

LFC Requester:	Davidson
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date 02/17/2025 *Check all that apply:*
Bill Number: SB391 Original Correction
 Amendment Substitute

Sponsor: Scott, Townsend, Gallegos, Ezzell **Agency Name and Code** New Mexico Environmental Department 667
Short Title: Air Quality Control Act Civil Penalties **Person Writing** Michelle Miano
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
	-\$20,000	-\$20,000	Recurring	General Fund

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Amends the Air Quality Control Act to remove the ability to pay provision for civil penalties, to disallow civil penalties for self-reported violations and for violations resulting from “mishap or mechanical malfunction” under certain circumstances. The circumstances include that the permittee is “taking appropriate action to eliminate, remediate or otherwise mitigate the environmental damage” and the permittee operates within rated capacities and can document a history of appropriate maintenance.

FISCAL IMPLICATIONS

SB391 eliminates the ability of the Environment Department to collect civil penalties for any reported violations - most significantly the requirement of excess emissions reporting beyond permitted limits. The Environment Department assesses civil penalties against entities non-compliant with the Air Quality Control Act, and those civil penalties are deposited into the state’s General Fund to ensure the state is made whole. Last year, the Air Quality Bureau collected over \$20 million plus over \$2 million garnered from civil penalties in joint federal cases, both delivered to the General Fund.

SIGNIFICANT ISSUES

The ability to pay provision in the Air Quality Bureau Civil Penalty Policy (“Policy”) penalizes those entities that have the fiscal resources to pay higher penalties, while protecting smaller entities from outsized penalties, in an effort to deter non-compliance with state laws, regulations and permit conditions. Moreover, entities with more fiscal resources generally, by extension, have more resources to invest in compliance assurance in ways that smaller entities might not. As the U.S. Environmental Protection Agency and U.S. Department of Justice similarly use the ability to pay consideration in their penalty calculations, SB391 would place New Mexico at a disadvantage in enforcement cases.

Appendix D of the Policy outlines the circumstances under which penalty mitigation or reduction may occur and aims to benefit those entities who are exercising due diligence in environmental protection. As it is a requirement that entities report excess emissions to the Environment Department, excess emissions are generally not subject to penalty mitigation or reduction. In many cases, excess emission violations for facilities are occurring year-after-year without the facility immediately curing the facility’s deficiencies that are causing sustained violations. Without penalties for these violations and without required reporting to the Environment Department, there would be no incentive for corrective action to occur.

The Environment Department already has a rule that requires entities self-reporting excess emissions to provide an “affirmative defense.” This already includes malfunctions and emergencies provisions. When an entity exercises this right, the Environment Department will investigate what caused the excess emissions to determine if the malfunction and emergency provisions are applicable.

Large facilities (i.e. major sources) are required to document deviations from their permits and applicable regulations semi-annually. As written, this bill could effectively disallow any penalties for these major sources as long as they report semi-annually instead of reporting more promptly as required by the Policy.

PERFORMANCE IMPLICATIONS

One of the Environment Department's performance measures is the percentage of state residents breathing clean air. If this bill is passed, the state can expect that more areas will not meet National or State Ambient Air Quality Standards, meaning that fewer residents will breathe clean air. Further, if this bill is passed, industry will be incentivized to violate when it is convenient or financially preferable to them and then simply self-disclose after the fact, knowing that there will be no penalties for doing so. It will incentivize violating regulations and permit conditions.

ADMINISTRATIVE IMPLICATIONS

This bill effectively strips the Environment Department of its ability to incentivize compliance – especially with excess emissions reporting. If this bill is passed, the Air Quality Bureau's Policy will need to be rewritten and penalties overhauled to develop another deterrent to noncompliance.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

State regulation, 20.2.7 NMAC, already gives companies the opportunity to provide affirmative defenses in the case of both malfunctions and emergencies. Permittees are already able to request "allowable limits" and other conditions for their permits to meet air quality standards while also allowing appropriate operation of their facilities.

In addition, the Air Quality Bureau already considers voluntary self-disclosures in Appendix D of its Policy, but it includes conditions which are appropriate in order to keep industry to within the standards that are protective of New Mexico's air quality.

TECHNICAL ISSUES

n/a

OTHER SUBSTANTIVE ISSUES

n/a

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Air Quality Bureau will continue to be able to assess civil penalties for non-compliant entities based on ability to pay and deliver penalties assessed to the state's General Fund.

AMENDMENTS

n/a