

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 790

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE AIR QUALITY CONTROL ACT; REPEALING LOCAL AUTHORITY, LOCAL BOARD AND LOCAL AGENCY; CREATING REGIONAL AUTHORITY, REGIONAL BOARD AND REGIONAL AGENCY; REQUIRING A REGIONAL TECHNICAL APPEALS BOARD FOR PERMIT APPEALS FROM DECISIONS BY THE REGIONAL AGENCY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967, Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS. --As used in the Air Quality Control Act:

A. "air contaminant" means any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms,

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 radioactive material, any combination thereof or any decay or
2 reaction product thereof;

3 B. "air pollution" means the emission, except
4 emission that occurs in nature, into the outdoor atmosphere of
5 one or more air contaminants in quantities and of a duration
6 that may with reasonable probability injure human health or
7 animal or plant life or as may unreasonably interfere with the
8 public welfare, visibility or the reasonable use of property;

9 C. "department" means the department of
10 environment;

11 D. "director" means the administrative head of [a
12 ~~local~~] the regional agency or the director's designee;

13 E. "emission limitation" [~~and~~] or "emission
14 standard" [~~mean~~] means a requirement established by the
15 environmental improvement board or the [~~local~~] regional board,
16 the department, the [~~local~~] regional authority or the [~~local~~]
17 regional agency or pursuant to the federal act that limits the
18 quantity, rate or concentration, or combination thereof, of
19 emissions of air contaminants on a continuous basis, including
20 any requirements relating to the operation or maintenance of a
21 source to assure continuous reduction;

22 F. "federal act" means the federal Clean Air Act,
23 its subsequent amendments and successor provisions;

24 G. "federal standard of performance" means any
25 standard of performance, emission limitation or emission

underscored material = new
[bracketed material] = delete

1 standard adopted pursuant to 42 U. S. C. Section 7411 or 7412;

2 H. "hazardous air pollutant" means an air
3 contaminant that has been classified as a hazardous air
4 pollutant pursuant to the federal act;

5 ~~I. "local agency" means the administrative agency~~
6 ~~established by a local authority pursuant to Paragraph (2) of~~
7 ~~Subsection A of Section 74-2-4 NMSA 1978;~~

8 ~~J. "local authority" means any of the following~~
9 ~~political subdivisions of the state that have, by following~~
10 ~~the procedure set forth in Subsection A of Section 74-2-4 NMSA~~
11 ~~1978, assumed jurisdiction for local administration and~~
12 ~~enforcement of the Air Quality Control Act:~~

13 ~~(1) a county that was a class A county as of~~
14 ~~January 1, 1980; or~~

15 ~~(2) a municipality with a population greater~~
16 ~~than one hundred thousand located within a county that was a~~
17 ~~class A county as of January 1, 1980;~~

18 ~~K. "local board" means a municipal, county or~~
19 ~~joint air quality control board created by any local~~
20 ~~authority;~~

21 ~~E.] I.~~ I. "mandatory class I area" means any of the
22 following areas in this state that were in existence on August
23 7, 1977:

24 (1) national wilderness areas that exceed
25 five thousand acres in size; and

. 135895. 3

underscored material = new
[bracketed material] = delete

1 (2) national parks that exceed six thousand
2 acres in size;

3 [M-] J. "modification" means any physical change
4 in, or change in the method of operation of, a source that
5 results in an increase in the potential emission rate of any
6 regulated air contaminant emitted by the source or that
7 results in the emission of any regulated air contaminant not
8 previously emitted, but does not include:

9 (1) a change in ownership of the source;

10 (2) routine maintenance, repair or
11 replacement;

12 (3) installation of air pollution control
13 equipment, and all related process equipment and materials
14 necessary for its operation, undertaken for the purpose of
15 complying with regulations adopted by the environmental
16 improvement board or the ~~[local]~~ regional board or pursuant to
17 the federal act; or

