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HOUSE BILL 192

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT TO PROVIDE STANDARDS FOR COTTON GINS AND OTHER SEASONAL AGRICULTURAL OPERATIONS.

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 the deadline for a  
17 final decision by the department or the local agency on a  
18 construction permit application [~~may~~] shall 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 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~~ shall not exceed five years;  
14 and

15 (11) for an operating permit only:

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

25 (b) provisions governing renewal of the

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1 operating permit; and

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

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

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

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

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

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

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

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

25 (1) for a construction permit:

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

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

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

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

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

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

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

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1 conditions may be met by machinery, devices or equipment  
2 otherwise available.

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

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

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

25 I. If a timely petition for hearing is made, the



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

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

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

25 L. Notwithstanding any other provision of law and

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

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

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

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

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

24 0. The department shall not deny an application for  
25 a permit for a cotton gin or other seasonal agricultural

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1 operation based on dispersion modeling if the applicant  
2 proposes to use best available control technology currently in  
3 use by cotton gins or other seasonal agricultural operations in  
4 the United States. For purposes of this subsection, "best  
5 available control technology" for cotton gins means condenser  
6 screens, seventy mesh screen or equivalent, on low-pressure  
7 exhausts and high-efficiency cyclone dust collectors on high-  
8 pressure exhausts, or any other control technology that will  
9 result in equivalent air contaminant reduction. Dispersion  
10 modeling shall not be used for the permitting of cotton gins or  
11 other seasonal agricultural operations unless the source is  
12 found to be subject to regulations to prevent significant  
13 deterioration of air quality."