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HOUSE BILL 581

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO THE ENVIRONMENT; REQUIRING THE DEPARTMENT OF ENVIRONMENT AND LOCAL AGENCIES TO COMPLETE ALL INSPECTIONS ON EXISTING SOURCES OWNED OR OPERATED BY PERMIT APPLICANTS BEFORE THE ISSUANCE OF OPERATING OR CONSTRUCTION PERMITS FOR NEW OR MODIFIED SOURCES TO SUCH APPLICANTS; ESTABLISHING A PERIODIC INSPECTION PROGRAM IN 2025 THAT SHALL USE THE BEST AVAILABLE TECHNOLOGY; REQUIRING THE DEPARTMENT AND LOCAL AGENCIES TO INCREASE PERMITTING FEES TO IMPLEMENT THE INSPECTION PROGRAM; REQUIRING THE DEPARTMENT TO REPORT TO THE LEGISLATURE IN 2026 AND 2027 REGARDING THE INSPECTION PROGRAM.

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

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

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

4 (1) a person intending to construct or modify
5 any source, except as otherwise specifically provided by
6 regulation, to obtain a construction permit from the department
7 or the local agency prior to such construction or modification;
8 and

9 (2) a person intending to operate any source
10 for which an operating permit is required by the 1990
11 amendments to the federal act, except as otherwise specifically
12 provided by regulation, to obtain an operating permit from the
13 department or the local agency.

14 B. Regulations adopted by the environmental
15 improvement board or the local board shall include at least the
16 following provisions:

17 (1) requirements for the submission of
18 relevant information, including information the department or
19 the local agency deems necessary to determine that regulations
20 and standards under the Air Quality Control Act, ~~[or]~~ the Oil
21 and Gas Act specifically relating to the venting and flaring of
22 natural gas by oil and gas facilities and the federal act,
23 including all amendments, will not be violated through minimum
24 mandatory documentation and procedures and that:

25 (a) applications for construction and

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1 operating permits shall include certified or otherwise verified
2 proof of compliance issued by the department, the local agency
3 or other authorized government department or agency
4 establishing that each of the other facilities owned or
5 operated by the applicant and subject to these state and
6 federal laws are in compliance with all state and federal
7 emission standards during the current inspection period and all
8 prior inspection periods, where such proof of compliance shall
9 be a condition precedent to the application;

10 (b) if an applicant is unable to produce
11 acceptable proof of compliance with the applicant's
12 application, the department or local agency shall inspect all
13 of the applicant's facilities within six months of the
14 submission of the application; and

15 (c) the department or local agency shall
16 notify the applicant of the results of all inspections
17 conducted pursuant to the provisions of this subsection and, if
18 the department or local agency determines that the sources are
19 in compliance with the applicable state and federal laws and
20 emission standards and the department or local agency
21 determines that the application is otherwise complete, the
22 department or local agency shall proceed with evaluating the
23 application for the new source; if the department or local
24 agency determines that the sources are not in compliance with
25 the applicable state and federal laws and standards, the

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1 department or local agency shall issue a final action pursuant
2 to Subsection G of this section denying the permit application
3 for the new source;

4 (2) specification of the deadlines for
5 processing permit applications; provided that the deadline for
6 a final decision by the department or the local agency on a
7 construction permit application may not exceed:

8 (a) ninety days after the application is
9 determined to be administratively complete, if the application
10 is not subject to requirements for prevention of significant
11 deterioration, unless the secretary or the director grants an
12 extension not to exceed ninety days for good cause, including
13 the need to have public hearings and, if the applicant has
14 failed to produce proof of compliance of each of the
15 applicant's facilities not subject to the prevention
16 requirements, the secretary or the director shall deem such
17 event as good cause for an additional extension of six months;
18 or

19 (b) one hundred eighty days after the
20 application is determined to be administratively complete, if
21 the application is subject to requirements for prevention of
22 significant deterioration, unless the secretary or the director
23 grants an extension not to exceed ninety days for good cause,
24 including the need to have public hearings and, if the
25 applicant has failed to produce proof of compliance of each of

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1 the applicant's facilities subject to the prevention
2 requirements, the secretary or director shall deem the event as
3 good cause for an additional extension of six months;

4 (3) that if the department or local agency
5 fails to take final action on a construction permit application
6 within the deadlines specified in Paragraph (2) of this
7 subsection, the department or local agency shall notify the
8 applicant in writing that an extension of time is required to
9 process the application and specify in detail the grounds for
10 the extension;

