102.I.9, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.10 SEVERABILITY: If any section, subsection, sentence, phrase, clause, or word of 20.11.102 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 the remaining provisions of 20.11.102 NMAC.
[11/10/93. . .12/1/95; 20.11.102.10 NMAC - Rn, 20 NMAC 11.102.I.10, 10/1/02; A 12/11/05]

20.11.102.11 DOCUMENTS: Documents incorporated and cited in 20.11.102 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.
[12/1/95; 20.11.102.11 NMAC - Rn, 20 NMAC 11.102.I.11 & A, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.12 OXYGENATED FUELS: During the winter pollution season, oxygenated fuels shall be used in all gasoline powered motor vehicles as a wintertime air pollution control strategy for reduction of carbon monoxide emissions in Bernalillo county.

A. Annual program duration and minimum oxygen content:

(1) During the winter pollution season, no person shall supply or sell any gasoline motor fuel intended as a final product for fueling of motor vehicles within Bernalillo county, or sell at retail, or sell to a private or government fleet for consumption; or introduce such fuels into a motor vehicle in Bernalillo county unless the fuel contains a minimum 2.7 percent oxygen content by weight, except as required pursuant to 20.11.102.14 NMAC.

(2) The department shall establish the blending tolerance for oxygenated fuels.

(3) The board, after considering EPA guidelines and other applicable information, reports, data, and testimony, may make a determination by July of each year whether the oxygenate levels should be modified or remain the same.

(4) Oxygenates approved for use in this program shall be blended per unit volume of gasoline motor fuel, and blended up to 10 percent by volume for ethanol, or at the volume for any other gasoline motor fuel additive which has been issued a waiver by the EPA pursuant to the Clean Air Act, Section 211 (f) (4).

(5) No gasoline motor fuel blended with methanol and intended as a final product for fueling of motor vehicles shall be sold at retail or to a private or government fleet within Bernalillo county.

B. Inventory: Any supplier who provides gasoline or oxygenate blends in bulk in Bernalillo county must register with VPMD and provide the names, addresses and telephone numbers of all jobbers, fleet fueling facilities and retail outlets supplied. The inventory shall be submitted to VPMD by November 30, 2005 and by October 31 each year thereafter.

C. Recordkeeping: During the winter pollution season, any supplier providing gasoline in Bernalillo county must document whether each batch is oxygenated, the oxygen content by weight and the oxygenate type and percent by volume. This documentation must accompany each shipment and be kept on file by the retailer or fleet facility for the duration of the winter pollution season.

D. Labeling and notice to the public:

(1) All oxygenated motor fuel sold shall be clearly labeled at each dispensing pump identifying the type of oxygenate, with labels provided by the department.

(2) All retail gasoline facilities shall keep readily available all pamphlets, brochures, fact sheets, and other written information provided to them by the department for information and dissemination to the public.

E. Sampling: A minimum of 20 percent of all retail stations and 10 percent of all fleet fueling facilities will be sampled. The department, upon presentation of proper identification, shall be allowed to enter a

facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for the samples at any facility. Samples will be collected through the filler of the underground gasoline storage tanks as outlined in 40 CFR Part 80, Appendix D. If a sample cannot be taken directly from the underground tank, the sample may be taken from the gas pump nozzle and labeled accordingly.

F. Analysis: The department shall make a good faith effort to analyze the samples as soon as possible. Samples shall be analyzed in the field or at the VPMD laboratory on the same day the samples are collected, circumstances permitting. Samples will be analyzed for ethanol, MTBE, or other oxygenates. Any sample results contested by a distributor or station will be sent by the department to the New Mexico Department of Agriculture (NMDA) petroleum standards bureau for analysis. Sample analysis shall be conducted in accordance with the American society for testing and materials (ASTM) standards or equivalent. Analysis shall comply with ASTM D-5845, ASTM D-4815, or equivalent standard.

G. Enforcement:

(1) Samples containing at least 2.5 percent oxygen by weight shall be considered in compliance. Samples containing at least 2.0 percent but less than 2.5 percent oxygen by weight will result in a notice of warning and must be corrected at the time of the next fuel delivery. Samples containing at least 1.5 percent but less than 2.0 percent oxygen by weight will result in notice of violation (NOV) and must be corrected within 24 hours. The NOV will cite the reason(s) for non-compliance and will include the sample date and the results of the analysis in percent oxygen by weight. Samples containing less than 1.5 percent oxygen by weight or repeat violations for samples below 2.5 percent oxygen by weight shall result in an immediate “*stop sale*” order which will remain in effect until the violation is corrected as determined by the department. Any fuel dispensed in violation of a “*stop sale*” order will result in the director of the department issuing a compliance order and imposing a penalty of not less than \$500 and not more than \$15,000 per day as authorized by the New Mexico Air Quality Act, NMSA 1978,74-2-12.B.

(2) The department may enter into an agreement, as appropriate, with any agency of the state or other local government entity to assist in the monitoring, compliance, and enforcement of 20.11.102 NMAC.

H. Suspension of program due to oxygenate shortage: Should extreme and unusual circumstances occur in the marketplace preventing the blending of oxygenates at the levels required by 20.11.102 NMAC, the manager may take the necessary steps as a temporary emergency measure to relax or suspend 20.11.102 NMAC. The manager shall inform the members of the board of such action taken within seven days of this occurrence. At its next regular meeting, or at a special meeting if so called, the board shall review the manager's action.

I. Program review: By the regular meeting of the board in July of each program year, the department shall provide a report to the board reviewing the results of the program, which shall include an analysis of costs and benefits to the consumer, investigations of complaints, compliance and quality assurance activities, and other findings and recommendations.

[11/10/93, 12/1/95; 20.11.102.12 NMAC - Rn, 20 NMAC 11.102.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.102.II.1, 10/1/02; A, 9/1/04; A 12/11/05]

20.11.102.13 Reserved

[11/10/93; 20.11.102.13 NMAC - Rn, 20 NMAC 11.102.II.2, 10/1/02; A, 9/1/04; Repealed, 12/11/05]

20.11.102.14 CONTINGENCY MEASURE: If monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards, then the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter.

[11/10/93. .6/15/95; 20.11.102.14 NMAC - Rn, 20 NMAC 11.102.II.3, 10/1/02; A, 9/1/04; A 12/11/05]

HISTORY OF 20.11.102 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. 35, Alternative Fuels, 11/1/89;

Regulation No. 35, Alternative Fuels, 6/25/92;

Regulation No. 35, Alternative Fuels, 11/10/93;

Regulation No. 35, Alternative Fuels, 6/15/95.

History of Repealed Material:

Other History: Regulation No. 35, Alternative Fuels, filed 6/15/95 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.102, Oxygenated Fuels, filed 10/27/95. 20 NMAC 11.102, Oxygenated Fuels, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.102 NMAC, Oxygenated Fuels, effective 10/1/02.