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SENATE BILL 676

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT.

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

Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967, Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS.--As used in the Air Quality Control Act:

A. "air contaminant" means any substance, including ~~[but not limited to]~~ any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination ~~[thereof]~~ or any decay or reaction product thereof;

B. "air pollution" means the emission, except emission that occurs in nature, into the outdoor atmosphere of

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1 one or more air contaminants in quantities and of a duration
2 that may with reasonable probability injure human health or
3 animal or plant life or as may unreasonably interfere with the
4 public welfare, visibility or the reasonable use of property;

5 C. "department" means the department of
6 environment;

7 D. "director" means the administrative head of a
8 local agency;

9 E. "emission limitation" [~~and~~] or "emission
10 standard" [~~mean~~] means a requirement established by the
11 environmental improvement board or the local board, the
12 department, the local authority or the local agency or
13 [~~pursuant to the federal act~~] by the federal environmental
14 protection agency that limits the quantity, rate or
15 concentration, or combination thereof, of emissions of air
16 contaminants on a continuous basis, including any requirements
17 relating to the operation or maintenance of a source to
18 [~~assure~~] ensure continuous reduction and any design,
19 equipment, work practice or operational standard adopted
20 pursuant to the Air Quality Control Act or the federal act ;

21 F. "federal act" means the federal Clean Air Act,
22 42 U.S.C. Sections 7401, et. seq., its subsequent amendments
23 and successor provisions;

24 G. "federal standard of performance" means any
25 standard of performance, emission limitation or emission

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1 standard adopted pursuant to [~~42 U.S.C. Section 7411 or 7412~~]
2 Section 111 or 112 of the federal act;

3 H. "hazardous air pollutant" means an air
4 contaminant that has been [~~classified~~] listed as a hazardous
5 air pollutant pursuant to Section 112(b) of the federal act;

6 I. "local agency" means the administrative agency
7 established by a local authority pursuant to Paragraph (2) of
8 Subsection A of Section 74-2-4 NMSA 1978;

9 J. "local authority" means any of the following
10 political subdivisions of the state that have, by following
11 the procedure set forth in Subsection A of Section 74-2-4 NMSA
12 1978, assumed jurisdiction for local administration and
13 enforcement of the Air Quality Control Act:

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

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

19 K. "local board" means a municipal, county or
20 joint air quality control board created by any local
21 authority;

22 L. "mandatory class I area" means any of the
23 following areas in this state that were in existence on August
24 7, 1977:

25 (1) national wilderness areas that exceed

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1 five thousand acres in size; and

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

4 M "modification" means any physical change in, or
5 change in the method of operation of, a source that results in
6 an increase in the potential emission rate of any regulated
7 air contaminant emitted by the source or that results in the
8 emission of any regulated air contaminant not previously
9 emitted, but does not include:

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

11 (2) routine maintenance, repair or
12 replacement;

13 (3) installation of air pollution control
14 equipment, and all related process equipment and materials
15 necessary for its operation, undertaken for the purpose of
16 complying with regulations adopted by the environmental
17 improvement board or the local board or ~~[pursuant to the~~
18 ~~federal act]~~ by the federal environmental protection agency;
19 or

20 (4) unless previously limited by enforceable
21 permit conditions:

22 (a) an increase in the production rate,
23 if such increase does not exceed the operating design capacity
24 of the source;

25 (b) an increase in the hours of

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1 operation; or

2 (c) use of an alternative fuel or raw
3 material if, prior to January 6, 1975, the source was capable
4 of accommodating such fuel or raw material or if use of an
5 alternate fuel or raw material is caused by any natural gas
6 curtailment or emergency allocation or any other lack of
7 supply of natural gas;

8 N. "nonattainment area" means for any air
9 contaminant an area that is designated "nonattainment" with
10 respect to that contaminant within the meaning of Section
11 107(d) of the federal act;

12 O. "person" includes an individual, partnership,
13 corporation, association, the state or political subdivision
14 of the state and any agency, department or instrumentality of
15 the United States and any of their officers, agents or
16 employees;

17 P. "potential emission rate" means the emission
18 rate of a source at its maximum capacity to emit a regulated
19 air contaminant under its physical and operational design in
20 the absence of air pollution control equipment that is not
21 vital to production of the normal product of the source or to
22 its normal operation. Any physical or operational limitation
23 on the capacity of the source to emit a regulated air
24 contaminant, including air pollution control equipment not
25 vital to production of the normal product or to normal

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1 operation, and restrictions on hours of operation or on the
2 type or amount of material combusted, stored or processed,
3 shall be treated as part of its physical and operational
4 design if the limitation or the effect it would have on
5 emissions is enforceable pursuant or the Air Quality Control
6 Act or is federally enforceable;