18 (4) unless previously limited by enforceable
19 permit conditions:

20 (a) an increase in the production rate,
21 if such increase does not exceed the operating design capacity
22 of the source;

23 (b) an increase in the hours of
24 operation; or

25 (c) use of an alternative fuel or raw

underscored material = new
[bracketed material] = delete

1 material if, prior to January 6, 1975, the source was capable
2 of accommodating such fuel or raw material or if use of an
3 alternate fuel or raw material is caused by any natural gas
4 curtailment or emergency allocation or any other lack of
5 supply of natural gas;

6 [N-] K. "nonattainment area" means for any air
7 contaminant an area that is designated "nonattainment" with
8 respect to that contaminant within the meaning of Section
9 107(d) of the federal act;

10 [O-] L. "person" includes an individual,
11 partnership, corporation, association, the state or political
12 subdivision of the state and any agency, department or
13 instrumentality of the United States and any of their
14 officers, agents or employees;

15 [P-] M. "potential emission rate" means the
16 emission rate of a source at its maximum capacity in the
17 absence of air pollution control equipment that is not vital
18 to production of the normal product of the source or to its
19 normal operation;

20 N. "region two" means the geographical area
21 comprising Bernalillo, Sandoval and Valencia counties and all
22 of air quality control region two as defined and established
23 by the state implementation plan approved by the federal
24 environmental protection agency;

25 O. "regional agency" means the administrative

underscored material = new
[bracketed material] = delete

1 agency designated by the largest municipality in region two to
2 administer and enforce the Air Quality Control Act within the
3 boundaries of the regional authority;

4 P. "regional authority" means the governments of
5 the three counties and the largest municipality within region
6 two that are authorized by the Air Quality Control Act to
7 administer and enforce that act within region two;

8 Q. "regional board" means the joint air quality
9 control board authorized by the Air Quality Control Act to
10 administer and enforce that act within region two;

11 ~~[Q.]~~ R. "regulated air contaminant" means any air
12 contaminant, the emission or ambient concentration of which is
13 regulated pursuant to the Air Quality Control Act or the
14 federal act;

15 ~~[R.]~~ S. "secretary" means the secretary of
16 environment;

17 ~~[S.]~~ T. "significant deterioration" means any
18 increase in the ambient concentrations of any air contaminant
19 above the levels allowed by the federal act or federal
20 regulations for that air contaminant in the area within which
21 the increase occurs;

22 ~~[T.]~~ U. "source" means any structure, building,
23 equipment, facility, installation or operation that emits or
24 may emit any air contaminant;

25 ~~[U.]~~ V. "standard of performance" means a

underscored material = new
[bracketed material] = delete

1 requirement of continuous emission reduction, including any
2 requirement relating to operation or maintenance of a source
3 to assure continuous emission reduction;

4 [V-] W. "state implementation plan" means any plan
5 submitted by New Mexico to the federal environmental
6 protection agency pursuant to 42 U.S.C. Section 7410; and

7 [W-] X. "toxic air pollutant" means any air
8 contaminant, except a hazardous air pollutant, classified by
9 the environmental improvement board or the ~~[toeat]~~ regional
10 board as a toxic air pollutant. "

11 Section 2. Section 74-2-3 NMSA 1978 (being Laws 1967,
12 Chapter 277, Section 3, as amended) is amended to read:

13 "74-2-3. ENVIRONMENTAL IMPROVEMENT BOARD. --

14 A. In taking any action under the Air Quality
15 Control Act, a majority of the environmental improvement board
16 constitutes a quorum, but any action, order or decision of the
17 environmental improvement board requires the concurrence of
18 three members present at a meeting.

