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HOUSE BILL 325

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

INTRODUCED BY

Stevan E. Pearce

FOR THE ECONOMIC DEVELOPMENT, SCIENCE AND TECHNOLOGY COMMITTEE

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 74-2-7 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) any 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

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underscored material = new
[bracketed material] = delete

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

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

9 (1) requirements for the submission of
10 relevant information, including [~~but not limited to~~]
11 information the department or the local agency deems necessary
12 to [~~ensure~~] determine that regulations and standards under the
13 Air Quality Control Act [~~or~~] and the federal act will [~~not~~] be
14 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 not exceed:

19 (a) [~~one hundred eighty~~] ninety days
20 after the application is determined to be complete, if the
21 application is not [~~affected by~~] subject to requirements for
22 prevention of significant deterioration; or

23 (b) [~~two hundred forty~~] one hundred
24 eighty days after the application is determined to be
25 complete, if the application is [~~affected by~~] subject to

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1 requirements for prevention of significant deterioration;

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

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

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

17 (4) a schedule of construction permit fees
18 sufficient to cover the reasonable costs of:

19 (a) [~~the reasonable costs of~~] reviewing
20 and acting upon any application for such permit; and

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

25 (5) a schedule of emission fees consistent

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1 with the provisions of Section 502(b)(3) of [~~the 1990~~
2 ~~amendments to~~] the federal act;

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

6 (7) for an operating permit only:

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

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

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

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

24 (1) a construction permit if it appears that
25 the construction or modification will not meet applicable

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1 requirements of the Air Quality Control Act, the federal act
2 or any regulation adopted pursuant to either; or

3 (2) an operating permit if:

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

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

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

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

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

24 (2) for an operating permit:

25 (a) imposition of individual emission

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

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

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

11 (d) any combination of the conditions
12 listed [~~above~~] in this paragraph.

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

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

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

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

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

underscored material = new
[bracketed material] = delete

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

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

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

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

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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 new 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. "

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 203 AND 325

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

AN ACT

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Section 1. Section 74-2-7 NMSA 1978 (being Laws 1972,
Chapter 51, Section 4, as amended) is amended to read:

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IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

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

(1) any 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) any 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 but not limited to information the department or the local agency deems necessary to ~~[ensure]~~ 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 the deadline for a final decision by the department or the local agency on a construction permit application may not exceed:

(a) ~~[one hundred eighty]~~ ninety days after the application is determined to be administratively complete, if the application is not ~~[affected by]~~ 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) ~~[two hundred forty]~~ one hundred eighty days after the application is determined to be administratively complete, if the application is ~~[affected by]~~ subject to requirements for prevention of significant

1 deterioration, unless the secretary or the director grants an
2 extension not to exceed ninety days for good cause, including the
3 need to have public hearings;

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

7 ~~[(3)]~~ (4) specification of the public notice,
8 comment period and public hearing, if any, required prior to the
9 issuance of a permit; provided the permit regulations adopted:

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

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

20 ~~[(4)]~~ (5) a schedule of construction permit
21 fees sufficient to cover the reasonable costs of:

22 (a) ~~[the reasonable costs of]~~ reviewing
23 and acting upon any application for such permit; and

24 (b) ~~[the reasonable costs of]~~ implementing
25 and enforcing the terms and conditions of the permit, excluding

1 any court costs or other costs associated with an enforcement
2 action;

3 [~~(5)~~] (6) a schedule of emission fees
4 consistent with the provisions of Section 502(b)(3) of the 1990
5 amendments to the federal act;

6 [~~(6)~~] (7) specification of the maximum length
7 of time for which a permit shall be valid; provided that for an
8 operating permit such period may not exceed five years; and

9 [~~(7)~~] (8) for an operating permit only:

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

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

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

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

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1 (1) a construction permit if it appears that
2 the construction or modification will not meet applicable
3 requirements of the Air Quality Control Act, the federal act or
4 any regulation adopted pursuant to either; or

5 (2) an operating permit if:

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

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

15 (c) any other provision of the Air Quality
16 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, including:

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

24 (2) for an operating permit:

25 (a) imposition of individual emission

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

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

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

11 (d) any combination of the conditions
12 listed [~~above~~] in this paragraph.

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

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

25 G. Any person who participated in a permitting action

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

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

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

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

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

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

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

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

. 126874. 3

1 to this section, persons constructing or modifying any new source
2 within the boundaries of the local authority shall obtain a
3 permit from the local agency and not from the department.

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

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

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

11 Section 2. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2000.