



## **SIGNIFICANT ISSUES**

Permitting agencies will need to ensure that fees are sufficient to cover the costs of reviewing and approving the new actions plans and conditional permits, and monitoring for compliance.

### Synopsis of Original Bill

HB76 allows NMED or a local air permitting agency (i.e., the City of Albuquerque) to deny new permits or revoke existing permits issued pursuant to the state Air Quality Control Act for cause. Such cause includes knowingly misrepresenting a material fact in a permit application; refusing to disclose information; previous felony conviction related to an environmental crime (within the last 10 years for crimes involving trade, price fixing, bribery, or fraud); constructing or operating an unpermitted facility whose emissions exceed the permit requirement threshold by 25 percent; or who has had a permit revoked or permanently suspended in other states or under federal law.

HB76 requires applicants (unless a federal or state entity) to submit a disclosure statement with such information to allow NMED or the local air permitting authority to determine if any of the conditions for denial are applicable. HB76 also allows NMED or the local air permitting agency the ability to consider “aggravating and mitigating factors” when denying or revoking a permit.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

No fiscal implications reported for NMED or the local air permitting agency. NMED believes existing funding will cover the resources required to review the disclosure information.

## **SIGNIFICANT ISSUES**

According to NMED, HB76 levels the playing field for New Mexico businesses as much as it protects New Mexico communities. Businesses that do not comply with air quality permits undermine the economic investment of New Mexico businesses that do. This puts communities at risk for illness or death from breathing harmful air contaminates. HB76 rewards businesses who invest in protecting air quality by ensuring those who do not are held accountable.

Currently, NMED reports it must issue permits even if the above conditions are true. Such revocation is resource intensive and legally difficult, even if the operator is non-compliant.

NMED notes grounds for denial or revocation of permits in HB76 match similar environmental laws in other states (e.g. Texas and South Dakota) and align permitting conditions in the Air Quality Control Act with provisions in the Hazardous Waste Act at Section 74-4-4.2D/E, Water Quality Act at Section 74-6-5E, and Solid Waste Act at Section 74-9-24B/C. (NMSA 1978).

## **PERFORMANCE IMPLICATIONS**

NMAG notes the Environmental Improvement Board (EIB) cannot pass regulations more stringent than the federal Clean Air Act. Assuming EIB would be tasked with promulgating rules to implement the new permit denial and revocation standards, such rules may run afoul of

Section 74-2-5 if those standards are “more stringent” than permit denial or revocation standards in the federal Clean Air Act. To resolve this conflict, NMAG proposes amending the bill to add an exception to Section 74-2-5; to the effect that EIB can pass regulations more stringent than the federal Clean Air Act when done so according to the proposed Section P of Section 74-2-7.

### **ADMINISTRATIVE IMPLICATIONS**

The resources required to address permit holders that disregard environmental laws and regulations will continue to limit the ability of the agency to address other environmental issues. HB76 may improve the performance measure for “the percent of days with good or moderate air quality index ratings” by limiting excess pollution that often accompanies non-compliance.

NMED will need to update its air quality permit application forms to include a disclosure form, and reports it can complete these activities with current staff and budget.

### **OTHER SUBSTANTIVE ISSUES**

NMED’s Air Quality Bureau has jurisdiction over all New Mexico counties except Bernalillo County and tribal lands. The City of Albuquerque regulates businesses in Bernalillo County.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The resources required to address permit holders that disregard environmental laws and regulations will continue to limit the ability of the agency to address other environmental issues.

### **AMENDMENTS**

NMAG suggested amending Section 74-2-5 to allow an exception for EIB to promulgate regulations more stringent than the federal Clean Air Act and its regulations where such regulations concern denial and revocation standards in the proposed Section P of Section 74-2-7.

AHO/sb/al