7 Q. "regulated air contaminant" means any air
8 contaminant, the emission or ambient concentration of which is
9 regulated pursuant to the Air Quality Control Act or the
10 federal act;

11 R. "secretary" means the secretary of environment;

12 S. "significant deterioration" means any increase
13 in the ambient concentrations of any air contaminant above the
14 levels allowed by the federal act or federal regulations for
15 that air contaminant in the area within which the increase
16 occurs;

17 T. "source" means any structure, building,
18 equipment, facility, installation or operation that emits or
19 may emit any air contaminant;

20 U. "standard of performance" means a requirement
21 of continuous emission reduction, including any requirement
22 relating to operation or maintenance of a source to [assure]
23 ensure continuous emission reduction;

24 V. "state implementation plan" means any plan
25 submitted by New Mexico to the federal environmental

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1 protection agency pursuant to [~~42 U.S.C. Section 7410~~] Section
2 110 of the federal act; and

3 W. "toxic air pollutant" means any air
4 contaminant, except a hazardous air pollutant, classified by
5 the environmental improvement board or the local board as a
6 toxic air pollutant. "

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

9 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
10 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES. --

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

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

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

23 B. Regulations adopted by the environmental
24 improvement board or the local board shall include at least
25 the following [provisions]:

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1 (1) requirements for permit applications,
2 including requirements for the submission of relevant
3 information, [~~including but not limited to information~~] the
4 department or the local agency deems necessary to [~~ensure~~
5 ~~that~~] determine:

6 (a) whether the applicable standards,
7 regulations and [~~standards under~~] requirements pursuant to the
8 Air Quality Control Act or the federal act will not be
9 violated; and

10 (b) the amount of applicable fees;

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

15 (a) one hundred eighty days after the
16 application is determined to be complete, if the application
17 is not [~~affected by requirements for prevention of~~] subject to
18 regulation to prevent significant deterioration of air
19 quality; or

20 (b) two hundred forty days after the
21 application is determined to be complete, if the application
22 is [~~affected by requirements for prevention of~~] subject to
23 regulations to prevent significant deterioration of air
24 quality;

25 (3) specification of the public notice,

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1 comment period and public hearing, if any, required prior to
2 the issuance of a permit; provided the [~~permit~~] regulations
3 adopted:

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

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

15 (4) a schedule of construction permit fees
16 sufficient to cover:

17 (a) the reasonable costs of reviewing
18 and acting upon any application for such permit; and

19 (b) the reasonable costs of
20 implementing and enforcing the terms and conditions of the
21 permit, excluding any court costs or other costs associated
22 with an enforcement action;

23 (5) a schedule of emission fees consistent
24 with the provisions of Section 502(b)(3) of [~~the 1990~~
25 ~~amendments to~~] the federal act;

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1 (6) specification of the maximum length of
2 time for which a permit shall be valid; provided that for an
3 operating permit, such period may not exceed five years; [and]

4 (7) for an operating permit only:

5 (a) provisions consistent with Sections
6 502(b) and 505(b) of the federal act providing: 1) notice to
7 and review and comment by the [~~United States~~] federal
8 environmental protection agency; and 2) that if the department
9 or local agency receives notice of objection from the [~~United~~
10 ~~States~~] federal environmental protection agency before the
11 operating permit is issued, the department or the local agency
12 shall not issue the permit unless it is revised and issued
13 under Section 505(c) of the federal act;

14 (b) provisions governing renewal of the
15 operating permit; and

16 (c) specification of the conditions
17 under which the operating permit may be terminated, modified
18 or revoked and reissued prior to the expiration of the term of
19 the operating permit; and

20 (8) construction permits only, specification
21 of the conditions under which the construction permit may be
22 terminated, modified or revoked.

23 C. The department or the local agency may deny any
24 application for:

25 (1) a construction permit if it appears that

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1 the construction or modification:

2 (a) will not meet applicable standards,
3 regulations or requirements [of] pursuant to the Air Quality
4 Control Act or the federal act; [~~or any regulation adopted~~
5 ~~pursuant to either; or~~

6 ~~(2) an operating permit if:~~

7 ~~(a) the source for which the permit is~~
8 ~~sought will emit a hazardous air pollutant or any air~~
9 ~~contaminant in excess of a federal standard of performance or~~
10 ~~a regulation of the environmental improvement board or the~~
11 ~~local board]~~

12 (b) [~~it appears that the source for~~
13 ~~which the permit is sought]~~ will cause or contribute to air
14 contaminant levels in excess of any national or state ambient
15 air quality standard or, within the boundaries of a local
16 authority, applicable local ambient air quality standards; or

17 (c) will violate any other provision of
18 the Air Quality Control Act or the federal act [~~will be~~
19 ~~violated~~]; and

20 (2) an operating permit if the source will
21 not meet the applicable standards, regulations or requirements
22 under the Air Quality Control Act or the federal act.