19 B. Except as provided in the Air Quality Control
20 Act, the jurisdiction of the environmental improvement board
21 extends to all areas of the state except within the boundaries
22 of a ~~[toeat]~~ regional authority. "

23 Section 3. A new section of the Air Quality Control Act,
24 Section 74-2-3.1 NMSA 1978, is enacted to read:

25 "74-2-3.1. [NEW MATERIAL] REGIONAL BOARD-- CREATION--

underscored material = new
[bracketed material] = delete

1 ORGANIZATION. --

2 A. There is created the "regional board". The
3 regional board shall serve as a joint board within region two,
4 comprising Bernalillo, Sandoval and Valencia counties, and
5 shall have authority and jurisdiction to exercise the same
6 functions pertaining to air quality as the functions delegated
7 by the Air Quality Control Act to the environmental
8 improvement board, except any functions reserved exclusively
9 for the environmental improvement board.

10 B. In connection with any proceeding pursuant to
11 this section, the director may issue subpoenas for the
12 attendance and testimony of witnesses and the production of
13 relevant papers, books and documents and may promulgate rules
14 for discovery procedures.

15 C. The regional board shall consist of nine
16 members who shall serve four-year terms. All members shall be
17 selected for their concerns about and commitment to the local
18 ambient air quality. Selections may be made from a broad
19 range of persons representing the public interest and who may
20 be experienced or trained in disciplines, including natural
21 sciences, medicine and health, engineering or physics,
22 humanities, social studies, finance, law, education, business
23 or industry. Each regional board member shall be a resident
24 of region two. The county manager for each of the three
25 counties in region two shall appoint one member each. The

underscored material = new
[bracketed material] = delete

1 mayor of the largest municipality in each of the three
2 counties in region two shall appoint one member each, with the
3 advice and consent of the respective city councils. The
4 governor shall appoint the three remaining members of the
5 regional board. The three members appointed by the governor
6 shall be: one engineer licensed to practice in New Mexico;
7 one person with a minimum of a bachelor of science degree from
8 an accredited four-year college and an additional two years of
9 experience as a medical professional; and one person with a
10 law degree who is licensed to practice in New Mexico. No
11 later than June 1, 2002, the applicable counties and
12 municipalities and the governor shall provide in writing to
13 the local agency the names, qualifications and contact
14 information regarding the nine appointees to the initial
15 regional board. If a county or municipality or the governor
16 fails to appoint a member by June 1, 2002, the director may
17 appoint a qualifying regional board member.

18 D. A majority of the nine members of the regional
19 board shall be public interest members who represent the
20 public interest and do not derive any significant portion of
21 their income from persons subject to or who appear before the
22 regional board on issues related to the federal act or the Air
23 Quality Control Act.

24 E. Regarding any matter to be heard or decided by
25 the regional board pursuant to the Air Quality Control Act, if

underscored material = new
[bracketed material] = delete

1 there are fewer members available than are necessary to hear
2 or decide a matter, the director shall ask the political
3 subdivision or the governor who appointed the absent or
4 disqualified board members to appoint temporary board members
5 to replace all absent and disqualified board members. Each
6 temporary regional board member shall meet all of the
7 qualifications required for appointment as a regular regional
8 board member.

9 F. No regional board member shall serve more than
10 two consecutive terms. Members whose terms expire may
11 continue to serve until a successor member is appointed.
12 Service for a partial term of greater than two years
13 constitutes a term for the purpose of determining the maximum
14 consecutive number of terms.

15 G. The terms of the members of the regional board
16 shall be staggered. The three members appointed by the three
17 counties in region two and the two municipal members appointed
18 from the two counties with the largest population in region
19 two shall have initial terms of four years each. The
20 remaining four members shall have initial terms of three years
21 each. A current member of the local board, as defined by
22 prior versions of the Air Quality Control Act, may be
23 appointed as a member of the initial regional board if the
24 local board member has served no more than one term on the
25 local board. However, no current local board member shall

underscored material = new
[bracketed material] = delete

1 serve a second consecutive term on the regional board
2 immediately following his first term on the initial regional
3 board.

