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;
and

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

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

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

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

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

(b) one hundred eighty days after the
application is determined to be administratively complete, if
the application is subject to requirements for prevention of
significant deterioration, unless the secretary or the director
grants an extension not to exceed ninety days for good cause,
including the need to have public hearings;

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

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

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

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

(b) by any local board shall include
provisions requiring that notice be given to the department of
all permit applications by any source that emits, or has a
potential emission rate of, one hundred tons per year or more
of any regulated air contaminant, including any source of
fugitive emissions of each regulated air contaminant, at least
sixty days prior to the date on which construction or major
modification is to commence;

(6) a schedule of construction permit fees
sufficient to cover the reasonable costs of:
(a) reviewing and acting upon any
application for such permit; and
(b) implementing and enforcing the terms
and conditions of the permit, excluding any court costs or
other costs associated with an enforcement action;

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

(8) a method for accelerated permit processing
that may be requested at the sole discretion of the applicant
at the time the applicant submits a construction permit
application and that:
(a) allows the department or local
agency to contract with qualified outside firms to assist the
department or local agency in its accelerated review of the
construction permit application; provided that the department
or local agency can contract with a qualified firm that does
not have a conflict of interest; and

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

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

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

(11) for an operating permit only:

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

(b) provisions governing renewal of the operating permit; and
(c) specification of the conditions

under which the operating permit may be terminated, modified or
revoked and reissued prior to the expiration of the term of the
operating permit.

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

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

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

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

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

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

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

(1) for a construction permit:

(a) a requirement that such source
install and operate control technology, determined on a case-by-case basis, sufficient to meet the standards, rules and requirements of the Air Quality Control Act and the federal act;

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

(c) compliance with applicable federal standards of performance;

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

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

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

E. This section does not authorize the department or the local agency to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, state regulations and permit conditions may be met by machinery, devices or equipment
F. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act and any applicable regulations of the environmental improvement board or the local board. Any conditions placed upon a permit by the department or the local agency shall be enforceable to the same extent as a regulation of its board.

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

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

I. If a timely petition for hearing is made, the environmental improvement board or the local board shall hold a
hearing within sixty days after receipt of the petition. The
environmental improvement board or the local board shall notify
the petitioner and the applicant or permittee, if other than
the petitioner, by certified mail of the date, time and place
of the hearing. If the subject of the petition is a permitting
action deemed by the environmental improvement board or the
local board to substantially affect the public interest, the
environmental improvement board or the local board shall ensure
that the public receives notice of the date, time and place of
the hearing. The public in such circumstances shall also be
given a reasonable opportunity to submit data, views or
arguments orally or in writing and to examine witnesses
testifying at the hearing. Any person submitting data, views
or arguments orally or in writing shall be subject to
examination at the hearing.

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

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

L. Notwithstanding any other provision of law and
subject to the provisions of Section 74-2-4 NMSA 1978, a final
decision on a permit by the department, the environmental
improvement board, the local agency, the local board or the
court of appeals that a source will or will not meet applicable
local, state and federal air pollution standards and
regulations shall be conclusive and is binding on every other
state agency and as an issue before any other state agency
shall be deemed resolved in accordance with that final
decision.

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

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

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

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

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

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

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

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

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

(a) a felony related to environmental
crime; or

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

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

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

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

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

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

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

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