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HOUSE BILL 76

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Christine Chandler and Linda Serrato

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE AIR  
QUALITY CONTROL ACT TO ALLOW THE DEPARTMENT OF ENVIRONMENT TO  
DENY A PERMIT APPLICATION BASED ON POOR COMPLIANCE HISTORY.

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

SECTION 1. Section 74-2-7 NMSA 1978 (being Laws 1972,  
Chapter 51, Section 4, as amended) is amended to read:

"74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL  
IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

A. By regulation, the environmental improvement  
board or the local board shall require:

(1) a person intending to construct or modify  
any source, except as otherwise specifically provided by  
regulation, to obtain a construction permit from the department  
or the local agency prior to such construction or modification;

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1 and

2 (2) a person intending to operate any source  
3 for which an operating permit is required by the 1990  
4 amendments to the federal act, except as otherwise specifically  
5 provided by regulation, to obtain an operating permit from the  
6 department or the local agency.

7 B. Regulations adopted by the environmental  
8 improvement board or the local board shall include at least the  
9 following provisions:

10 (1) requirements for the submission of  
11 relevant information, including information the department or  
12 the local agency deems necessary to determine that regulations  
13 and standards under the Air Quality Control Act or the federal  
14 act will not be violated;

15 (2) specification of the deadlines for  
16 processing permit applications; provided that the deadline for  
17 a final decision by the department or the local agency on a  
18 construction permit application may not exceed:

19 (a) ninety days after the application is  
20 determined to be administratively complete, if the application  
21 is not subject to requirements for prevention of significant  
22 deterioration, unless the secretary or the director grants an  
23 extension not to exceed ninety days for good cause, including  
24 the need to have public hearings; or

25 (b) one hundred eighty days after the

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1 application is determined to be administratively complete, if  
2 the application is subject to requirements for prevention of  
3 significant deterioration, unless the secretary or the director  
4 grants an extension not to exceed ninety days for good cause,  
5 including the need to have public hearings;

6 (3) that if the department or local agency  
7 fails to take final action on a construction permit application  
8 within the deadlines specified in Paragraph (2) of this  
9 subsection, the department or local agency shall notify the  
10 applicant in writing that an extension of time is required to  
11 process the application and specify in detail the grounds for  
12 the extension;

13 (4) a description of elements required before  
14 the department or local agency shall deem an application  
15 administratively complete;

16 (5) specification of the public notice,  
17 comment period and public hearing, if any, required prior to  
18 the issuance of a permit; provided that the permit regulations  
19 adopted:

20 (a) by the environmental improvement  
21 board shall include provisions governing notice to nearby  
22 states; and

23 (b) by any local board shall include  
24 provisions requiring that notice be given to the department of  
25 all permit applications by any source that emits, or has a

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1 potential emission rate of, one hundred tons per year or more  
2 of any regulated air contaminant, including any source of  
3 fugitive emissions of each regulated air contaminant, at least  
4 sixty days prior to the date on which construction or major  
5 modification is to commence;

6 (6) a schedule of construction permit fees  
7 sufficient to cover the reasonable costs of:

8 (a) reviewing and acting upon any  
9 application for such permit; and

10 (b) implementing and enforcing the terms  
11 and conditions of the permit, excluding any court costs or  
12 other costs associated with an enforcement action;

13 (7) a schedule of emission fees consistent  
14 with the provisions of Section 502(b)(3) of the 1990 amendments  
15 to the federal act;

16 (8) a method for accelerated permit processing  
17 that may be requested at the sole discretion of the applicant  
18 at the time the applicant submits a construction permit  
19 application and that:

20 (a) allows the department or local  
21 agency to contract with qualified outside firms to assist the  
22 department or local agency in its accelerated review of the  
23 construction permit application; provided that the department  
24 or local agency can contract with a qualified firm that does  
25 not have a conflict of interest; and

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1 (b) establishes a process for the  
2 department or local agency to account for the expenditure of  
3 the accelerated permit processing fees;

4 (9) allowance for additional permit  
5 application fees, sufficient to cover the reasonable costs of  
6 an accelerated permit application review process. Before the  
7 applicant is notified that the permit application has been  
8 determined to be complete, the department or local agency shall  
9 give the applicant a reasonable estimate of costs of an  
10 accelerated permit application review process;

