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TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 21 OPEN BURNING

20.11.21.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[6/14/71. . .12/1/95; 20.11.21.1 NMAC – Rn, 20 NMAC 11.21.I.1, 10/1/02]

20.11.21.2 SCOPE:
A. This Part is applicable to sources within Bernalillo County.
B. 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.
[12/1/95; 20.11.21.2 NMAC – Rn, 20 NMAC 11.21.I.2, 10/1/02]

20.11.21.3 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.
[6/14/71. . .12/1/95; 20.11.21.3 NMAC – Rn, 20 NMAC 11.21.I.3, 10/1/02]

20.11.21.4 DURATION: Permanent.
[12/1/95; 20.11.21.4 NMAC – Rn, 20 NMAC 11.21.I.4, 10/1/02]

20.11.21.5 EFFECTIVE DATE: December 1, 1995, unless a later date is cited at the end of a section.
[12/1/95; 20.11.21.5 NMAC – Rn, 20 NMAC 11.21.I.5 & A, 10/1/02]

20.11.21.6 OBJECTIVE: The objective of this Part is to minimize emissions from fires in the open, which, as a general class, produce visible emissions and noxious byproducts of combustion.
[3/24/82. . .12/1/95; 20.11.21.6 NMAC – Rn, 20 NMAC 11.21.I.6, 10/1/02]

20.11.21.7 DEFINITIONS: In addition to the definitions in this Section 20.11.21.7 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.

A. “Commercial Agricultural Burning” means the burning of crop residues for field preparation or that is otherwise necessary for the production of a crop that is sold by or used as feed in a registered agricultural business.

B. “Environmentally Non-Essential Burning” means the burning of any unwanted material, assembly or collection of combustible materials which could otherwise reasonably be altered, destroyed, reduced or removed to a suitable disposal site without the potential to cause environmental harm or damage in situ or en route.

C. “Environmentally Poor Burning Substances” include but are not limited to; leaves, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically soaked wood, plastic or rubber, office records, sensitive or classified wastes, interiors of wrecked vehicle bodies or other materials which are difficult to burn without producing vast amounts of noxious and toxic fumes or dense smoke.

D. “Hot Torch” means a wand or burner fueled by propane, butane, or compressed natural gas.

E. “Hot Torch Burning” means burning of individual weeds at the point of the hot torch.

F. “Open Burning” means the causing of rapid oxidation of any substance which is not confined in a device having controllable fuel/air mixture capable of achieving nearly complete combustion, and from which combustion products are discharged into the open air without passing through a stack, duct, chimney or vent.

G. “Research and Development Activities” means scientific experimentation using open burning to prove a concept or produce information useful in planning.

[1/3/85. . .6/16/92, 12/1/95; 20.11.21.7 NMAC – Rn, 20 NMAC 11.21.I.7, 10/1/02]

20.11.21.8 VARIANCES: [Reserved]
[12/1/95; 20.11.21.8 NMAC – Rn, 20 NMAC 11.21.I.8, 10/1/02]

20.11.21.9 SAVINGS CLAUSE: Any amendment to 20.11.21 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 3, or Part 21. 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; 20.11.21.9 NMAC – Rn, 20 NMAC 11.21.I.9 & A, 10/1/02]

20.11.21.10 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; 20.11.21.10 NMAC – Rn, 20 NMAC 11.21.I.10, 10/1/02]

20.11.21.11 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; 20.11.21.11 NMAC – Rn, 20 NMAC 11.21.I.11 & A, 10/1/02]

20.11.21.12 OPEN BURNING PROHIBITED:

A. Open burning by any person is prohibited in Bernalillo County. Except where otherwise allowed under Sections 13 and 14 of 20.11.21 NMAC, no person shall permit, cause, suffer or allow open burning to occur on private or public property.

B. Materials ignited accidentally, which cause open burning, shall be extinguished as soon as possible after discovery.

C. No person shall construe compliance with this Part as permission to violate other applicable regulations, ordinances or Codes.

D. Open burning allowed under Sections 13 and 14 of 20.11.21 NMAC shall be suspended during declared "No burn periods" of the winter pollution advisory.

[1/3/85, 12/1/95; 20.11.21.12 NMAC – Rn, 20 NMAC 11.21.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.21.II.1, 10/1/02]

20.11.21.13 CONDITIONALLY ALLOWED OPEN BURNING WITH A PERMIT:

A. Open burning may be allowed for the purposes prescribed in Table I providing an open burning permit has been obtained prior to ignition from the Albuquerque Environmental Health Department as set forth in Subsections B and C of 20.11.21.13 NMAC.

**Table I
OPEN BURNING PERMITS**

Multiple	Single	Purpose and Conditions
X	X	1. Timber and forest Management (single event permit required for burns of 1/4 acre or more)
	X	2. Disease Control of Dead Animals and Plants
X	X	3. Research and development activities (single event permit required for burns of 2000 gallons or more liquid fuel or 5000 pounds or more solid fuel)
X		4. Disposal by burning of explosives to avoid hazards of transport or handling
X	X	5. Above ground detonation of more than 20 pounds of explosives (single event permit required for detonation of more than 200 pounds.
X	X	6. Ignition of rocket motors containing more than 4000 pounds fuel (single event permit required for motors containing more than 8000 pounds fuel).
X		7. Fire fighter and rescue training (fuel and conditions appropriate for the activity). No environmentally poor burning substances may be burned unless essential to simulate the needed training conditions.
X	X	8. Hot torch burning of weeds along ditches, channels, public rights of way, or other public property.
X	X	9. Commercial agricultural burning (single event permit required for burns of 1/4 acre or more).
	X	10. Any special condition which would otherwise be prohibited for which there is an unusual need where burning would best serve the public interest overall.

