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AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE AIR
QUALITY CONTROL ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT TO
DENY A PERMIT APPLICATION BASED ON POOR COMPLIANCE HISTORY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-2-7 NMSA 1978 (being Laws 1972,
Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement
board or the local board shall require:

(1) a person intending to construct or
modify any source, except as otherwise specifically provided
by regulation, to obtain a construction permit from the
department or the local agency prior to such construction or
modification; and

(2) a person intending to operate any source
for which an operating permit is required by the 1990
amendments to the federal act, except as otherwise
specifically provided by regulation, to obtain an operating
permit from the department or the local agency.

B. Regulations adopted by the environmental
improvement board or the local board shall include at least
the following provisions:

1 (1) requirements for the submission of
2 relevant information, including information the department or
3 the local agency deems necessary to determine that
4 regulations and standards under the Air Quality Control Act
5 or the federal act will not be violated;

6 (2) specification of the deadlines for
7 processing permit applications; provided that the deadline
8 for a final decision by the department or the local agency on
9 a construction permit application may not exceed:

10 (a) ninety days after the application
11 is determined to be administratively complete, if the
12 application is not subject to requirements for prevention of
13 significant deterioration, unless the secretary or the
14 director grants an extension not to exceed ninety days for
15 good cause, including the need to have public hearings; or

16 (b) one hundred eighty days after the
17 application is determined to be administratively complete, if
18 the application is subject to requirements for prevention of
19 significant deterioration, unless the secretary or the
20 director grants an extension not to exceed ninety days for
21 good cause, including the need to have public hearings;

22 (3) that if the department or local agency
23 fails to take final action on a construction permit
24 application within the deadlines specified in Paragraph (2)
25 of this subsection, the department or local agency shall

1 notify the applicant in writing that an extension of time is
2 required to process the application and specify in detail the
3 grounds for the extension;

4 (4) a description of elements required
5 before the department or local agency shall deem an
6 application administratively complete;

7 (5) specification of the public notice,
8 comment period and public hearing, if any, required prior to
9 the issuance of a permit; provided that the permit
10 regulations adopted:

11 (a) by the environmental improvement
12 board shall include provisions governing notice to nearby
13 states; and

14 (b) by any local board shall include
15 provisions requiring that notice be given to the department
16 of all permit applications by any source that emits, or has a
17 potential emission rate of, one hundred tons per year or more
18 of any regulated air contaminant, including any source of
19 fugitive emissions of each regulated air contaminant, at
20 least sixty days prior to the date on which construction or
21 major modification is to commence;

22 (6) a schedule of construction permit fees
23 sufficient to cover the reasonable costs of:

24 (a) reviewing and acting upon any
25 application for such permit; and

1 (b) implementing and enforcing the
2 terms and conditions of the permit, excluding any court costs
3 or other costs associated with an enforcement action;

4 (7) a schedule of emission fees consistent
5 with the provisions of Section 502(b)(3) of the 1990
6 amendments to the federal act;

7 (8) a method for accelerated permit
8 processing that may be requested at the sole discretion of
9 the applicant at the time the applicant submits a
10 construction permit application and that:

11 (a) allows the department or local
12 agency to contract with qualified outside firms to assist the
13 department or local agency in its accelerated review of the
14 construction permit application; provided that the department
15 or local agency can contract with a qualified firm that does
16 not have a conflict of interest; and

17 (b) establishes a process for the
18 department or local agency to account for the expenditure of
19 the accelerated permit processing fees;

20 (9) allowance for additional permit
21 application fees, sufficient to cover the reasonable costs of
22 an accelerated permit application review process. Before the
23 applicant is notified that the permit application has been
24 determined to be complete, the department or local agency
25 shall give the applicant a reasonable estimate of costs of an

1 accelerated permit application review process;

2 (10) specification of the maximum length of
3 time for which a permit shall be valid; provided that for an
4 operating permit such period may not exceed five years; and

5 (11) for an operating permit only:

6 (a) provisions consistent with Sections
7 502(b) and 505(b) of the federal act providing: 1) notice to
8 and review and comment by the United States environmental
9 protection agency; and 2) that if the department or local
10 agency receives notice of objection from the United States
11 environmental protection agency before the operating permit
12 is issued, the department or the local agency shall not issue
13 the permit unless it is revised and issued under Section
14 505(c) of the federal act;

15 (b) provisions governing renewal of the
16 operating permit; and

17 (c) specification of the conditions
18 under which the operating permit may be terminated, modified
19 or revoked and reissued prior to the expiration of the term
20 of the operating permit.