4 H. No person employed on a full-time basis by a
5 political subdivision within region two or the state shall be
6 a member of the regional board. If a member has missed three
7 consecutive meetings of the regional board without valid
8 reason or has been absent from more than fifty percent of the
9 meetings and hearings during any twelve consecutive meetings
10 and hearings of the regional board, that member shall be
11 removed from office by the political entity that appointed the
12 member, or by the governor, if the governor appointed the
13 member.

14 I. Vacant positions on the regional board shall be
15 filled by individuals appointed by the political entity or
16 governor that appointed the outgoing member. At least two
17 months before a regional board member's term expires, the
18 regional agency shall solicit from the appointing political
19 entity or governor a recommended list of qualified individuals
20 to fill the vacancy. The list, and any additional
21 recommendations by the regional agency, shall be submitted to
22 the appointing political entity for consideration. If a
23 vacancy occurs for reasons other than expiration of a term,
24 the regional agency shall promptly initiate the procedures
25 used to fill a vacancy when a term has expired.

. 135895. 3

underscored material = new
[bracketed material] = delete

1 J. Five members present shall constitute a quorum
2 of the regional board. A quorum shall be present for all
3 matters decided by a vote of the regional board. Any action,
4 order or decision of the regional board requires a simple
5 majority vote of the members present, except for adoption,
6 amendment or repeal of a regional board regulation or state
7 implementation plan, in which case the concurrence of five
8 members shall be required.

9 K. The regional board shall elect from its
10 membership a chairperson and vice chairperson who shall serve
11 for two-year terms. No regional board chairperson or vice
12 chairperson shall serve in the same position for more than two
13 consecutive terms in office. The regional board may adopt
14 rules to govern its proceedings. The regional board shall
15 comply with the requirements of the Open Meetings Act.

16 L. The director shall be the custodian of all
17 files and records of the regional board.

18 M. Any member of the regional board who has a
19 conflict of interest regarding a matter before the regional
20 board shall disqualify himself from the discussion and shall
21 abstain from the vote on such matter. As used in this
22 subsection, a "conflict of interest" means any interest that
23 may yield, directly or indirectly, any monetary or other
24 material benefit to the regional board member or the member's
25 spouse or minor child.

underscored material = new
[bracketed material] = delete

1 N. The regional board may adopt rules concerning
2 nonvoting members who may attend regional board meetings and
3 express the interests and concerns of planning commissions and
4 Indian nation, tribe or pueblo governments located within
5 region two. If an Indian nation, tribe or pueblo government
6 representative attends or participates in a regional board
7 meeting or hearing, the sovereign status of the Indian nation,
8 tribe or pueblo government will not be affected. "

9 Section 4. Section 74-2-4 NMSA 1978 (being Laws 1967,
10 Chapter 277, Section 4, as amended) is amended to read:

11 "74-2-4. [LOCAL] REGIONAL AUTHORITY. --

12 ~~[A. A county or municipality meeting the~~
13 ~~qualifications set forth in Paragraph (1) or (2) of Subsection~~
14 ~~J of Section 74-2-2 NMSA 1978 may assume jurisdiction as a~~
15 ~~local authority by adopting an ordinance providing for the~~
16 ~~local administration and enforcement of the Air Quality~~
17 ~~Control Act. The ordinance shall:~~

18 ~~(1) create a local board to perform, within~~
19 ~~the boundaries of the local authority, those functions~~
20 ~~delegated to the environmental improvement board under the Air~~
21 ~~Quality Control Act, except any functions reserved exclusively~~
22 ~~for the environmental improvement board;~~

23 ~~(2) create a local agency to administer and~~
24 ~~enforce the provisions of the Air Quality Control Act within~~
25 ~~the boundaries of the local authority that shall, within the~~

underscored material = new
[bracketed material] = delete

1 ~~boundaries of the local authority, perform all of the duties~~
2 ~~required of the department and exert all of the powers granted~~
3 ~~to the department, except for those duties and powers reserved~~
4 ~~exclusively for the department; and~~

