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HOUSE BILL 579

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO THE ENVIRONMENT; ESTABLISHING REQUIREMENTS FOR
REGULATING GREENHOUSE GAS EMISSIONS; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Air Quality Control Act
is enacted to read:

"[NEW MATERIAL] GREENHOUSE GAS REGULATION.--

Notwithstanding any other provision in law, neither the
environmental improvement board, a local board or any other
state agency, board, institution or political subdivision shall
adopt or enforce any state, local or regional rule or program
to regulate the emission of greenhouse gas except as provided
in the Air Quality Control Act."

SECTION 2. Section 74-2-2 NMSA 1978 (being Laws 1967,

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1 Chapter 277, Section 2, as amended) is amended to read:
2 "74-2-2. DEFINITIONS.--As used in the Air Quality Control
3 Act:

4 A. "air contaminant" means a substance, including
5 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,
6 vapor, micro-organisms, radioactive material, any combination
7 thereof or any decay or reaction product thereof;

8 B. "air pollution" means the emission, except the
9 emission of greenhouse gas or an emission that occurs in
10 nature, into the outdoor atmosphere of one or more air
11 contaminants in quantities and of a duration that may with
12 reasonable probability injure human health or animal or plant
13 life or as may unreasonably interfere with the public welfare,
14 visibility or the reasonable use of property;

15 C. "department" means the department of
16 environment;

17 D. "director" means the administrative head of a
18 local agency;

19 E. "emission limitation" or "emission standard"
20 means a requirement established by the environmental
21 improvement board or the local board, the department, the local
22 authority or the local agency or pursuant to the federal act
23 that limits the quantity, rate or concentration, or combination
24 thereof, of emissions of air contaminants on a continuous
25 basis, including any requirements relating to the operation or

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1 maintenance of a source to assure continuous reduction;

2 F. "federal act" means the federal Clean Air Act,
3 its subsequent amendments and successor provisions;

4 G. "federal standard of performance" means a
5 standard of performance, emission limitation or emission
6 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

7 H. "greenhouse gas" means any gas that absorbs
8 infrared radiation in the atmosphere, including the following
9 gases, alone or in combination:

10 (1) carbon dioxide;

11 (2) methane;

12 (3) nitrous oxide;

13 (4) hydrofluorocarbons;

14 (5) perfluorocarbons; and

15 (6) sulfur hexafluoride;

16 [~~H.~~] I. "hazardous air pollutant" means an air
17 contaminant that has been listed as a hazardous air pollutant
18 pursuant to the federal act;

19 [~~F.~~] J. "local agency" means the administrative
20 agency established by a local authority pursuant to Paragraph
21 (2) of Subsection A of Section 74-2-4 NMSA 1978;

22 [~~J.~~] K. "local authority" means any of the
23 following political subdivisions of the state that have, by
24 following the procedure set forth in Subsection A of Section
25 74-2-4 NMSA 1978, assumed jurisdiction for local administration

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1 and enforcement of the Air Quality Control Act:

2 (1) a county that was a class A county as of
3 January 1, 1980; or

4 (2) a municipality with a population greater
5 than one hundred thousand located within a county that was a
6 class A county as of January 1, 1980;

7 [~~K-~~] L. "local board" means a municipal, county or
8 joint air quality control board created by a local authority;

9 [~~H-~~] M. "mandatory class I area" means any of the
10 following areas in this state that were in existence on August
11 7, 1977:

12 (1) national wilderness areas that exceed five
13 thousand acres in size; and

14 (2) national parks that exceed six thousand
15 acres in size;

16 [~~M-~~] N. "modification" means a physical change in,
17 or change in the method of operation of, a source that results
18 in an increase in the potential emission rate of a regulated
19 air contaminant emitted by the source or that results in the
20 emission of a regulated air contaminant not previously emitted,
21 but does not include:

22 (1) a change in ownership of the source;

23 (2) routine maintenance, repair or
24 replacement;

25 (3) installation of air pollution control

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1 equipment, and all related process equipment and materials
2 necessary for its operation, undertaken for the purpose of
3 complying with regulations adopted by the environmental
4 improvement board or the local board or pursuant to the federal
5 act; or

6 (4) unless previously limited by enforceable
7 permit conditions:

8 (a) an increase in the production rate,
9 if such increase does not exceed the operating design capacity
10 of the source;

11 (b) an increase in the hours of
12 operation; or

13 (c) use of an alternative fuel or raw
14 material if, prior to January 6, 1975, the source was capable
15 of accommodating such fuel or raw material or if use of an
16 alternate fuel or raw material is caused by a natural gas
17 curtailment or emergency allocation or [~~an other~~] another lack
18 of supply of natural gas;

19 [~~N-~~] O. "nonattainment area" means for an air
20 contaminant an area that is designated "nonattainment" with
21 respect to that contaminant within the meaning of Section
22 107(d) of the federal act;

23 [~~θ-~~] P. "person" includes an individual,
24 partnership, corporation, association, the state or political
25 subdivision of the state and any agency, department or