21 C. Except as provided in Subsection O of this
22 section, the department or the local agency may deny any
23 application for:

24 (1) a construction permit if it appears that
25 the construction or modification:

1 (a) will not meet applicable standards,
2 rules or requirements of the Air Quality Control Act or the
3 federal act;

4 (b) will cause or contribute to air
5 contaminant levels in excess of a national or state standard
6 or, within the boundaries of a local authority, applicable
7 local ambient air quality standards; or

8 (c) will violate any other provision of
9 the Air Quality Control Act or the federal act; and

10 (2) an operating permit if the source will
11 not meet the applicable standards, rules or requirements
12 pursuant to the Air Quality Control Act or the federal act.

13 D. The department or the local agency may specify
14 conditions to any permit granted under this section,
15 including:

16 (1) for a construction permit:

17 (a) a requirement that such source
18 install and operate control technology, determined on a case-
19 by-case basis, sufficient to meet the standards, rules and
20 requirements of the Air Quality Control Act and the federal
21 act;

22 (b) individual emission limits,
23 determined on a case-by-case basis, but only as restrictive
24 as necessary to meet the requirements of the Air Quality
25 Control Act and the federal act or the emission rate

1 specified in the permit application, whichever is more
2 stringent;

3 (c) compliance with applicable federal
4 standards of performance;

5 (d) reasonable restrictions and
6 limitations not relating to emission limits or emission
7 rates; or

8 (e) any combination of the conditions
9 listed in this paragraph; and

10 (2) for an operating permit, terms and
11 conditions sufficient to ensure compliance with the
12 applicable standards, rules and requirements pursuant to the
13 Air Quality Control Act and the federal act.

14 E. This section does not authorize the department
15 or the local agency to require the use of machinery, devices
16 or equipment from a particular manufacturer if the federal
17 standards of performance, state regulations and permit
18 conditions may be met by machinery, devices or equipment
19 otherwise available.

20 F. The issuance of a permit does not relieve any
21 person from the responsibility of complying with the
22 provisions of the Air Quality Control Act and any applicable
23 regulations of the environmental improvement board or the
24 local board. Any conditions placed upon a permit by the
25 department or the local agency shall be enforceable to the

1 same extent as a regulation of its board.

2 G. A person who participated in a permitting
3 action before the department or the local agency shall be
4 notified by the department or the local agency of the action
5 taken and the reasons for the action. Notification of the
6 applicant shall be by certified mail.

7 H. A person who participated in a permitting
8 action before the department or the local agency and who is
9 adversely affected by such permitting action may file a
10 petition for hearing before the environmental improvement
11 board or the local board. The petition shall be made in
12 writing to the environmental improvement board or the local
13 board within thirty days from the date notice is given of the
14 department's or the local agency's action. Unless a timely
15 petition for hearing is made, the decision of the department
16 or the local agency shall be final.

17 I. If a timely petition for hearing is made, the
18 environmental improvement board or the local board shall hold
19 a hearing within sixty days after receipt of the petition.
20 The environmental improvement board or the local board shall
21 notify the petitioner and the applicant or permittee, if
22 other than the petitioner, by certified mail of the date,
23 time and place of the hearing. If the subject of the
24 petition is a permitting action deemed by the environmental
25 improvement board or the local board to substantially affect

1 the public interest, the environmental improvement board or
2 the local board shall ensure that the public receives notice
3 of the date, time and place of the hearing. The public in
4 such circumstances shall also be given a reasonable
5 opportunity to submit data, views or arguments orally or in
6 writing and to examine witnesses testifying at the hearing.
7 Any person submitting data, views or arguments orally or in
8 writing shall be subject to examination at the hearing.

9 J. The environmental improvement board or the
10 local board may designate a hearing officer to take evidence
11 in the hearing. All hearings shall be recorded.

12 K. The burden of proof shall be upon the
13 petitioner. Based upon the evidence presented at the
14 hearing, the environmental improvement board or the local
15 board shall sustain, modify or reverse the action of the
16 department or the local agency respectively.