11 (10) specification of the maximum length of  
12 time for which a permit shall be valid; provided that for an  
13 operating permit such period may not exceed five years; and

14 (11) for an operating permit only:

15 (a) provisions consistent with Sections  
16 502(b) and 505(b) of the federal act providing: 1) notice to  
17 and review and comment by the United States environmental  
18 protection agency; and 2) that if the department or local  
19 agency receives notice of objection from the United States  
20 environmental protection agency before the operating permit is  
21 issued, the department or the local agency shall not issue the  
22 permit unless it is revised and issued under Section 505(c) of  
23 the federal act;

24 (b) provisions governing renewal of the  
25 operating permit; and

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1 (c) specification of the conditions  
2 under which the operating permit may be terminated, modified or  
3 revoked and reissued prior to the expiration of the term of the  
4 operating permit.

5 C. Except as provided in Subsection 0 of this  
6 section, the department or the local agency may deny any  
7 application for:

8 (1) a construction permit if it appears that  
9 the construction or modification:

10 (a) will not meet applicable standards,  
11 rules or requirements of the Air Quality Control Act or the  
12 federal act;

13 (b) will cause or contribute to air  
14 contaminant levels in excess of a national or state standard  
15 or, within the boundaries of a local authority, applicable  
16 local ambient air quality standards; or

17 (c) will violate any other provision of  
18 the Air Quality Control Act or the federal act; and

19 (2) an operating permit if the source will not  
20 meet the applicable standards, rules or requirements pursuant  
21 to the Air Quality Control Act or the federal act.

22 D. The department or the local agency may specify  
23 conditions to any permit granted under this section, including:

24 (1) for a construction permit:

25 (a) a requirement that such source

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1 install and operate control technology, determined on a case-  
2 by-case basis, sufficient to meet the standards, rules and  
3 requirements of the Air Quality Control Act and the federal  
4 act;

5 (b) individual emission limits,  
6 determined on a case-by-case basis, but only as restrictive as  
7 necessary to meet the requirements of the Air Quality Control  
8 Act and the federal act or the emission rate specified in the  
9 permit application, whichever is more stringent;

10 (c) compliance with applicable federal  
11 standards of performance;

12 (d) reasonable restrictions and  
13 limitations not relating to emission limits or emission rates;  
14 or

15 (e) any combination of the conditions  
16 listed in this paragraph; and

17 (2) for an operating permit, terms and  
18 conditions sufficient to ensure compliance with the applicable  
19 standards, rules and requirements pursuant to the Air Quality  
20 Control Act and the federal act.

21 E. This section does not authorize the department  
22 or the local agency to require the use of machinery, devices or  
23 equipment from a particular manufacturer if the federal  
24 standards of performance, state regulations and permit  
25 conditions may be met by machinery, devices or equipment

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1 otherwise available.

2 F. The issuance of a permit does not relieve any  
3 person from the responsibility of complying with the provisions  
4 of the Air Quality Control Act and any applicable regulations  
5 of the environmental improvement board or the local board. Any  
6 conditions placed upon a permit by the department or the local  
7 agency shall be enforceable to the same extent as a regulation  
8 of its board.

9 G. A person who participated in a permitting action  
10 before the department or the local agency shall be notified by  
11 the department or the local agency of the action taken and the  
12 reasons for the action. Notification of the applicant shall be  
13 by certified mail.

14 H. A person who participated in a permitting action  
15 before the department or the local agency and who is adversely  
16 affected by such permitting action may file a petition for  
17 hearing before the environmental improvement board or the local  
18 board. The petition shall be made in writing to the  
19 environmental improvement board or the local board within  
20 thirty days from the date notice is given of the department's  
21 or the local agency's action. Unless a timely petition for  
22 hearing is made, the decision of the department or the local  
23 agency shall be final.

24 I. If a timely petition for hearing is made, the  
25 environmental improvement board or the local board shall hold a

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1 hearing within sixty days after receipt of the petition. The  
2 environmental improvement board or the local board shall notify  
3 the petitioner and the applicant or permittee, if other than  
4 the petitioner, by certified mail of the date, time and place  
5 of the hearing. If the subject of the petition is a permitting  
6 action deemed by the environmental improvement board or the  
7 local board to substantially affect the public interest, the  
8 environmental improvement board or the local board shall ensure  
9 that the public receives notice of the date, time and place of  
10 the hearing. The public in such circumstances shall also be  
11 given a reasonable opportunity to submit data, views or  
12 arguments orally or in writing and to examine witnesses  
13 testifying at the hearing. Any person submitting data, views  
14 or arguments orally or in writing shall be subject to  
15 examination at the hearing.