11 (4) a description of elements required before
12 the department or local agency shall deem an application
13 administratively complete and where such elements shall include
14 as a condition precedent the proof of compliance issued by the
15 department, the local agency or other authorized government
16 department or agency as described in this subsection;

17 (5) specification of the public notice,
18 comment period and public hearing, if any, required prior to
19 the issuance of a permit; provided that the permit regulations
20 adopted:

21 (a) by the environmental improvement
22 board shall include provisions governing notice to nearby
23 states; and

24 (b) by any local board shall include
25 provisions requiring that notice be given to the department of

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1 all permit applications by any source that emits, or has a
2 potential emission rate of, one hundred tons per year or more
3 of any regulated air contaminant, including any source of
4 fugitive emissions of each regulated air contaminant, at least
5 sixty days prior to the date on which construction or major
6 modification is to commence;

7 (6) a schedule of construction permit fees
8 sufficient to cover the reasonable costs of:

9 (a) reviewing and acting upon any
10 application for such permit; and

11 (b) implementing and enforcing the terms
12 and conditions of the permit, including the costs of the
13 periodic inspection program required by Section 74-2-13 NMSA
14 1978, but excluding any court costs or other costs associated
15 with an enforcement action;

16 (7) a schedule of emission fees consistent
17 with the provisions of Section 502(b)(3) of the 1990 amendments
18 to the federal act;

19 (8) a method for accelerated permit processing
20 that may be requested at the sole discretion of the applicant
21 ~~[at the time the applicant submits a construction permit~~
22 ~~application]~~ if and only if the applicant has first submitted a
23 proof of compliance that has been subsequently accepted by the
24 department or local agency as true and that:

25 (a) allows the department or local

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1 agency to contract with qualified outside firms to assist the
2 department or local agency in its accelerated review of the
3 construction permit application; provided that the department
4 or local agency can contract with a qualified firm that does
5 not have a conflict of interest; and

6 (b) establishes a process for the
7 department or local agency to account for the expenditure of
8 the accelerated permit processing fees;

9 (9) allowance for additional permit
10 application fees, sufficient to cover the reasonable costs of
11 an accelerated permit application review process that is
12 applicable only to applicants who have first submitted proof of
13 compliance that has been subsequently accepted as true as
14 described in this subsection. Before the applicant is notified
15 that the permit application has been determined to be complete,
16 the department or local agency shall give the applicant a
17 reasonable estimate of costs of an accelerated permit
18 application review process;

19 (10) specification of the maximum length of
20 time for which a permit shall be valid; provided that for an
21 operating permit such period may not exceed five years; and

22 (11) for an operating permit only:

23 (a) provisions consistent with Sections
24 502(b) and 505(b) of the federal act providing: 1) notice to
25 and review and comment by the United States environmental

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1 protection agency; and 2) that if the department or local
2 agency receives notice of objection from the United States
3 environmental protection agency before the operating permit is
4 issued, the department or the local agency shall not issue the
5 permit unless it is revised and issued under Section 505(c) of
6 the federal act;

7 (b) provisions governing renewal of the
8 operating permit; and

9 (c) specification of the conditions
10 under which the operating permit may be terminated, modified or
11 revoked and reissued prior to the expiration of the term of the
12 operating permit.

13 C. Except as provided in Subsection 0 of this
14 section, the department or the local agency may deny any
15 application for:

16 (1) a construction permit if it appears that
17 the construction or modification:

18 (a) will not meet applicable standards,
19 rules or requirements of the Air Quality Control Act, the Oil
20 and Gas Act specifically relating to regulations of the venting
21 and flaring of natural gas by oil and gas facilities or the
22 federal act;

23 (b) will cause or contribute to air
24 contaminant levels in excess of a national or state standard
25 or, within the boundaries of a local authority, applicable

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1 local ambient air quality standards; or

2 (c) will violate any other provision of
3 the Air Quality Control Act, the Oil and Gas Act specifically
4 relating to regulations of the venting and flaring of natural
5 gas by oil and gas facilities or the federal act; and

6 (2) an operating permit if the source will not
7 meet the applicable standards, rules or requirements pursuant
8 to the Air Quality Control Act, the Oil and Gas Act
9 specifically relating to regulations of the venting and flaring
10 of natural gas by oil and gas facilities or the federal act.

