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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 43 STACK HEIGHT REQUIREMENTS

20.11.43.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[6/18/86. . .12/1/95; 20.11.43.1 NMAC – Rn, 20 NMAC 11.43.I.1, 10/1/02]

20.11.43.2 SCOPE: This Part applies to sources with emission stacks, which are located in Bernalillo County, New Mexico.

A. Exempt: This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

B. Existing Stacks: The provisions of 20.11.43.13 NMAC shall not apply to:

(1) stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970 except where air contaminants are being emitted from such stacks or using such dispersion techniques by sources as defined in Section 111(a)(3) of the Clean Air Act (CAA) which were constructed, or reconstructed, or for which major modifications as defined in 40 CFR Sections 51.165 (a)(1)(v)A, 51.166 b(2)i and 52.21 b(2)i were carried out after December 31, 1970, or;

(2) coal fired steam electric generating units subject to the provisions of Section 118 of the CAA, which commenced operation before July 1, 1957 and the stacks were constructed under a contract awarded before February 8, 1974.

[3/16/89. . .12/1/95; 20.11.43.2 NMAC – Rn, 20 NMAC 11.43.I.2, 10/1/02]

20.11.43.3 STATUTORY AUTHORITY: This Part 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 1994 Section 9-5-1-4.

[6/18/86. . .12/1/95; 20.11.43.3 NMAC – Rn, 20 NMAC 11.43.I.3, 10/1/02]

20.11.43.4 DURATION: Permanent.

[12/1/95; 20.11.43.4 NMAC – Rn, 20 NMAC 11.43.I.4, 10/1/02]

20.11.43.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.

[12/1/95; 20.11.43.5 NMAC – Rn, 20 NMAC 11.43.I.5 & A, 10/1/02]

20.11.43.6 OBJECTIVE: The objective of this Part is to adopt local requirements that are identical to those required by federal new source review regulations assuring uniform procedures and formulae in determining, on a case-by-case basis, what stack heights or other dispersion techniques are creditable under the term "good engineering practice".

[3/16/89. . .12/1/95; 20.11.43.6 NMAC – Rn, 20 NMAC 11.43.I.6, 10/1/02]

20.11.43.7 DEFINITIONS: For purposes of this Part, the definitions in 40 CFR Sections 51.100f, z, and ff through kk (1987), as well as 40 CFR 60.15b (1987) are hereby incorporated as regulations of the Board. In addition to the definitions in 20.11.43.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

[3/16/89. . .12/1/95; 20.11.43.7 NMAC – Rn, 20 NMAC 11.43.I.7, 10/1/02]

20.11.43.8 VARIANCES: Because sources subject to the federal stack height regulation cannot be granted variances from these requirements, insofar as variation from the requirements of this Part are concerned, such sources can not utilize the provisions of 20.11.7 NMAC, Variances Procedures, nor 9-5-1-4 ROA 1994; nor Bernalillo County Ordinance 94-5, all of which were adopted pursuant to Section 74-2-8 NMSA 1978.

[3/16/89. . .12/1/95; 20.11.43.8 NMAC – Rn, 20 NMAC 11.43.I.8, 10/1/02]

20.11.43.9 SAVINGS CLAUSE: Any amendment to 20.11.43 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control

Board Regulation 33, or 20.11.43 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.

[12/1/95; 20.11.43.9 NMAC – Rn, 20 NMAC 11.43.I.9, 10/1/02]

20.11.43.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part 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 this Part.

[12/1/95; 20.11.43.10 NMAC – Rn, 20 NMAC 11.43.I.10, 10/1/02]

20.11.43.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.43.11 NMAC – Rn, 20 NMAC 11.43.I.11 & A, 10/1/02]

20.11.43.12 PUBLIC NOTICE:

A. Before the Department issues a permit pursuant to 20.11.41, 60, or 61 NMAC which contains a new, or revised emission limitation that is based on a good engineering stack height that exceeds the height allowed by 40 CFR Part 51, section 51.100 (ii) 1 or 2, 1987, the Department shall notify the public of the availability of the demonstration study. Such notice shall be given in the manner specified in the applicable regulation for the permit application. Interested parties shall have 30 days from the date of the notice to submit comments on the demonstration and to request a public hearing.

B. If the Director determines there is significant public interest a public hearing shall be held. If a public hearing is held, the Department shall give notice of the time, date and place of the hearing. The hearing shall be held within 45 days of the notice. The hearing may be combined with any other public hearing to be held on the permit application.

C. After the hearing, the Department shall make its final decision on the new or revised emission limitation.

[12/1/95; 20.11.43.12 NMAC – Rn, 20 NMAC 11.43.I.12 & Repealed, 10/1/02; ;Rn, 20 NMAC 11.43.II.1, 10/1/02]

20.11.43.13 CREDIT LIMITATIONS: Except as otherwise provided, in evaluating air quality impacts for a proposed new source or modification of an existing source requiring a permit pursuant to 20.11.41 NMAC/ Authority to Construct; 20.11.61 NMAC, Prevention of Significant Deterioration; or 20.11.60 NMAC, Permitting in Nonattainment Areas, the Department shall give no credit for reductions in emissions due to so much of a source's stack height that exceeds good engineering practice or due to any other dispersion technique.

[3/16/89. . 12/1/95; 20.11.43.13 NMAC – Rn, 20 NMAC 11.43.II.2, 10/1/02]

HISTORY OF 20.11.43 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. 33, Stack Height Requirements; 6/18/86;

Regulation No. 33, Stack Height Requirements, 3/16/89.

History of Repealed Material: [Reserved]

Other History: Regulation No. 33, Stack Height Requirements, filed 3/16/89, was **renumbered and reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.43, Stack Height Requirements, filed 10/27/95.

20 NMAC 11.43, Stack Height Requirements, filed 10/27/95, was **renumbered, reformatted, amended and replaced** by 20.11.43 NMAC, Stack Height Requirements, effective 10/1/02.