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SENATE BILL 404

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John Arthur Smith

AN ACT

**RELATING TO AIR QUALITY; AMENDING THE AIR QUALITY CONTROL ACT;
PROVIDING FOR REGULATION OF 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**

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1 modification; 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
5 specifically provided by regulation, to obtain an operating
6 permit from the department or the local agency.

7 B. Regulations adopted by the environmental
8 improvement board or the local board shall include at least
9 the 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 not exceed:

19 (a) ninety days after the application
20 is determined to be administratively complete, if the
21 application is not subject to requirements for prevention of
22 significant deterioration, unless the secretary or the
23 director grants an extension not to exceed ninety days for
24 good cause, including 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
4 director grants an extension not to exceed ninety days for
5 good cause, 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
8 application within the deadlines specified in Paragraph (2) of
9 this subsection, the department or local agency shall notify
10 the applicant in writing that an extension of time is required
11 to process the application and specify in detail the grounds
12 for 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
11 terms and conditions of the permit, excluding any court costs
12 or 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
15 amendments to the federal act;

16 (8) a method for accelerated permit
17 processing that may be requested at the sole discretion of the
18 applicant at the time the applicant submits a construction
19 permit 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
9 shall 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 not exceed five years; and

14 (11) for an operating permit only:

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

24 (b) provisions governing renewal of the
25 operating permit; and

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

5 C. The department or the local agency may deny any
6 application for:

7 (1) a construction permit if it appears that
8 the construction or modification:

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

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

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

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

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

24 (1) for a construction permit:

25 (a) a requirement that such source

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

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

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

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

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

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

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

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1 otherwise available.

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

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

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

24 I. If a timely petition for hearing is made, the
25 environmental improvement board or the local board shall hold

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

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

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

24 L. Notwithstanding any other provision of law and
25 subject to the provisions of Section 74-2-4 NMSA 1978, a final

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

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

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

17 (1) the state air quality permit fund created
18 by Section 74-2-15 NMSA 1978 if collected by the department;
19 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. Cotton gins and other seasonal agricultural
25 operations that are not subject to regulations to prevent

1 significant deterioration of air quality or to achieve
2 national ambient air quality standards in nonattainment areas
3 are exempt from the provisions of Paragraph (1) of Subsection
4 A of this section. "

5 Section 2. A new section of the Air Quality Control Act
6 is enacted to read:

7 "[NEW MATERIAL] COTTON GINS AND OTHER SEASONAL
8 AGRICULTURAL OPERATIONS. --

9 A. Cotton gins and other seasonal agricultural
10 operations shall not produce emissions that result in opacity
11 levels that exceed twenty percent. Cotton gins and other
12 seasonal agricultural operations shall use the best system of
13 emission reduction that, taking into account the cost of
14 achieving such reduction and any non-air-quality health and
15 environmental impact and energy requirements, the
16 environmental improvement board or local board determines has
17 been adequately demonstrated, including, for cotton gins, the
18 use of screened drums or cages on battery condenser and lint
19 cleaner exhausts and cyclones on other exhausts.

20 B. The owner or operator of a cotton gin or other
21 seasonal agricultural operation shall maintain records
22 required by the environmental improvement board or the local
23 board sufficient to demonstrate compliance with the
24 requirements of this section.

25 C. The environmental improvement board or local

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board shall adopt rules to implement this section."