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

13 (1) for a construction permit:

14 (a) a requirement that such source
15 install and operate control technology, determined on a case-
16 by-case basis, sufficient to meet the standards, rules and
17 requirements of the Air Quality Control Act, the Oil and Gas
18 Act specifically relating to regulations of the venting and
19 flaring of natural gas by oil and gas facilities and the
20 federal act;

21 (b) individual emission limits,
22 determined on a case-by-case basis, but only as restrictive as
23 necessary to meet the requirements of the Air Quality Control
24 Act, the Oil and Gas Act specifically relating to regulations
25 of the venting and flaring of natural gas by oil and gas

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1 facilities and the federal act or the emission rate specified
2 in the permit application, whichever is more stringent;

3 (c) compliance with applicable federal
4 standards of performance;

5 (d) reasonable restrictions and
6 limitations not relating to emission limits or emission rates;
7 or

8 (e) any combination of the conditions
9 listed in this paragraph; provided that the combination results
10 in the most stringent level of performance that is the most
11 protective of health and safety; and

12 (2) for an operating permit, terms and
13 conditions sufficient to ensure compliance with the applicable
14 standards, rules and requirements pursuant to the Air Quality
15 Control Act, the Oil and Gas Act specifically relating to
16 regulations of the venting and flaring of natural gas by oil
17 and gas facilities and the federal act.

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

24 F. The issuance of a permit does not relieve any
25 person from the responsibility of complying with the provisions

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1 of the Air Quality Control Act, the applicable portions of the
2 Oil and Gas Act and any applicable regulations of the
3 environmental improvement board or the local board. Any
4 conditions placed upon a permit by the department or the local
5 agency shall be enforceable to the same extent as a regulation
6 of its board.

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

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

23 I. If a timely petition for hearing is made, the
24 environmental improvement board or the local board shall hold a
25 hearing within sixty days after receipt of the petition. The

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

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

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

23 L. Notwithstanding any other provision of law and
24 subject to the provisions of Section 74-2-4 NMSA 1978, a final
25 decision on a permit by the department, the environmental

1 improvement board, the local agency, the local board or the
2 court of appeals that a source will or will not meet applicable
3 local, state and federal air pollution standards and
4 regulations shall be conclusive and is binding on every other
5 state agency and as an issue before any other state agency
6 shall be deemed resolved in accordance with that final
7 decision.

8 M. Subject to the provisions of Section 74-2-4 NMSA
9 1978, if the local board has adopted a permit regulation
10 pursuant to this section, persons constructing or modifying any
11 source within the boundaries of the local authority shall
12 obtain a permit from the local agency and not from the
13 department.

14 N. Fees collected pursuant to this section shall be
15 deposited in:

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

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

21 O. The department may not deny an application for a
22 construction permit for a cotton gin if the applicant proposes
23 use of the best system of emissions reduction currently in use
24 by cotton gins in the United States, as specified by regulation
25 of the environmental improvement board, and the cotton gin has

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1 a potential emission rate, considering the use of the proposed
2 emissions reduction system and the proposed hours of operation,
3 of not more than fifty tons per year of any regulated air
4 contaminant for which there is a national ambient air quality
5 standard. The construction permit shall require that the
6 applicant use the proposed emission reduction system and limit
7 the hours of operation to the hours specified in the
8 application. For purposes of this subsection, "best system of
9 emissions reduction" for cotton gins means a system that will
10 result in emissions reduction equal to or greater than that
11 obtained by the use of condenser screens, seventy-mesh screen
12 or equivalent on low-pressure exhausts and high-efficiency
13 cyclone dust collectors on high-pressure exhausts.

14 P. The department or local agency may deny any
15 permit application or revoke any permit issued pursuant to the
16 Air Quality Control Act if, within ten years immediately
17 preceding the date of submission of the permit application, the
18 applicant or permittee has:

19 (1) knowingly misrepresented a material fact
20 in an application for a permit;

21 (2) refused to disclose the information
22 required by the provisions of the Air Quality Control Act;

23 (3) been convicted in any court of any state
24 or the United States of:

25 (a) a felony related to environmental

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1 crime; or

2 (b) a crime defined by state or federal
3 statute as involving or being in restraint of trade, price
4 fixing, bribery or fraud;

