



STRENGTHENING THE NEW MEXICO OIL AND GAS ACT TO SAFEGUARD THE PUBLIC INTEREST

*Provided to the New Mexico Water and Natural Resources Committee
by Erik Schlenker-Goodrich, Executive Director*

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1. INCLUDE A PUBLIC INTEREST MANDATE IN THE NEW MEXICO OIL AND GAS ACT

- a.** The Oil and Gas Act (“OGA”) promotes development without first aligning development with the public interest. In effect, it lets the horse out of the barn before the pasture fence has been built.
- b.** The powers and duties conferred by the OGA to the Oil Conservation Commission (“OCC”) and Oil Conservation Division (“OCD”) are limited to: (i) ministerial matters; (ii) prevention of waste; (iii) protection of correlative rights; and (iv) engineering aspects of drilling and production, such as the management of oil and gas field waste. *See* NMSA § 70-2-12 (attached as Exhibit 1).
- c.** There is no overarching, explicit, and clear power or duty for the OCC and OCD to safeguard the public interest. The few references to the public interest are isolated and limited to particular oil and gas issues. *See, e.g.*, NMSA § 70-2-12(B)(15) (providing that OCC/OCD shall regulate produced water “in a manner that protects public health, the environment and fresh water resources.”)
- d.** Providing the OCC and OCD with the overarching, explicit, and clear power and duty to prioritize the public interest, in particular climate, public health, environmental justice, and land, water, and wildlife protection, can help avoid and mitigate conflicts caused by oil and gas development and align development in accord with the broad public interest.

2. DIVERSIFY THE COMPOSITION OF THE OIL CONSERVATION COMMISSION

- a.** The composition of the OCC, as set by the OGA, is limited to: (i) a designee of the secretary of the Energy, Minerals, and Natural Resources Department; (ii) the OCD director; and (iii) a designee of the commissioner of the State Land Office. *See* NMSA § 70-2-4 (attached as Exhibit 2).
- b.** Other New Mexico boards and commissions, such as the Environmental Improvement Board (“EIB”) and Water Quality Control Commission (“WQCC”), provide far broader representation. *See* NMSA §§ 74-1-4(A) (EIB composition,

attached as Exhibit 3), 74-6-3(A) (WQCC composition, attached as Exhibit 4).

- c. Expanding the composition of the OCC would provide the public with a voice in oil and gas decision-making, help avoid and mitigate conflicts between oil and gas and other interests, and strengthen the credibility of OCC decisions.
- d. Recommended additions to the OCC include voices that represent education, tribes, public health, climate, environment, and environmental justice interests.

3. IMPROVE PUBLIC INVOLVEMENT, AGENCY TRANSPARENCY, AND INDUSTRY ACCOUNTABILITY

- a. The OGA provides the public with only a marginal role in oil and gas decision-making, such as the submission and approval of drilling permits, a role further weakened by: (i) the OGA’s lack of a public interest mandate; (ii) the OCC’s narrow composition; (iii) the sheer difficulty for the public to track oil and gas development; (iv) limited OCD enforcement authorities and capacity; and (v) limited data availability, accessibility, and reporting.
- b. The OGA should be reformed to improve public involvement, agency transparency, and industry accountability. Specifically:
 - i. Improve front-end governance of oil and gas development by providing key opportunities for public involvement, improving agency transparency, and proactive planning and action to avoid and mitigate conflicts before they arise.
 - ii. Create heightened incentives for industry to comply with legal, regulatory, and permit commitments by removing the administrative penalties cap of \$200,000 set by NMSA § 70-2-31(D) (attached as Exhibit 5). Such action would align OCD with the Air Quality Act, NMSA § 74-2-12 (attached as Exhibit 6), which does not cap administrative penalties.
 - iii. Enable OCD to use credible information obtained from 3rd parties in enforcement actions as evidence of noncompliance.
 - iv. Empower the public to hold industry accountable to its commitments in court when OCD cannot or will not.
- c. Look for opportunities to complement or amplify OGA reforms by strengthening authorities and duties of other state agencies overseeing oil and gas development. E.g., remove the New Mexico Air Quality Act’s “no more stringent than” limitation. See NMSA §§ 74-2-5(C)(1), (2) (attached as Exhibit 7).