5 ~~(3) provide for the appointment of a director~~
6 ~~who shall perform for the local authority the same duties as~~
7 ~~required of the secretary under the Air Quality Control Act,~~
8 ~~except the duties and powers reserved exclusively for the~~
9 ~~secretary.~~

10 ~~B. At least a majority of the members of a local~~
11 ~~board shall be individuals who represent the public interest~~
12 ~~and do not derive any significant portion of their income from~~
13 ~~persons subject to or who appear before the local board on~~
14 ~~issues related to the federal act or the Air Quality Control~~
15 ~~Act.~~

16 ~~C. Prior to adopting any ordinance regulating air~~
17 ~~pollution, public hearings and consultations shall be held as~~
18 ~~directed by the local authority adopting the ordinance. The~~
19 ~~provisions of any ordinance shall be consistent with the~~
20 ~~substantive provisions of the Air Quality Control Act and~~
21 ~~shall provide for standards and regulations not lower than~~
22 ~~those required by regulations adopted by the environmental~~
23 ~~improvement board.]~~

24 A. The regional authority is authorized to
25 administer and enforce the Air Quality Control Act within the

underscored material = new
[bracketed material] = delete

1 boundaries of region two, except for those duties and powers
2 reserved exclusively for the department. Any political
3 subdivision within region two may enter into a joint powers
4 agreement with the regional agency to provide funding or
5 additional staff to administer and enforce the Air Quality
6 Control Act within region two.

7 ~~[D.]~~ B. Notwithstanding the provisions of
8 Subsection A of this section, the environmental improvement
9 board and the secretary shall retain jurisdiction and control
10 for the administration and enforcement of the Air Quality
11 Control Act as determined in that act with respect to any act
12 or failure to act ~~[governmental or proprietary]~~ of ~~[any local~~
13 ~~authority]~~ the regional agency that causes or contributes to
14 air pollution, including proceeding against a ~~[local~~
15 ~~authority]~~ political subdivision in region two as provided in
16 Section 74-2-12 NMSA 1978. "Failure to act", as used in this
17 section, includes failure to act against any person violating
18 the applicable ~~[ordinance or]~~ regulation adopted pursuant
19 thereto.

20 ~~[E. Any local authority that is located within]~~

21 C. If region two includes a transportation-related
22 pollutant nonattainment area or maintenance area, the regional
23 board may provide for a vehicle emission inspection and
24 maintenance program for vehicles under twenty-six thousand
25 pounds gross vehicle weight powered by a spark-ignited

. 135895. 3

underscored material = new
[bracketed material] = delete

1 internal combustion engine, which program shall be no more
2 stringent than that required under the federal act or under
3 federal air quality standards. Any two or more ~~[local]~~
4 regional authorities may adopt identical rules and regulations
5 necessary to implement the vehicle emission inspection and
6 maintenance program, including examining the alternatives of
7 public or private operation of the program.

8 ~~[F. Any local authority]~~

9 D. A regional board that has implemented a
10 vehicle emission inspection and maintenance program may extend
11 the enforcement of that program by entering into joint powers
12 agreements with ~~[any municipality or county within the~~
13 ~~designated airshed or with]~~ the department.

14 ~~[G.] E.~~ No tax shall be imposed to fund any
15 vehicle emission inspection and maintenance program until the
16 ~~[local]~~ regional authority has submitted the question of
17 imposition of a tax to the registered voters of the ~~[local]~~
18 regional authority and those registered voters have approved
19 the imposition of the tax.

