

**TITLE 20 ENVIRONMENTAL PROTECTION**  
**CHAPTER 2 AIR QUALITY (STATEWIDE)**  
**PART 23 FUGITIVE DUST CONTROL**

**20.2.23.1 ISSUING AGENCY:** Environmental Improvement Board.  
[20.2.23.1 NMAC - N, 01/01/2019]

**20.2.23.2 SCOPE:** All geographic areas within the jurisdiction of the Environmental Improvement Board.  
[20.2.23.2 NMAC - N, 01/01/2019]

**20.2.23.3 STATUTORY AUTHORITY:** Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B and C of Section 74-2-5 NMSA 1978.  
[20.2.23.3 NMAC - N, 01/01/2019]

**20.2.23.4 DURATION:** Permanent.  
[20.2.23.4 NMAC - N, 01/01/2019]

**20.2.23.5 EFFECTIVE DATE:** January 01, 2019.  
[20.2.23.5 NMAC - N, 01/01/2019]

**20.2.23.6 OBJECTIVE:** The objective of this part is to limit human-caused emissions of fugitive dust into the ambient air by ensuring that control measures are utilized to protect human health and welfare.  
[20.2.23.6 NMAC - N, 01/01/2019]

**20.2.23.7 DEFINITIONS:** In addition to the terms defined in 20.2.2 NMAC, as used in this part, the following definitions apply.

**A. "Agricultural facility"** means any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the production of crops or livestock.

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

**C. "Construction" or "construction activity"** means any activity preparatory to, or related to building or demolishing a structure, road construction or maintenance, or altering, rehabilitating or improving land, including grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

**D. "Control measure"** means a technique, process, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension or airborne transport of fugitive dust, including those more fully described in 20.2.23.111 NMAC.

**E. "Disturbed surface area"** means an area of the earth's surface that may become a fugitive dust source or track-out due to construction or other activity.

**F. "Dust suppressant" or "suppressant"** means water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer or any other material, which is not prohibited for ground surface application by the U.S. environmental protection agency or the New Mexico environment department, or any applicable law, rule or regulation, as a treatment material for reducing fugitive dust emissions.

**G. "Fugitive dust"** means particulate matter emissions which may become entrained in the atmosphere due to mechanical or wind forces, or both; construction activity; materials handling, transfer or storage; disturbed surface areas; or similar commercial or industrial activities, and; which are not ducted through exhaust systems.

**H. "Inactive disturbed surface area"** means any disturbed surface area on which construction or other activity is not presently occurring, but which continues to be a potential fugitive dust source or track-out.

**I. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the environmental improvement board.

**J. "Paved" or "paving"** means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely maintained asphalt millings or combinations thereof, that covers a surface traveled or used by motor vehicles.

**K. “Roadway” or “road”** means any public or private paved or unpaved surface that can be entered or used with the primary purpose of public or private travel by motor vehicles or is used for maintenance of electrical or other transmission lines. This definition does not include roadways under construction or easements, rights of way, or access roads used in association with construction activity, bulk material handling and transport, disturbed surface areas or inactive disturbed surface areas.

**L. “Source” or “fugitive dust source”** means the origin of fugitive dust emissions.

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

**N. “Track-out”** 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.

[20.2.23.7 NMAC - N, 01/01/2019]

**20.2.23.8 CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

[20.2.23.8 NMAC - N, 01/01/2019]

**20.2.23.9 SAVINGS CLAUSE:** Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.23.9 NMAC - N, 01/01/2019]

**20.2.23.10 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws, rules or regulations, including more stringent controls on fugitive dust emissions.

[20.2.23.10 NMAC - N, 01/01/2019]

**20.2.23.11-20.2.23.107 [RESERVED]**

**20.2.23.108 APPLICABILITY:**

**A.** This part shall apply to persons owning or operating the following fugitive dust sources in areas requiring a mitigation plan in accordance with 40 CFR Part 51.930:

(1) disturbed surface areas or inactive disturbed surface areas, or a combination thereof, encompassing an area equal to or greater than one acre;

(2) any commercial or industrial bulk material processing, handling, transport or storage operations.

**B.** The following fugitive dust sources are exempt from this part:

(1) agricultural facilities, as defined in this part;

(2) roadways, as defined in this part;

(3) operations issued permits pursuant to the state of New Mexico Air Quality Control Act, Mining Act or Surface Mining Act; and

(4) lands used for state or federal military activities.

[20.2.23.108 NMAC - N, 01/01/2019]

**20.2.23.109 GENERAL PROVISIONS:** No person subject to this part, shall cause or allow visible emissions from fugitive dust sources that:

**A.** pose a threat to public health;

**B.** interfere with public welfare, including animal or plant injury or damage, visibility or the reasonable use of property.

[20.2.23.109 NMAC - N, 01/01/2019]

**20.2.23.110 EMISSION LIMITATIONS:**

**A.** No person shall cause or allow visible emissions from the following fugitive dust sources subject to this part to traverse any exterior property line of the property on which the source is located for more than a total of five minutes in any consecutive 60 minutes:

(1) construction or other activity, disturbed surface areas and inactive disturbed surface areas;

(2) bulk material handling; or

(3) bulk material storage.