West's New Mexico Statutes Annotated

Chapter 70. Oil and Gas

Article 2. Oil Conservation Commission; Division; Regulation of Wells (Refs & Annos)

N. M. S. A. 1978, § 70-2-12

§ 70-2-12. Enumeration of powers

Effective: July 1, 2019

[Currentness](#)

A. The oil conservation division of the energy, minerals and natural resources department may:

- (1) collect data;
- (2) make investigations and inspections;
- (3) examine properties, leases, papers, books and records;
- (4) examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment;
- (5) hold hearings;
- (6) provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports;
- (7) limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act; and
- (8) require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. The oil conservation division may make rules and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way so as to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; pursuant to [Section 70-2-14 NMSA 1978](#), the division shall require financial assurance conditioned for the performance of the rules;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent “blow-ups” and “caving” in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

(15) to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of oil or gas, including disposal by injection pursuant to authority delegated under the federal Safe Drinking Water Act, in a manner that protects public health, the environment and fresh water resources;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash that may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act, the rules adopted under that act and the Procurement Code, including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the federal Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars (\$25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature;

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water Quality Act as provided in [Subsection E of Section 74-6-4 NMSA 1978](#).

Credits

L. 1978, Ch. 71, § 1; L. 1986, Ch. 76, § 1; L. 1987, Ch. 234, § 61; L. 1989, Ch. 289, § 1; L. 1996, Ch. 72, § 2, eff. May 15, 1996; L. 2004, Ch. 87, § 2; L. 2018, Ch. 16, § 1, eff. May 16, 2018; L. 2019, Ch. 197, § 6, eff. July 1, 2019.

Formerly 1953 Comp., § 65-3-11.

[Notes of Decisions \(8\)](#)

NMSA 1978, § 70-2-12, NM ST § 70-2-12

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

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West's New Mexico Statutes Annotated

Chapter 70. Oil and Gas

Article 2. Oil Conservation Commission; Division; Regulation of Wells (Refs & Annos)

N. M. S. A. 1978, § 70-2-4

§ 70-2-4. Oil conservation commission; members; term; officers; quorum; power to administer oaths

[Currentness](#)

There is created an “oil conservation commission”, hereinafter in the Oil and Gas Act [this article] called the “commission”, to be composed of a designee of the commissioner of public lands, a designee of the secretary of energy, minerals and natural resources and the director of the oil conservation division. The designees of the commissioner of public lands and the secretary of energy, minerals and natural resources shall be persons who have expertise in the regulation of petroleum production by virtue of education or training. No salary or compensation shall be paid any member of the commission for his services as a member of the commission. The term of office of each member of the commission shall be concurrent with the other office held by him. The commission shall organize by electing a chairman from its membership. Two members of the commission shall constitute a quorum for all purposes. The commission shall adopt a seal and the seal affixed to any paper signed by the director of the oil conservation division shall be prima facie evidence of due execution. The attorney general shall be the attorney for the commission. Any member of the commission or the director of the oil conservation division or any employee of the commission or division shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by the Oil and Gas Act or by any other law of this state relating to the conservation of oil and gas.

Credits

L. 1935, Ch. 72, § 3; L. 1949, Ch. 168, § 3; L. 1975, Ch. 289, § 13; L. 1977, Ch. 255, § 39; L. 1987, Ch. 234, § 58.

Formerly 1941 Comp., § 69-204; 1953 Comp., § 65-3-4.

[Notes of Decisions \(3\)](#)

NMSA 1978, § 70-2-4, NM ST § 70-2-4

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[West's New Mexico Statutes Annotated](#)
[Chapter 74. Environmental Improvement](#)
[Article 1. General Provisions \(Refs & Annos\)](#)

N. M. S. A. 1978, § 74-1-4

§ 74-1-4. Environmental improvement board; creation; organization

[Currentness](#)

A. There is created the “environmental improvement board”. The board shall consist of seven members appointed by the governor, by and with the advice and consent of the senate. The members of the board shall be appointed for overlapping terms, with no term exceeding five years. No more than four members shall be appointed from any political party. At least a majority of the membership of the board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the federal Clean Air Act¹ or the Air Quality Control Act. Any vacancy occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term.