16 J. The environmental improvement board or the local  
17 board may designate a hearing officer to take evidence in the  
18 hearing. All hearings shall be recorded.

19 K. The burden of proof shall be upon the  
20 petitioner. Based upon the evidence presented at the hearing,  
21 the environmental improvement board or the local board shall  
22 sustain, modify or reverse the action of the department or the  
23 local agency respectively.

24 L. Notwithstanding any other provision of law and  
25 subject to the provisions of Section 74-2-4 NMSA 1978, a final

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1 decision on a permit by the department, the environmental  
2 improvement board, the local agency, the local board or the  
3 court of appeals that a source will or will not meet applicable  
4 local, state and federal air pollution standards and  
5 regulations shall be conclusive and is binding on every other  
6 state agency and as an issue before any other state agency  
7 shall be deemed resolved in accordance with that final  
8 decision.

9 M. Subject to the provisions of Section 74-2-4 NMSA  
10 1978, if the local board has adopted a permit regulation  
11 pursuant to this section, persons constructing or modifying any  
12 source within the boundaries of the local authority shall  
13 obtain a permit from the local agency and not from the  
14 department.

15 N. Fees collected pursuant to this section shall be  
16 deposited in:

17 (1) the state air quality permit fund created  
18 by Section 74-2-15 NMSA 1978 if collected by the department; or

19 (2) a fund created pursuant to Section 74-2-16  
20 NMSA 1978 if collected by a local agency pursuant to a permit  
21 regulation adopted by the local board pursuant to this section.

22 O. The department may not deny an application for a  
23 construction permit for a cotton gin if the applicant proposes  
24 use of the best system of emissions reduction currently in use  
25 by cotton gins in the United States, as specified by regulation  
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1 of the environmental improvement board, and the cotton gin has  
2 a potential emission rate, considering the use of the proposed  
3 emissions reduction system and the proposed hours of operation,  
4 of not more than fifty tons per year of any regulated air  
5 contaminant for which there is a national ambient air quality  
6 standard. The construction permit shall require that the  
7 applicant use the proposed emission reduction system and limit  
8 the hours of operation to the hours specified in the  
9 application. For purposes of this subsection, "best system of  
10 emissions reduction" for cotton gins means a system that will  
11 result in emissions reduction equal to or greater than that  
12 obtained by the use of condenser screens, seventy-mesh screen  
13 or equivalent on low-pressure exhausts and high-efficiency  
14 cyclone dust collectors on high-pressure exhausts.

15 P. The department or local agency may deny any  
16 permit application or revoke any permit issued pursuant to the  
17 Air Quality Control Act if the applicant or permittee has:

18 (1) knowingly misrepresented a material fact  
19 in an application for a permit;

20 (2) refused to disclose the information  
21 required by the provisions of the Air Quality Control Act;

22 (3) been convicted in any court, within ten  
23 years immediately preceding the date of submission of the  
24 permit application, of:

25 (a) a felony related to environmental

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1 crime; or

2 (b) a crime defined by state or federal  
3 statute as involving or being in restraint of trade, price  
4 fixing, bribery or fraud;

5 (4) constructed or operated a facility for  
6 which a permit is sought without a permit required by the Air  
7 Quality Control Act, and the emissions from the unpermitted  
8 facility exceed the permit requirement threshold by twenty-five  
9 percent for any pollutant; or

10 (5) had any permit revoked or permanently  
11 suspended for cause under the environmental laws of any state  
12 or the United States.

13 Q. In making a finding under Subsection P of this  
14 section, the department or local agency may consider  
15 aggravating and mitigating factors.

16 R. An applicant for a permit issued pursuant to the  
17 Air Quality Control Act shall file a disclosure statement with  
18 the department or local agency with the information required,  
19 and on a form developed, by the department.

20 S. A person shall not be required to submit the  
21 disclosure statement required by this section if the person is:

22 (1) the United States or any agency or  
23 instrumentality of the United States; or

24 (2) a state or any agency or political  
25 subdivision of a state."

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