**B.** Compliance with this condition shall be determined by a visible emissions test conducted in accordance with reference method 22 in 40 CFR Subpart 60, Appendix A.

**C.** Alternative test methods to determine compliance including opacity observations, visible crust determinations and vegetation cover determinations, may be approved by the department on a case-by-case basis. [20.2.23.110 NMAC - N, 01/01/2019]

**20.2.23.111 CONTROL MEASURES FOR FUGITIVE DUST SOURCES AND IMPLEMENTATION:**

Every person subject to this part shall utilize one or more control measures included in 20.2.23.111 NMAC or one or more other control measure(s) for fugitive dust sources under their control as necessary to meet the requirements of 20.2.23.110 NMAC.

**A. Implementation.** Control measures must be implemented before, after, and during any dust-generating operation, including during weekends, after work hours and on holidays.

**B. Disturbed surface areas and inactive disturbed surface areas.** Control measures include:

(1) scheduling or phasing of active operations to include consideration of such factors as time of year and prevailing wind direction;

(2) limiting disturbance of natural vegetation;

(3) application and maintenance of mulch, dust suppressants or other control measures in accordance with manufacturer's specifications;

(4) geotextiles, plastic covers, or erosion control mats or blankets;

(5) wind fencing;

(6) landscaping to include xeriscaping, reseeding and conventional techniques;

(7) installing permanent perimeter and interior walls;

(8) restricting public access and use by fencing and signage;

(9) paving or application of gravel sufficient to prevent fugitive dust emissions;

(10) prevention, clean up and removal of track-out material;

(11) restricting vehicle speed;

(12) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion; and

(13) cessation of operations.

**C. Bulk material handling.** Control measures include:

(1) use of spray bars;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) reduced process rates;

(4) reduced drop heights; and

(5) cessation of operations.

**D. Bulk material storage.** Control measures include:

(1) use of enclosures with at least three sides;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) use of wind breaks; and

(4) limit stockpile height to no higher than 15 feet and limit surface area.

[20.2.23.111 NMAC - N, 01/01/2019]

**20.2.23.112 DUST CONTROL PLAN:** The owner or operator of a fugitive dust source shall develop and maintain a dust control plan. This plan shall be kept by the owner or operator and shall be available upon request to the department. A dust control plan shall, at a minimum, contain all of the following information:

**A.** Name(s), address(es) and telephone numbers of person(s) responsible for the development and implementation of the dust control plan and responsible for the dust-generating operation.

**B.** A drawing, on eight and one-half inch by eleven inch paper, that shows:

(1) the entire project site including property lines;

(2) the acreage to be disturbed with linear dimensions;

(3) the nearest public road(s);

(4) private roads within the project site; and

(5) the planned exit locations onto paved areas accessible to the public.

**C.** Documentation of the control measure(s), as described in Section 20.2.23.111 NMAC, utilized to meet the requirements of 20.2.23.110 NMAC for every actual and potential dust-generating source or operation,

including, as applicable, the specific dust suppressants to be applied, together with the product specifications or label instructions for approved usage. The control measure(s) shall be documented in the dust control plan on a department approved form. The dust control plan shall include the following record keeping requirements for the use of control measure(s):

(1) for persons that utilize a control measure(s) requiring recurring application, operation or maintenance activities, including the use of dust suppressants or cleanup of track out, the date, time, frequency, quantity and location(s) of the actions taken to implement the control measure(s) shall be recorded on a weekly basis; and

(2) for persons that utilize a control measure(s) requiring a single action, including changes in operating procedure, cessation of operations, or installation of landscaping or fencing, the date, time and length of activities or changes in operations to implement the control measure(s) shall be recorded.

**D.** Specific surface treatment(s) or control measures implemented for material track-out and sedimentation where unpaved roadways or access points join paved areas accessible to the public.

**E.** The records required by this subpart shall be maintained for a period of two years after the date of collection.

**F.** The dust control plan shall be enforceable to the same extent as the provisions of this part.  
[20.2.23.112 NMAC-N, 01/01/2019]

**20.2.23.113 DUST CONTROL PLAN REVISIONS:**

**A.** If the department determines that a dust control plan does not contain the minimum requirements of 20.2.23.112 NMAC, then the department may issue a written notice to the person identified in Subsection A of 20.2.23.112 NMAC explaining such determination.

**B.** If the department determines that a dust control plan meeting the requirements of 20.2.23.112 NMAC has been followed, yet fugitive dust emissions from any fugitive dust source still exceed the standards of 20.2.23.110 NMAC, then the department may issue a written notice to the person identified in the dust control plan explaining this determination.

**C.** Once notified that a dust control plan does not meet minimum requirements or that fugitive dust emissions still exceed the standards despite a dust control plan being in place, the owner or operator of a fugitive dust source shall make written revisions to the fugitive dust plan and submit such revised dust control plan to the department within 14 days of receipt of the department's written notice, unless such time period is extended by the department, upon request, for good cause. During the time that the owner or operator is preparing revisions to the dust control plan, such owner or operator shall still comply with all requirements of this part.

[20.2.23.113 NMAC-N, 01/01/2019]

**HISTORY OF 20.2.23 NMAC: [RESERVED]**