5 (4) constructed or operated a facility for
6 which a permit is sought without a permit required by the Air
7 Quality Control Act, except when such an unpermitted facility
8 is discovered after acquisition in the course of a timely
9 environmental audit authorized by department or local board
10 policy and except if:

11 (a) the operator of the facility using
12 good engineering practices and established approved calculation
13 methodologies estimated that the facility's emissions would not
14 require a permit pursuant to the Air Quality Control Act; and

15 (b) upon discovery of the discrepancy
16 between the calculated pre-construction maximum facility
17 emissions and the calculated post-construction maximum facility
18 emissions, the operator of the facility applies for the
19 appropriate permit within thirty calendar days; or

20 (5) had any permit revoked or permanently
21 suspended for cause under the environmental laws of any state
22 or the United States.

23 Q. In making a finding under Subsection P of this
24 section, the department or local agency may consider
25 aggravating and mitigating factors.

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1 R. If an applicant or permittee whose permit is
2 being considered for denial or revocation on any basis provided
3 by Subsection P of this section has submitted an action plan
4 that has been approved in writing by the secretary or director,
5 and plan approval includes a period of operation under a
6 conditional permit that will allow the applicant or permittee a
7 reasonable opportunity to demonstrate its rehabilitation, the
8 secretary or director may issue a conditional permit for a
9 reasonable period of time.

10 S. An applicant for a permit pursuant to the Air
11 Quality Control Act shall file a disclosure statement with the
12 department or local agency with the information listed in
13 Subsection P of this section, and on a form developed by the
14 department. An existing permit holder shall provide such
15 disclosure upon request by the department or local agency."

16 SECTION 2. Section 74-2-13 NMSA 1978 (being Laws 1972,
17 Chapter 51, Section 8, as amended) is repealed and a new
18 Section 74-2-13 NMSA 1978 is enacted to read:

19 "74-2-13. [NEW MATERIAL] PERIODIC AND OTHER
20 INSPECTIONS.--

21 A. The department, through a joint powers agreement
22 with the energy, minerals and natural resources department and
23 local agencies, shall establish a periodic inspection program
24 through regulations that shall be effective no later than
25 November 2025 that shall require that inspections:

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1 (1) occur without prior notice every two years
2 at all sources within their respective boundaries that hold
3 construction or operating permits;

4 (2) determine whether the sources inspected
5 are in compliance with the Air Quality Control Act, the Oil and
6 Gas Act as it relates to all regulations of venting and flaring
7 of oil and gas facilities and the federal act;

8 (3) be completed onsite with use of the best
9 available technology, including EXOatmospheric measurements
10 generated by methaneSAT; and

11 (4) be funded by permitting fees paid by the
12 owners or operators of permitted sources, the costs to be
13 allocated in an equitable manner to be determined by the
14 secretary and the director and approved by the board or local
15 board.

16 B. The department and a local agency shall notify
17 the owners and operators of the inspected sources of the
18 results of these periodic inspections within thirty days of
19 their completion, and the notification shall include either a
20 proof of compliance or, as applicable, a remediation plan, a
21 plan for follow-up inspections and an assessment of all
22 resulting penalties or conditional penalties.

23 C. The department shall report to the legislature
24 in 2026 and 2027 regarding the status of the periodic
25 inspection program, to include, at a minimum:

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1 (1) the number of sources inspected during the
2 reporting period;

3 (2) the schedule for the completion of the
4 inspections of all sources;

5 (3) the number of sources that are in
6 noncompliance with the applicable standards under state and
7 federal laws and regulations but expressly to include the
8 methane emission standards of the Oil and Gas Act and Section
9 136 of the federal act; and

10 (4) a summary of the remediation plans imposed
11 and the penalties assessed.

12 D. The secretary or the director or an authorized
13 representative of either, upon presentation of the appropriate
14 credentials:

15 (1) shall have a right of entry to, upon or
16 through all premises on which an emission source is located or
17 on which all records required to be maintained by regulations
18 of the environmental improvement board, the local board or by a
19 permit condition are located to conduct the periodic
20 inspections described in this section; and

21 (2) may at all reasonable times have access to
22 the premises to copy all records required to be established and
23 maintained by regulations of the environmental improvement
24 board or the local board or a permit condition; to inspect all
25 monitoring equipment and method required by regulations of the

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1 environmental improvement board, the local board or by a permit
2 condition; and to sample any emissions that are required to be
3 sampled pursuant to regulation of the environmental improvement
4 board, the local board or a permit condition."

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