17 L. Notwithstanding any other provision of law and
18 subject to the provisions of Section 74-2-4 NMSA 1978, a
19 final decision on a permit by the department, the
20 environmental improvement board, the local agency, the local
21 board or the court of appeals that a source will or will not
22 meet applicable local, state and federal air pollution
23 standards and regulations shall be conclusive and is binding
24 on every other state agency and as an issue before any other
25 state agency shall be deemed resolved in accordance with that

1 final decision.

2 M. Subject to the provisions of Section 74-2-4
3 NMSA 1978, if the local board has adopted a permit regulation
4 pursuant to this section, persons constructing or modifying
5 any source within the boundaries of the local authority shall
6 obtain a permit from the local agency and not from the
7 department.

8 N. Fees collected pursuant to this section shall
9 be deposited in:

10 (1) the state air quality permit fund
11 created by Section 74-2-15 NMSA 1978 if collected by the
12 department; or

13 (2) a fund created pursuant to Section
14 74-2-16 NMSA 1978 if collected by a local agency pursuant to
15 a permit regulation adopted by the local board pursuant to
16 this section.

17 O. The department may not deny an application for
18 a construction permit for a cotton gin if the applicant
19 proposes use of the best system of emissions reduction
20 currently in use by cotton gins in the United States, as
21 specified by regulation of the environmental improvement
22 board, and the cotton gin has a potential emission rate,
23 considering the use of the proposed emissions reduction
24 system and the proposed hours of operation, of not more than
25 fifty tons per year of any regulated air contaminant for

1 which there is a national ambient air quality standard. The
2 construction permit shall require that the applicant use the
3 proposed emission reduction system and limit the hours of
4 operation to the hours specified in the application. For
5 purposes of this subsection, "best system of emissions
6 reduction" for cotton gins means a system that will result in
7 emissions reduction equal to or greater than that obtained by
8 the use of condenser screens, seventy-mesh screen or
9 equivalent on low-pressure exhausts and high-efficiency
10 cyclone dust collectors on high-pressure exhausts.

11 P. The department or local agency may deny any
12 permit application or revoke any permit issued pursuant to
13 the Air Quality Control Act if, within ten years immediately
14 preceding the date of submission of the permit application,
15 the applicant or permittee has:

16 (1) knowingly misrepresented a material fact
17 in an application for a permit;

18 (2) refused to disclose the information
19 required by the provisions of the Air Quality Control Act;

20 (3) been convicted in any court of any state
21 or the United States of:

22 (a) a felony related to environmental
23 crime; or

24 (b) a crime defined by state or federal
25 statute as involving or being in restraint of trade, price

1 fixing, bribery or fraud;

2 (4) constructed or operated a facility for
3 which a permit is sought without a permit required by the Air
4 Quality Control Act, except when such an unpermitted facility
5 is discovered after acquisition in the course of a timely
6 environmental audit authorized by department or local board
7 policy and except if:

8 (a) the operator of the facility using
9 good engineering practices and established approved
10 calculation methodologies estimated that the facility's
11 emissions would not require a permit pursuant to the Air
12 Quality Control Act; and

13 (b) upon discovery of the discrepancy
14 between the calculated pre-construction maximum facility
15 emissions and the calculated post-construction maximum
16 facility emissions, the operator of the facility applies for
17 the appropriate permit within thirty calendar days; or

18 (5) had any permit revoked or permanently
19 suspended for cause under the environmental laws of any state
20 or the United States.

21 Q. In making a finding under Subsection P of this
22 section, the department or local agency may consider
23 aggravating and mitigating factors.

24 R. If an applicant or permittee whose permit is
25 being considered for denial or revocation on any basis

1 provided by Subsection P of this section has submitted an
2 action plan that has been approved in writing by the
3 secretary or director, and plan approval includes a period of
4 operation under a conditional permit that will allow the
5 applicant or permittee a reasonable opportunity to
6 demonstrate its rehabilitation, the secretary or director may
7 issue a conditional permit for a reasonable period of time.

8 S. An applicant for a permit pursuant to the Air
9 Quality Control Act shall file a disclosure statement with the
10 department or local agency with the information listed in
11 Subsection P of this section, and on a form developed by the
12 department. An existing permit holder shall provide such
13 disclosure upon request by the department or local agency."

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