

AN ACT

RELATING TO ENVIRONMENT; PROVIDING PENALTIES AND REMEDIES FOR FAILURE TO OBEY COMPLIANCE ORDERS; AUTHORIZING ENFORCEMENT ACTIONS.

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

Section 1. Section 74-2-12 NMSA 1978 (being Laws 1992, Chapter 20, Section 14, as amended) is amended to read:

"74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD CITATIONS.--

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."

Section 2. Section 74-2-12.1 NMSA 1978 (being Laws 1992, Chapter 20, Section 15, as amended) is amended to read:

"74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT OR LOCAL AUTHORITY--LIMITATION OF ACTIONS.--

A. A person who violates a provision of the Air Quality Control Act or a regulation, permit condition or emergency order adopted or issued pursuant to that act may be

assessed a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs.

B. A person who fails to comply with an administrative order issued pursuant to Section 74-2-12 NMSA 1978 may be assessed, pursuant to a court order, a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of noncompliance with the order.

C. In an action to enforce the provisions of the Air Quality Control Act or an ordinance, regulation, permit condition or order, adopted, imposed or issued pursuant to that act:

(1) the department shall be represented by the attorney general;

(2) a local authority that is a municipality shall be represented by the attorney of the municipality; and

(3) a local authority that is a county shall be represented by the district attorney within whose judicial district the county lies.

D. No action for civil penalty shall be commenced more than five years from the date the violation was known by the department or the local agency." _____