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FISCAL IMPACT REPORT

	ORIGINAL DATE 2-08-06		
SPONSOR	Wirth	LAST UPDATED	2-15-06
	COMPLIANCE ORDER NON-COMPLIANCE	HB	23/aSfI
SHORT TITLE	PENALTIES	SB	
		ANALYST	Hadwiger

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	Minimal		
	See Fiscal Implications		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Environment (NMED)
Attorney General (AG)

SUMMARY

Synopsis of SFL Amendment

The Senate Floor Amendment requires a court order to assess a \$25 thousand civil penalty for each day of noncompliance. The sponsor concurs with this amendment. The Department of Environment (NMED) also does not oppose the amendment.

Synopsis of Original Bill

House Bill 23 provides the Department of Environment (NMED) the authority to take air quality violators to district court to collect civil penalties if they default on a compliance order. House Bill 23 also authorizes the Court to suspend or revoke permits and assess additional civil penalties (not to exceed \$25,000 per day of noncompliance) whenever air quality violators fail to take corrective actions within the time period specified in a compliance order.

FISCAL IMPLICATIONS

This bill 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.

SIGNIFICANT ISSUES

The Air Quality Control Act authorizes NMED to assess civil penalties for violations of that act, air quality regulations, and permits. The Act does not authorize the collection of civil penalties for failure to comply with a compliance order. House Bill 23 provides incentive for compliance. There are similar provisions in the Solid Waste Act, Hazardous Waste Act, and the Water Quality Control Act, though these acts give the authority to the Secretary rather than the District Court.

The office of the Attorney General (AG) indicated Unlike other environmental statutes, the Air Quality Control Act currently provides no mechanism, either administratively or judicially, for the environment department or local agencies to enforce their administrative orders. Thus, there is no incentive for a violator to take the corrective action required in such an order. The bill remedies this imbalance. Current § 74-2-9 authorizes a person adversely affected by an administration action to appeal to the court of appeals. This bill evens the playing field by allowing the environment department or a local agency a judicial remedy to enforce their orders.

PERFORMANCE IMPLICATIONS

NMED has a performance measure that requires 95 percent of inspected facilities to take corrective action to mitigate violations discovered during an inspection. House Bill 23 will help the department reach its performance target by providing a greater incentive for compliance.

ADMINISTRATIVE IMPLICATIONS

NMED reports that agency would incur minimal additional work to file a civil action requesting a court order to enforce the compliance order. The Department anticipates that the additional work will be absorbed by existing legal and enforcement staff, and would not require additional positions. In addition, the program can be implemented immediately and will not require the promulgation of additional regulations.

TECHNICAL ISSUES

The AG commented that the first part of new subsection I (page 4, lines 10-13 up to “or to commence”) seems to contemplate the initiation of an administrative action. However, it does not provide the forum in which such action is to be initiated. Additionally, the second part of new subsection I (page 4, lines 13 beginning with the word, “or,” through line 15) authorizes a district court action, but does not specify the court’s scope of review.