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FISCAL IMPACT REPORT

SPONSOR Wirth DATE TYPED 2/15/05 HB 515

SHORT TITLE Air Quality Permit Standards & Procedures SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)

New Mexico Oil and Gas Association (NMOGA)

SUMMARY

Synopsis of Bill

House Bill 515 would allow the Department of Environment (NMED) or a local agency to deny, condition, modify, suspend or revoke an air quality permit if the applicant has:

1. knowingly misrepresented a material fact in the permit application,
2. failed to disclose information required by the provision fo the Air Quality Control Act,
3. been convicted in any court of a felony or other specified crimes within the past ten years,

NMED could consider aggravating or mitigating factors in making its determination.

Permit applicants would be required to file a disclosure statement with NMED on a form developed by NMED in cooperation with the Department of Public Safety (DPS). Upon request of NMED, DPS would be required to prepare “an investigative report” on the applicant based on the disclosure statement within 90 days of the receipt of the statement. DPS could review criminal history information from the FBI or other law enforcement agency. While the report is being prepared, NMED could request information on any person who could reasonably be expected to be involved in management activities of the permitted facility or has a controlling interest in the facility. Applicants would be required to cooperate with the investigation. If additional infor-

mation is required after filing of the disclosure statement, a permittee or applicant would have to provide the additional information within 30 days or face revocation or denial of a permit. HB515 specifies exceptions to the disclosure statement provisions.

Significant Issues

According to NMED, currently, polluters with a history of noncompliance with environmental statutes, regulations, and permits are treated the same as sources that are in full compliance. The violation of environmental statutes, regulations, and permits can adversely affect the health of New Mexicans and the quality of their environment. HB 515 allows the department to consider an applicant's compliance history in making permit decisions, making it more likely that sources will comply with environmental requirements.

The New Mexico Oil and Gas Association (NMOGA) identified the following concerns with regard to HB515:

1. The bill proposes to add a "bad actor" provision similar to that already contained in the Solid Waste Act, Hazardous Waste Act and Water Quality Act. These provisions were intended to give the regulatory agencies authority to keep criminal organizations from participating in businesses regulated under the authority of these laws. There is no evidence that adding this provision to the Air Act is necessary for such purpose.
2. This provision may be used to substantially delay permit applications and increase the applicant's costs in obtaining a permit. The Air Quality Bureau already has the authority to deny or revoke an air quality permit application if the applicant has knowingly misrepresented or withheld information, so the proposed changes do not strengthen NMED's authority in that regard.
3. HB515 may penalize operators that self-report, as they would have a more visible track record of violations compared to operators that conceal problems; thus creating a disincentive for reporting.
4. HB515 would create a significant new barrier to doing business in New Mexico that would make this State less attractive to new business or to the retention or expansion of existing businesses.

PERFORMANCE IMPLICATIONS

NMED has three performance measures that could be impacted by this bill. First, HB515 will facilitate achievement of NMED's goal that 95% of facilities will take corrective action to mitigate air quality violations discovered as a result of inspections by providing more incentive for polluters to mitigate violations discovered during inspections. Second, to the extent that HB515 improves compliance, it would help the NMED improve visibility in New Mexico. HB515 may make it difficult for NMED to achieve a third performance measure—to make decisions on 90 percent of all air construction permit applications within 90 days or within additional time allowed by statute. The purpose of this performance measure is to assure timely processing of applications and maintain a business-friendly permitting process. The need for investigative reports may delay permit processing. NMED indicates that its experiences with similar reports pursuant to other statutes have shown that permits can still be processed to meet statutory deadlines.

FISCAL IMPLICATIONS

NMED indicated that existing sources of income should be sufficient to fund the additional review of disclosure information.

ADMINISTRATIVE IMPLICATIONS

The Environmental Improvement Board would have to revise 20.2.70 NMAC – Operating Permits and 20.2.72 NMAC – Construction Permits to conform the provisions regarding application content and the basis for permit denial. NMED may require more staff to review disclosure statements and evaluate investigative reports.

OTHER SUBSTANTIVE ISSUES

NMED indicated that, under current statute, the department manages air quality through regulations and permits. The Air Quality Control Act allows the department to deny an air quality permit if the source will not comply with applicable air quality requirements, but nothing allows the department to deny an application based on the applicant's enforcement history. NMED has such authority under other environmental laws, including the Solid Waste Act, Hazardous Waste Act, and Water Quality Control Act. Consequently, NMED must treat applicants regulated under one of these laws differently than other applicants, granting permits to some but not to others.

According to NMED, a "bad actor" provision in the Air Quality Control Act would provide another incentive for applicants to comply with environmental requirements. Based on past experience, the department would implement this provision for only a small percentage of air permit applicants. Yet for that small number of applicants, the "bad actor" provision would be an important and effective means to obtaining continued compliance with environmental requirements.

POSSIBLE QUESTIONS

1. How would HB515 affect DPS staff/resources needed to prepare the investigation reports?

DH/yr