20 ~~[H.] F.~~ A ~~[local]~~ regional authority having a
21 vehicle emission inspection and maintenance program shall
22 conduct the vehicle emission inspection and maintenance
23 program through a decentralized privately owned and operated
24 system unless air quality emissions result in automatic
25 implementation of another type of program under the terms of a

underscored material = new
[bracketed material] = delete

1 contingency plan required and approved by the United States
2 environmental protection agency. The ~~[local authority]~~
3 regional board shall set the emission inspection fee by
4 ~~[ordinance]~~ regulation.

5 ~~[F.]~~ G. A ~~[local authority having]~~ regional board
6 that has implemented a vehicle emission inspection and
7 maintenance program is authorized to adopt rules, regulations
8 and guidelines governing the establishment of private vehicle
9 emission inspection and maintenance stations. No private
10 vehicle emission inspection and maintenance station shall test
11 vehicles unless the station possesses a valid permit issued by
12 the ~~[local]~~ regional agency. Permit fees shall be determined
13 by ~~[ordinance]~~ regulation of the ~~[local authority]~~ regional
14 board and shall not exceed two hundred dollars (\$200) per year
15 per station. Additionally, a ~~[local authority]~~ regional board
16 may charge a permit fee of up to thirty-five dollars (\$35.00)
17 per year for each vehicle emissions mechanic and for each
18 vehicle emissions inspector. The imposition of permit fees
19 does not require a vote of the registered voters of the
20 ~~[local]~~ regional authority. "

21 Section 5. Section 74-2-5 NMSA 1978 (being Laws 1967,
22 Chapter 277, Section 5, as amended) is amended to read:

23 "74-2-5. DUTIES AND POWERS-- ENVIRONMENTAL IMPROVEMENT
24 BOARD-- ~~[LOCAL]~~ REGIONAL BOARD. --

25 A. The environmental improvement board or the

underscored material = new
[bracketed material] = delete

1 ~~[toeal]~~ regional board shall prevent or abate air pollution.

2 B. The environmental improvement board or the
3 ~~[toeal]~~ regional board shall:

4 (1) adopt, promulgate, publish, amend and
5 repeal regulations consistent with the Air Quality Control Act
6 to attain and maintain national ambient air quality standards
7 and prevent or abate air pollution, including regulations
8 prescribing air standards, within the geographic area of the
9 environmental improvement board's jurisdiction or the ~~[toeal]~~
10 regional board's jurisdiction, or any part thereof; and

11 (2) adopt a plan for the regulation, control,
12 prevention or abatement of air pollution, recognizing the
13 differences, needs, requirements and conditions within the
14 geographic area of the environmental improvement board's
15 jurisdiction or the ~~[toeal]~~ regional board's jurisdiction or
16 any part thereof.

17 C. Regulations adopted by the environmental
18 improvement board or the ~~[toeal]~~ regional board may:

19 (1) include regulations to protect visibility
20 in mandatory class I areas to prevent significant
21 deterioration of air quality and to achieve national ambient
22 air quality standards in nonattainment areas; provided that
23 such regulations:

24 (a) shall be no more stringent than but
25 at least as stringent as required by the federal act and

underscored material = new
[bracketed material] = delete

1 federal regulations pertaining to visibility protection in
2 mandatory class I areas, pertaining to prevention of
3 significant deterioration and pertaining to nonattainment
4 areas; and

5 (b) shall be applicable only to sources
6 subject to such regulation pursuant to the federal act;

7 (2) prescribe standards of performance for
8 sources and emission standards for hazardous air pollutants
9 that, except as provided in Paragraph (3) of this subsection:

10 (a) shall be no more stringent than but
11 at least as stringent as required by federal standards of
12 performance; and

13 (b) shall be applicable only to sources
14 subject to such federal standards of performance;

15 (3) include regulations governing emissions
16 from solid waste incinerators that shall be at least as
17 stringent as, and may be more stringent than, any applicable
18 federal emission limitations;

19 (4) require notice to the department or the
20 [~~local~~] regional agency of the intent to introduce or permit
21 the introduction of an air contaminant into the air within the
22 geographical area of the environmental improvement board's
23 jurisdiction or the [~~local~~] regional board's jurisdiction; and

