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## FISCAL IMPACT REPORT

SPONSOR Wirth DATE TYPED 03/07/05 HB 516/aHENRC

SHORT TITLE Compliance Order Penalties SB \_\_\_\_\_

ANALYST Hadwiger

### APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None				

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue 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 HENRC Amendment

Where the original bill gave the NMED secretary power to assess penalties to enforce a compliance order, the HENRC amendment allows the secretary to commence a civil action in district court for this purpose. Where the original bill included, as one possible penalty for noncompliance, suspension of *any* permits issued to the violator pursuant to the Air Quality Control Act,

the amendment allows suspension or revocation only of the permit that is alleged to have been violated. The amendment also changes the requirements for public sector attorneys (the attorney general, city attorney or district attorney) to represent regulatory agencies in enforcement actions from “emergency orders” to “orders.”

### Synopsis of Original Bill

House Bill 516 would allow civil penalties of up to \$25,000 and suspension or revocation of permits for persons who violate the Air Quality Control Act and fail to take corrective action within the time specified in a compliance order. If a violator defaults on a final order, the NMED secretary may commence a civil action in district court to collect civil penalties assessed in the order. Penalties would be deposited in the general fund.

### Significant Issues

According to NMED, the Air Quality Control Act (Act) authorizes that courts to assess civil penalties for violations of the Act, air quality regulations, and permits. The Act does not authorize civil penalties for failure to comply with a compliance order. HB516 provides more incentive for compliance. There are similar provisions in the Solid Waste Act, Hazardous Waste Act, and the Water Quality Control Act.

The New Mexico Oil and Gas Association (NMOGA) agreed there should be sanctions for non-compliance with a compliance order, but indicated the proposed penalty departs from enforcement penalties at the federal level under the federal Clean Air Act. Under federal law, the EPA is authorized to seek judicial enforcement of its orders and to recover interest on any penalty due, as well as costs of the enforcement action. NMOGA indicated concern that the new penalty could be abused, because there is no requirement to prove violation of the underlying regulation or law. There was also concern that the bill would allow NMED to revoke all air permits held by a permittee rather than the permit for the specific noncompliant site. The HENRC amendment appears to address these concerns by providing for court imposition of civil penalties (and court appeals), as well as specifying that only the permit alleged to have been violated would be subject to revocation or suspension.

### **FISCAL IMPLICATIONS**

HB516 may result in savings to NMED by creating an incentive for violators to comply with compliance orders. Any civil penalties collected will be deposited in the General Fund. The amount of civil penalties that might be collected is unknown and would be difficult to project.

### **OTHER SUBSTANTIVE ISSUES**

NMED offered the following additional comments:

*NMED has authority to enforce state and federal air quality regulations to preserve air quality. One of the ways the Department implements these regulations is through the issuance of permits to sources of air pollution. The Act authorizes the Department to issue compliance orders whenever a person violates those regulations or permits. These orders compel compliance immediately or within a specified time period and often assess a civil penalty. The Act currently does not specify NMED's course of action if a violator defaults on or fails*

*to comply with a compliance order. In the past, violators have defaulted on orders and failed to comply with the corrective actions required in the order. A violator's default or failure to comply may result in the emission of large quantities of air pollutants, potentially compromising public health and welfare. In addition, the current statutory language is not clear regarding the scope of review in district court for defaulted compliance orders, creating potential disputes with violators that divert resources from other important air quality issues.*

*HB516/HENRC authorizes the courts to assess civil penalties up to \$25,000 for each day of noncompliance, whenever a violator fails to take corrective actions within the time period specified in the compliance order. Penalties collected would be deposited in the state general fund. The additional civil penalty should serve as a deterrent to noncompliance with air quality regulations and permits. The department or the courts also would be authorized to suspend or revoke any permit issued to the violator.*

*HB516/aHENRC also provides a mechanism to enforce the corrective actions and collect civil penalties on a defaulted order. If a violator defaults on a final order issued pursuant to the Act, Section 74-2-12 A, the Secretary of the Department could bring a civil action in district court to enforce the corrective actions and collect the civil penalties assessed in the order. The violator then may appeal the district court's decision to the court of appeals. The district court's scope of review would be limited to whether the order was defaulted, which in turn would limit the court of appeal's scope of review.*

**DH/lg**