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SENATE BILL 742

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

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE ENVIRONMENTAL JUSTICE ACT; CREATING AN ADVISORY COUNCIL; PROVIDING POWERS AND DUTIES; INCREASING THE TIME FOR APPROVAL OF AIR QUALITY PERMITS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 4 of this act may be cited as the "Environmental Justice Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the Environmental Justice Act:

A. "committee" means the environmental justice advisory committee;

B. "deputy" means the deputy secretary for environmental justice; and

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1 C. "secretary" means the secretary of environment.

2 Section 3. [NEW MATERIAL] ENVIRONMENTAL JUSTICE DEPUTY
3 SECRETARY-- POWERS AND DUTIES. --The secretary of environment
4 shall appoint a "deputy secretary for environmental justice".

5 The deputy shall:

6 A. meet regularly with the committee;

7 B. review demographics of permitted and proposed
8 facilities;

9 C. oversee outreach and education programs for
10 communities throughout the state on the permitting process of
11 the Air Quality Control Act and other acts that require state
12 permits, which programs shall be implemented with every permit
13 application in order to facilitate public involvement;

14 D. serve as liaison to federal environmental
15 justice representatives and bodies and to communities in New
16 Mexico;

17 E. develop a database of priority facilities that
18 require action and present the priority list to the committee
19 and the secretary;

20 F. develop an assistance program for small
21 businesses that will guide and facilitate the small business
22 representatives through the department's permitting process;
23 and

24 G. perform other duties as assigned by the
25 secretary.

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1 Section 4. [NEW MATERIAL] ENVIRONMENTAL JUSTICE ADVISORY
2 COMMITTEE-- MEMBERSHIP-- PURPOSE. --

3 A. The "environmental justice advisory committee"
4 is created. The committee shall be composed of
5 representatives of community-based organizations throughout
6 the state appointed by the secretary. Members of the
7 committee shall serve at the pleasure of the secretary. The
8 committee shall annually elect a chairman and vice chairman.
9 The committee shall meet at least semiannually at the call of
10 the deputy. Members may receive per diem and travel expenses
11 as provided in the Per Diem and Mileage Act, but shall receive
12 no other compensation, perquisite or allowance.

13 B. The committee shall meet with the deputy and
14 the secretary to advise the department on matters pertaining
15 to the Environmental Justice Act and to perform such other
16 advisory duties as requested by the deputy or the secretary.

17 Section 5. Section 74-2-7 NMSA 1978 (being Laws 1972,
18 Chapter 51, Section 4, as amended) is amended to read:

19 "74-2-7. PERMITS-- PERMIT APPEALS TO THE ENVIRONMENTAL
20 IMPROVEMENT BOARD OR THE LOCAL BOARD-- PERMIT FEES. --

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

- 23 (1) any person intending to construct or
24 modify any source, except as otherwise specifically provided
25 by regulation, to obtain a construction permit from the

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1 department or the local agency prior to such construction or
2 modification; and

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

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

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

16 (2) specification of the deadlines for
17 processing permit applications; provided, the deadline for a
18 final decision by the department or the local agency on a
19 construction permit application may not exceed [~~(a) one~~
20 ~~hundred eighty~~] two hundred seventy days after the application
21 is determined to be complete [~~if the application is not~~
22 ~~affected by requirements for prevention of significant~~
23 ~~deterioration; or~~

24 (b) ~~two hundred forty days after the~~
25 ~~application is determined to be complete, if the application~~

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1 ~~is affected by requirements for prevention of significant~~
2 ~~deterioration];~~

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

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

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

18 (4) a schedule of construction permit fees
19 sufficient to cover:

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

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

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

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

7 (7) for an operating permit only:

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

17 (b) provisions governing renewal of the
18 operating permit; and

19 (c) specification of the conditions
20 under which the operating permit may be terminated, modified
21 or revoked and reissued prior to the expiration of the term of
22 the operating permit.

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 will not meet applicable
2 requirements of the Air Quality Control Act, the federal act
3 or any regulation adopted pursuant to either; or

4 (2) an operating permit if:

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

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

15 (c) any other provision of the Air
16 Quality Control Act or the federal act will be violated.

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

20 (1) for a construction permit, a requirement
21 that such source install and operate control technology,
22 determined on a case-by-case basis, sufficient to meet the
23 requirements of the Air Quality Control Act, the federal act
24 and regulations promulgated pursuant to either; and

25 (2) for an operating permit:

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

7 (b) compliance with applicable federal
8 standards of performance;

9 (c) imposition of reasonable
10 restrictions and limitations not relating to emission limits
11 or emission rates; or

12 (d) any combination of the conditions
13 listed above.

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

20 F. The issuance of a permit does not relieve any
21 person from the responsibility of complying with the
22 provisions of the Air Quality Control Act and any applicable
23 regulations of the environmental improvement board or the
24 local board. Any conditions placed upon a permit by the
25 department or the local agency shall be enforceable to the

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1 same extent as a regulation of its board.

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

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

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

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1 interest, the environmental improvement board or the local
2 board shall ensure that the public receives notice of the
3 date, time and place of the hearing. The public in such
4 circumstances shall also be given a reasonable opportunity to
5 submit data, views or arguments orally or in writing and to
6 examine witnesses testifying at the hearing. Any person
7 submitting data, views or arguments orally or in writing shall
8 be subject to examination at the hearing.

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

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

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

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1 decision.

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

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

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

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

17 Section 6. APPROPRIATION. --Two hundred fifty thousand
18 dollars (\$250,000) is appropriated from the general fund to
19 the department of environment for expenditure in fiscal year
20 2000 to carry out the provisions of the Environmental Justice
21 Act. Any unexpended or unencumbered balance remaining at the
22 end of fiscal year 2000 shall revert to the general fund.

23 Section 7. EFFECTIVE DATE. --The effective date of the
24 provisions of this act is July 1, 1999.