B. The members of the board shall be reimbursed as provided in the Per Diem and Mileage Act.

C. The board shall elect from its membership a chairman, vice chairman and secretary and shall establish the tenure of these offices. The board shall convene upon the call of the chairman or a majority of its members. Four members shall constitute a quorum.

Credits

L. 1971, Ch. 277, § 5; L. 1972, Ch. 51, § 9; L. 1990, Ch. 31, § 1; L. 1997, Ch. 139, § 4; L. 2001, Ch. 145, § 1.

Formerly 1953 Comp., § 12-19-5; 1953 Comp., § 12-12-5.

Footnotes

¹

[42 U.S.C.A. § 7401 et seq.](#)

NMSA 1978, § 74-1-4, NM ST § 74-1-4

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

[West's New Mexico Statutes Annotated](#)
[Chapter 74. Environmental Improvement](#)
[Article 6. Water Quality \(Refs & Annos\)](#)

N. M. S. A. 1978, § 74-6-3

§ 74-6-3. Water quality control commission created

Effective: June 15, 2007

[Currentness](#)

A. There is created the “water quality control commission” consisting of:

- (1) the secretary of environment or a member of the secretary’s staff designated by the secretary;
- (2) the secretary of health or a member of the secretary’s staff designated by the secretary;
- (3) the director of the department of game and fish or a member of the director’s staff designated by the director;
- (4) the state engineer or a member of the state engineer’s staff designated by the state engineer;
- (5) the chair of the oil conservation commission or a member of the chair’s staff designated by the chair;
- (6) the director of the state parks division of the energy, minerals and natural resources department or a member of the director’s staff designated by the director;
- (7) the director of the New Mexico department of agriculture or a member of the director’s staff designated by the director;
- (8) the chair of the soil and water conservation commission or a soil and water conservation district supervisor designated by the chair;

(9) the director of the bureau of geology and mineral resources at the New Mexico institute of mining and technology or a member of the director's staff designated by the director;

(10) a municipal or county government representative; and

(11) four representatives of the public to be appointed by the governor for terms of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act.¹ At least one member appointed by the governor shall be a member of a New Mexico Indian tribe or pueblo.

B. A member of the commission shall not receive, or shall not have received during the previous two years, a significant portion of the member's income directly or indirectly from permit holders or applicants for a permit. A member of the commission shall, upon the acceptance of the member's appointment and prior to the performance of any of the member's duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of the member's gross personal income in each of the preceding two years, that the member received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act. A member of the commission shall not participate in the consideration of an appeal if the subject of the appeal is an application filed or a permit held by an entity that either employs the commission member or from which the commission member received more than ten percent of the member's gross personal income in either of the preceding two years.

C. The commission shall elect a chair and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act² and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act,³ to the department of environment.

Credits

L. 1967, Ch. 190, § 3; L. 1970, Ch. 64, § 2; L. 1971, Ch. 277, § 50; L. 1973, Ch. 326, § 2; L. 1977, Ch. 253, § 74; L. 1987, Ch. 234, § 81; L. 1993, Ch. 291, § 3; L. 1997, Ch. 82, § 1; L. 2001, Ch. 246, § 14; L. 2001, Ch. 267, § 1; L. 2003, Ch. 165, § 2, eff. July 1, 2003; L. 2007, Ch. 183, § 1, eff. June 15, 2007.

Formerly 1953 Comp., § 75-39-3.

Editors' Notes

REPEAL OF ACT

<For repeal of Act, see § 74-6-17.>

Notes of Decisions (1)

Footnotes

¹ NMSA 1978, § 10-8-1 et seq.

² 42 U.S.C.A. § 300f.

³ NMSA 1978, § 9-1-1 et seq.

NMSA 1978, § 74-6-3, NM ST § 74-6-3

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Chapter 70. Oil and Gas

Article 2. Oil Conservation Commission; Division; Regulation of Wells (Refs & Annos)

N. M. S. A. 1978, § 70-2-31

§ 70-2-31. Violations of the Oil and Gas Act; penalties

Effective: January 1, 2020

[Currentness](#)

A. Whenever the division determines that a person violated or is violating the Oil and Gas Act or any provision of any rule, order, permit or authorization issued pursuant to that act, the division may seek compliance and civil penalties by:

(1) issuing a notice of violation;

(2) commencing a civil action in district court for appropriate relief, including injunctive relief; or

(3) issuing a temporary cessation order if the division determines that the violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The cessation order will remain in effect until the earlier of when the violation is abated or thirty days unless a hearing is held before the division and a new order is issued.