B. Persons seeking Multiple or Single Event permits as indicated in Table I for some act which may be conditionally allowed by this subsection shall supply the following information in writing in letter form at least 24 hours in advance of the Single Event classification and at least by the date required by the department on those classified as Multiple.

- (1) the requestor's name, address, and telephone number;
- (2) location where burning is to be conducted;
- (3) type and quantity of ignitable material and fuel;

(a) date(s) when the burning is to be conducted; or estimated number, character, and schedule of fires to be conducted.

(b) general description of method to ignite, maintain, control and terminate the burning.

(c) reasons why the requestor believes the burning is necessary; and

(d) what alternatives to burning have been considered and why they were not chosen instead of burning.

(e) for Multiple event permits - the number and character of similar fires conducted during the previous permit cycle for which renewed approval is sought.

(4) In the event of an emergency necessitating a Single Event permit the above process may be handled by telephone providing the Department is in agreement and the information is subsequently supplied to the Department in writing. In case of such emergency the 24 hours notice requirement may be waived at the discretion of the Department. Information supplied to the Department relative to planned burning shall be construed to be part of the conditions of the permit issued pursuant thereto. Any subsequent need to deviate from the original plan must be reported to the Department and approved in order to maintain the validity of the permit.

C. Upon receipt of a request for a Single Event or Multiple Event open burning permit the Department shall evaluate the application and make its best judgment as to whether to grant the permit, deny the permit, or grant the permit with additional conditions that the Department believes to be in the best interest of the local community consistent with the Board's goal of eliminating burning that is environmentally non-essential. Renewal of Multiple permits shall not be prejudiced by prior approved permits but rather shall only be issued by the Department upon a re-evaluation of all the information provided in said renewal request. The Department shall consider the need to burn, anticipated atmospheric conditions, and other factors as the Department may deem appropriate to the requestor's application.

D. After evaluation of the applicant's request, the Department shall respond in writing advising the applicant of its findings including any additional conditions deemed necessary. In emergency situations preliminary information relative to the Department's decision should first be telephoned if possible, so as to expedite issues of immediate need. Copies of all applications for multiple open burning permits and the Department's response shall be submitted to the Board.

E. In the event an applicant for a permit under this subsection is not satisfied with either the conditions or possible denial of his request, the decision may be appealed to the Board. Such appeal shall be in writing and shall be considered by the Board at their next regularly scheduled business meeting. The ultimate decision of the Board shall be final.

F. Any permit issued under this section shall be revoked if the applicant fails to comply with the permit provisions therein.

G. All permits issued under this section shall expire when specified or not later than one year from the date of issuance.

[12/1/95; 20.11.21.13 NMAC – Rn, 20 NMAC 11.21.II.2, 10/1/02]

20.11.21.14 EXCEPTIONS TO OPEN BURNING PROHIBITIONS:

A. Environmentally poor burning substances shall not be burned in Bernalillo County by any open burning process unless authorized under the provisions of subsection A of 20.11.21.13 NMAC.

B. Open burning is allowed for the purposes set forth in Table II providing that the indicated Time, Notice, and Condition requirements therein are met.

C. Required notice as indicated in Table II shall be given to a staff engineer or environmental health specialist of the Department at least 24 hours prior to the planned burning. Information supplied to the Department shall be sufficient to document the allowed event:

- (1) name of individual giving notice,
- (2) whom he represents,
- (3) kind or purpose of burning planned,
- (4) approximate beginning and ending time,
- (5) date and location of the burn, and
- (6) telephone number.

D. ALLOWED OPEN BURNING

Table II

Time & Notice Requirements			ALLOWED TYPE OF BURNING CONDITION
Column 1	Column 2	Column 3	
No Time Limits	11 AM to 3 PM October thru March 6 AM to 5 PM April thru September	Advance Notice to Env. Health Department	
	X		1. Dead and dry tumbleweed removal.
X			2. Cooking noncommercial food.
		X	3. Religious, ceremonial, or recreational bonfires.
	X		4. Hot torch weed control on less than 1/4 acre private, residential property.

[1/3/85 . . .12/1/95; 20.11.21.14 NMAC – Rn, 20 NMAC 11.21.II.3, 10/1/02]

20.11.21.15 AMBIENT AIR STANDARD EXCEEDENCE: The Director shall have the authority to suspend any open burning allowed under this Part in the event of current or prospective violations of the ambient air standards.

[1/3/85, 20.11.21.15 NMAC – Rn, 20 NMAC 11.21.II.4, 10/1/02]

HISTORY OF 20.11.21 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.

Resolution No. 1, Air Pollution Control Regulations Of The Albuquerque Bernalillo County Air Quality Control Board, 8/6/71;

Regulation No. 1, Air Pollution Control Regulations, 6/6/73;

Regulation No. 1, Air Pollution Control Regulations, 7/9/73;

Regulation No. 1, Air Pollution Control Regulations, 3/21/77;

Regulation No. 3, Open Burning, 3/24/82;

Regulation No. 3, Open Burning, 1/3/85;

Regulation No. 3, Open Burning, 6/16/92.

History of Repealed Material: [Reserved]

Other History: Regulation No. 3, Open Burning, filed 6/16/92 was renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.21, Open Burning, filed 10/27/95.

20 NMAC 11.21, Open Burning, filed 10/27/95 was renumbered, reformatted, amended and replaced by 20.11.21 NMAC, Open Burning, effective 10/1/02.