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1 instrumentality of the United States and any of their officers,
2 agents or employees;

3 ~~[P-]~~ Q. "potential emission rate" means the
4 emission rate of a source at its maximum capacity to emit a
5 regulated air contaminant under its physical and operational
6 design, provided any physical or operational limitation on the
7 capacity of the source to emit a regulated air contaminant,
8 including air pollution control equipment and restrictions on
9 hours of operation or on the type or amount of material
10 combusted, stored or processed, shall be treated as part of its
11 physical and operational design only if the limitation or the
12 effect it would have on emissions is enforceable by the
13 department or the local agency pursuant to the Air Quality
14 Control Act or the federal act;

15 ~~[Q-]~~ R. "regulated air contaminant" means an air
16 contaminant, the emission or ambient concentration of which is
17 regulated pursuant to the Air Quality Control Act or the
18 federal act;

19 ~~[R-]~~ S. "secretary" means the secretary of
20 environment;

21 ~~[S-]~~ T. "significant deterioration" means an
22 increase in the ambient concentrations of an air contaminant
23 above the levels allowed by the federal act or federal
24 regulations for that air contaminant in the area within which
25 the increase occurs;

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1 ~~[F.]~~ U. "source" means a structure, building,
2 equipment, facility, installation or operation that emits or
3 may emit an air contaminant;

4 ~~[H.]~~ V. "standard of performance" means a
5 requirement of continuous emission reduction, including any
6 requirement relating to operation or maintenance of a source to
7 assure continuous emission reduction;

8 ~~[V.]~~ W. "state implementation plan" means a plan
9 submitted by New Mexico to the federal environmental protection
10 agency pursuant to 42 U.S.C. Section 7410; and

11 ~~[W.]~~ X. "toxic air pollutant" means an air
12 contaminant, except a hazardous air pollutant, classified by
13 the environmental improvement board or the local board as a
14 toxic air pollutant."

15 SECTION 3. Section 74-2-5 NMSA 1978 (being Laws 1967,
16 Chapter 277, Section 5, as amended) is amended to read:

17 "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT
18 BOARD--LOCAL BOARD.--

19 A. The environmental improvement board or the local
20 board shall prevent or abate air pollution.

21 B. The environmental improvement board or the local
22 board shall:

23 (1) adopt, promulgate, publish, amend and
24 repeal regulations consistent with the Air Quality Control Act
25 to attain and maintain national ambient air quality standards

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1 and prevent or abate air pollution, including regulations
2 prescribing air standards, within the geographic area of the
3 environmental improvement board's jurisdiction or the local
4 board's jurisdiction, or any part thereof; and

5 (2) adopt a plan for the regulation, control,
6 prevention or abatement of air pollution, recognizing the
7 differences, needs, requirements and conditions within the
8 geographic area of the environmental improvement board's
9 jurisdiction or the local board's jurisdiction or any part
10 thereof.

11 C. Regulations adopted by the environmental
12 improvement board or the local board may:

13 (1) include regulations to protect visibility
14 in mandatory class I areas to prevent significant deterioration
15 of air quality and to achieve national ambient air quality
16 standards in nonattainment areas; provided that such
17 regulations:

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

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

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1 (2) prescribe standards of performance for
2 sources and emission standards for hazardous air pollutants
3 that, except as provided in this subsection:

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

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

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

13 (4) include regulations to control greenhouse
14 gas emissions, to the extent that regulations are mandated by
15 any federal act or regulation; provided that such regulations:

16 (a) shall be no more stringent than,
17 but at least as stringent as, required by any federal act and
18 federal regulations pertaining to regulation of greenhouse gas
19 emissions; and

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

22 [~~4~~] (5) include regulations requiring the
23 installation of control technology for mercury emissions that
24 removes the greater of what is achievable with best available
25 control technology or ninety percent of the mercury from the

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1 input fuel for all coal-fired power plants, except for coal-
2 fired power plants constructed and generating electric power
3 and energy before July 1, 2007;

4 [~~(5)~~] (6) require notice to the department or
5 the local agency of the intent to introduce or permit the
6 introduction of an air contaminant into the air within the
7 geographical area of the environmental improvement board's
8 jurisdiction or the local board's jurisdiction; and

9 [~~(6)~~] (7) require any person emitting any air
10 contaminant to:

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

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

16 (c) establish and maintain records of
17 the nature and amount of emissions;

18 (d) submit reports regarding the nature
19 and amounts of emissions and the performance of emission
20 control devices; and

21 (e) provide any other reasonable
22 information relating to the emission of air contaminants.

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

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

5 (1) character and degree of injury to or
6 interference with health, welfare, visibility and property;

7 (2) the public interest, including the social
8 and economic value of the sources and subjects of air
9 contaminants; and

10 (3) technical practicability and economic
11 reasonableness of reducing or eliminating air contaminants from
12 the sources involved and previous experience with equipment and
13 methods available to control the air contaminants involved."