B. A notice of violation issued pursuant to Paragraph (1) of Subsection A of this section shall state with reasonable specificity the nature of the violation, shall require compliance immediately or within a specified time period, shall provide notice of the availability of an informal review and the date of a hearing before the division and shall provide notice of potential sanctions, including assessing a penalty, suspending, canceling or terminating a permit or authorization, shutting in a well and plugging and abandonment of a well and forfeiting financial assurance pursuant to [Section 70-2-14 NMSA 1978](#).

C. If the notice of violation is not resolved informally within thirty days after service of the notice, the division shall hold a hearing and determine whether the violation should be upheld and whether any sanctions, including civil penalties, shall be assessed. In assessing a penalty authorized by this section, the division shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements, any history of noncompliance under the Oil and Gas Act and other relevant factors. When a decision is rendered by the division after a hearing, any party of record adversely affected shall have the right to have the matter heard de novo before the commission pursuant to [Section 70-2-13 NMSA 1978](#).

D. Any civil penalty assessed by a court or by the division or commission pursuant to this section may not exceed two thousand five hundred dollars (\$2,500) per day of noncompliance for each violation unless the violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond a time specified in the notice of violation or order issued by the division, commission or court, whereupon the civil penalty may not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation. No penalty assessed by the division or commission after a hearing may exceed two hundred thousand dollars (\$200,000); provided that such limitation does not apply to penalties assessed by a court.

E. The commission shall make rules, pursuant to [Section 70-2-12.2 NMSA 1978](#), providing procedures for the issuance of notices of violations, the assessment of penalties and the conduct of informal proceedings and hearings pursuant to this section.

F. It is unlawful, subject to a criminal penalty of a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding three years or both such fine and imprisonment, for any person to knowingly and willfully:

(1) violate any provision of the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act; or

(2) do any of the following for the purpose of evading or violating the Oil and Gas Act or any rule, regulation or order of the commission or the division issued pursuant to that act:

(a) make any false entry or statement in a report required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(b) make or cause to be made any false entry in any record, account or memorandum required by the Oil and Gas Act or by any rule, regulation or order of the commission or division issued pursuant to that act;

(c) omit or cause to be omitted from any such record, account or memorandum full, true and correct entries; or

(d) remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum.

G. For the purposes of Subsection F of this section, each day of violation shall constitute a separate offense.

H. Any person who knowingly and willfully procures, counsels, aids or abets the commission of any act described in Subsection A or F of this section shall be subject to the same penalties as are prescribed in Subsection D or F of this section.

Credits

L. 1981, Ch. 362, § 1; L. 2019, Ch. 197, § 7, eff. Jan. 1, 2020.

[Notes of Decisions \(1\)](#)

NMSA 1978, § 70-2-31, NM ST § 70-2-31

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Chapter 74. Environmental Improvement
Article 2. Air Pollution (Refs & Annos)

N. M. S. A. 1978, § 74-2-12

§ 74-2-12. Enforcement; compliance orders; field citations

[Currentness](#)

A. When, on the basis of any information, the secretary or the director determines that a person has violated or is violating a requirement or prohibition of the Air Quality Control Act, a regulation promulgated pursuant to that act or a condition of a permit issued under that act, the secretary or the director may:

- (1) issue a compliance order within one year after the violation becomes known by the department or the local agency stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for a past or current violation, or both; or
- (2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of the permit or portion thereof issued by the secretary or the director that is alleged to have been violated. Any penalty assessed in the order shall not exceed fifteen thousand dollars (\$15,000) per day of noncompliance for each violation.

C. An order issued pursuant to Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named therein submits a written request to the secretary or the director for a public hearing. Upon such request, the secretary or the director shall promptly conduct a public hearing. The secretary or the director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the secretary or the director, who shall make the final decision.

D. The environmental improvement board or the local board may implement a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed one thousand dollars (\$1,000) per day of violation may be issued by officers or employees of the department or the local agency as designated by the secretary or the director.

E. A person to whom a field citation is issued pursuant to Subsection D of this section may, within a reasonable time as prescribed by regulation by the environmental improvement board or the local board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

F. Payment of a civil penalty required by a field citation issued pursuant to Subsection D of this section shall not be a defense to further enforcement by the department or the local agency to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act if the violation continues.