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

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(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 applicable standards, regulations and requirements [of] pursuant to the Air Quality Control Act and the federal act; [and regulations promulgated pursuant to either; and

~~(2) for an operating permit:~~

~~(a) imposition of]~~ (b) individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to ~~[meet the]~~ ensure compliance with the applicable standards, regulations and requirements [of] pursuant to the Air Quality Control Act and the federal act or the emission rate specified in the [operating] permit application, whichever is more stringent;

(c) at the request of the applicant, emission limitations and other conditions that are more stringent than necessary to ensure compliance with the applicable standards, regulations and requirements pursuant to the Air Quality Control Act and the federal act, including enforceable conditions to limit the potential emission rate of the sources;

~~[(b)]~~ (d) compliance with applicable federal standards of performance;

~~[(c) imposition of]~~ (e) reasonable

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1 restrictions and limitations not relating to emission limits
2 or emission rates; or

3 ~~(d)~~ (f) any combination of the terms
4 and conditions listed above; and

5 (2) for an operating permit, terms and
6 conditions sufficient to ensure compliance with the applicable
7 standards, regulations and requirements pursuant to the Air
8 Quality Control Act and the federal act, including pertinent
9 terms and conditions in a construction permit, as determined
10 by the department or the local agency.

11 E. This section does not authorize the department
12 or the local agency to require the use of machinery, devices
13 or equipment from a particular manufacturer if the federal
14 standards of performance, state regulations and permit
15 conditions may be met by machinery, devices or equipment
16 otherwise available.

17 F. The issuance of a permit does not relieve any
18 person from the responsibility of complying with the
19 provisions of the Air Quality Control Act and any applicable
20 regulations of the environmental improvement board or the
21 local board. Any terms or conditions ~~[placed upon]~~ specified
22 in a permit by the department or the local agency shall be
23 enforceable to the same extent as a regulation of its board.

24 G. Any person who participated in a permitting
25 action before the department or the local agency shall be

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1 notified by the department or the local agency of the action
2 taken and the reasons for the action. Notification of the
3 applicant shall be by certified mail.

4 H. Any person who participated in a permitting
5 action before the department or the local agency and who is
6 adversely affected by such permitting action may file a
7 petition for hearing before the environmental improvement
8 board or the local board. The petition shall be made in
9 writing to the environmental improvement board or the local
10 board within thirty days from the date notice is given of the
11 department's or the local agency's action. Unless a timely
12 [~~request~~] petition for hearing is made, the decision of the
13 department or the local agency shall be final.

14 I. If a timely petition for hearing is made, the
15 environmental improvement board or the local board shall hold
16 a hearing within ninety days after receipt of the petition.
17 The environmental improvement board or the local board shall
18 notify the petitioner and the applicant or permittee, if other
19 than the petitioner, by certified mail of the date, time and
20 place of the hearing. If the subject of the petition is a
21 permitting action deemed by the environmental improvement
22 board or the local board to substantially affect the public
23 interest, the environmental improvement board or the local
24 board shall ensure that the public receives notice of the
25 date, time and place of the hearing. The public in such

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1 circumstances shall also be given a reasonable opportunity to
2 submit data, views or arguments orally or in writing and to
3 examine witnesses testifying at the hearing. Any person
4 submitting data, views or arguments orally or in writing shall
5 be subject to examination at the hearing.

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

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

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

24 M Subject to the provisions of Section 74-2-4
25 NMSA 1978, if the local board has adopted a permit regulation

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1 pursuant to this section, persons [~~constructing or modifying~~
2 ~~any new source~~] intending to construct or modify a source or
3 to operate a source for which a construction permit or an
4 operating permit is required within the boundaries of the
5 local authority shall obtain a permit from the local agency
6 and not from the department.

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

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

12 (2) a fund created pursuant to Section
13 74-2-16 NMSA 1978 if collected by a local agency pursuant to a
14 permit regulation adopted by the local board pursuant to this
15 section. "

16 Section 3. TEMPORARY PROVISION--EFFECT OF EXISTING
17 REGULATIONS.--A regulation of the environmental improvement
18 board or a local board that is inconsistent with this act
19 shall remain in full force and effect until amended or
20 repealed.