G. In determining the amount of a penalty to be assessed pursuant to this section, the secretary, the director or the person issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

H. In connection with a proceeding under this section, the secretary or the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

I. If a person fails to comply with an administrative order, the secretary or director may initiate an action to suspend or revoke the permit, or portion thereof, alleged to have been violated or to commence a civil action in district court to enforce the order, or to suspend or revoke the permit, or both.

J. If a person fails to pay an assessment of a civil penalty, the secretary or director may commence a civil action in district court to collect the civil penalties assessed in the order.

K. Penalties collected pursuant to this section shall be deposited in the:

(1) municipal or county general fund, as applicable, if the administrative order or field citation was directed to a source located within a local authority; or

(2) state general fund if the administrative order or field citation was directed to any other source.

Credits

L. 1992, Ch. 20, § 14; L. 2001, Ch. 133, § 3; L. 2006, Ch. 61, § 1, eff. May 17, 2006.

[Notes of Decisions \(6\)](#)

§ 74-2-12. Enforcement; compliance orders; field citations, NM ST § 74-2-12

NMSA 1978, § 74-2-12, NM ST § 74-2-12

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

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[Chapter 74. Environmental Improvement](#)
[Article 2. Air Pollution \(Refs & Annos\)](#)

N. M. S. A. 1978, § 74-2-5

§ 74-2-5. Duties and powers; environmental improvement board; local board

Effective: June 14, 2019

[Currentness](#)

- A. The environmental improvement board or the local board shall prevent or abate air pollution.
- B. The environmental improvement board or the local board shall:
- (1) adopt, promulgate, publish, amend and repeal rules and standards consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including:
 - (a) rules prescribing air standards, within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction, or any part thereof; and
 - (b) standards of performance that limit carbon dioxide emissions to no more than one thousand one hundred pounds per megawatt-hour on and after January 1, 2023 for a new or existing source that is an electric generating facility with an original installed capacity exceeding three hundred megawatts and that uses coal as a fuel source; and
 - (2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board's jurisdiction or the local board's jurisdiction or any part thereof.
- C. Rules adopted by the environmental improvement board or the local board may:
- (1) include rules to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that such regulations:

(a) shall be no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

(b) shall be applicable only to sources subject to such regulation pursuant to the federal act;

(2) prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in this subsection and in Subparagraph (b) of Paragraph (1) of Subsection B of this section:

(a) shall be no more stringent than but at least as stringent as required by federal standards of performance; and

(b) shall be applicable only to sources subject to such federal standards of performance;

(3) include regulations governing emissions from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emission limitations;

(4) include regulations requiring the installation of control technology for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent of the mercury from the input fuel for all coal-fired power plants, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007;

(5) require notice to the department or the local agency of the intent to introduce or permit the introduction of an air contaminant into the air within the geographical area of the environmental improvement board's jurisdiction or the local board's jurisdiction; and

(6) require any person emitting any air contaminant to:

(a) install, use and maintain emission monitoring devices;

(b) sample emissions in accordance with methods and at locations and intervals as may be prescribed by the environmental improvement board or the local board;

- (c) establish and maintain records of the nature and amount of emissions;
- (d) submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and
- (e) provide any other reasonable information relating to the emission of air contaminants.

D. Any regulation adopted pursuant to this section shall be consistent with federal law, if any, relating to control of motor vehicle emissions.

E. In making its regulations, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

- (1) character and degree of injury to or interference with health, welfare, visibility and property;
- (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and
- (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

Credits

L. 1967, Ch. 277, § 5; L. 1970, Ch. 58, § 4; L. 1972, Ch. 51, § 3; L. 1979, Ch. 393, § 2; L. 1981, Ch. 373, § 3; L. 1983, Ch. 34, § 2; L. 1987, Ch. 293, § 1; L. 1990, Ch. 99, § 66; L. 1992, Ch. 20, § 4; L. 2007, Ch. 143, § 1, eff. June 15, 2007; L. 2019, Ch. 65, § 36, eff. June 14, 2019.

Formerly 1953 Comp., § 12-14-5.

Notes of Decisions (17)

NMSA 1978, § 74-2-5, NM ST § 74-2-5

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

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