24 (5) require any person emitting any air
25 contaminant to:

underscored material = new
[bracketed material] = delete

1 (a) install, use and maintain emission
2 monitoring devices;

3 (b) sample emissions in accordance with
4 methods and at locations and intervals as may be prescribed by
5 the environmental improvement board or the ~~[local]~~ regional
6 board;

7 (c) establish and maintain records of
8 the nature and amount of emissions;

9 (d) submit reports regarding the nature
10 and amounts of emissions and the performance of emission
11 control devices; and

12 (e) provide any other reasonable
13 information relating to the emission of air contaminants.

14 D. Any regulation adopted ~~[under]~~ pursuant to this
15 section shall be consistent with federal law, if any, relating
16 to control of motor vehicle emission.

17 E. In making its regulations, the environmental
18 improvement board or the ~~[local]~~ regional board shall give
19 weight it deems appropriate to all facts and circumstances,
20 including but not limited to:

21 (1) character and degree of injury to or
22 interference with health, welfare, visibility and property;

23 (2) the public interest, including the social
24 and economic value of the sources and subjects of air
25 contaminants; and

underscored material = new
[bracketed material] = delete

1 (3) technical practicability and economic
2 reasonableness of reducing or eliminating air contaminants
3 from the sources involved and previous experience with
4 equipment and methods available to control the air
5 contaminants involved. "

6 Section 6. Section 74-2-5.1 NMSA 1978 (being Laws 1992,
7 Chapter 20, Section 5) is amended to read:

8 "74-2-5.1. DUTIES AND POWERS OF THE DEPARTMENT AND THE
9 [~~LOCAL~~] REGIONAL AGENCY. --The department and the [~~local~~]
10 regional agency for their respective jurisdictions shall:

11 A. develop facts and make investigations and
12 studies consistent with the Air Quality Control Act and, as
13 required for enforcement of that act, enter at all reasonable
14 times in or upon any private or public property, except
15 private residences, that the department or the [~~local~~]
16 regional agency has reasonable cause to believe is or will
17 become a source contributing to air pollution and require the
18 production of information relating to emissions that cause or
19 contribute to air pollution. The results of any such
20 investigations shall be reduced to writing if any enforcement
21 action is contemplated, and a copy shall be furnished to the
22 owner or occupants of the premises before the action is filed;

23 B. institute legal proceedings to compel
24 compliance with the Air Quality Control Act or any regulation
25 of the environmental improvement board or the [~~local~~] regional

. 135895. 3

underscored material = new
[bracketed material] = delete

1 board;

2 C. encourage and make every reasonable effort to
3 obtain voluntary cooperation by the owner or occupants to
4 preserve, restore or improve air purity;

5 D. consult with any person proposing to construct,
6 install or otherwise acquire an air contaminant source,
7 device, system or control mechanism concerning the efficiency
8 of the device, system or mechanism or the air pollution
9 problem that may be related to the source, device, system or
10 mechanism; provided that consultation shall not relieve any
11 person from compliance with the Air Quality Control Act,
12 regulations in force pursuant to that act or any other
13 provision of law;

14 E. establish a small business stationary source
15 technical and environmental compliance assistance program,
16 consistent with the provisions of Section 507 of the federal
17 act;

18 F. accept, receive and administer grants or other
19 funds or gifts from public and private agencies, including the
20 federal government, or from any person;

21 G. classify and record air contaminant sources
22 that, in its judgment, may cause or contribute to air
23 pollution, according to levels and types of emissions and
24 other characteristics that relate to air pollution; provided,
25 classifications may be for application to the entire

. 135895. 3

underscored material = new
[bracketed material] = delete

1 geographical area of the department's responsibility or the
2 [~~the~~] regional authority's responsibility or to any
3 designated portion of that area and shall be made with special
4 reference to the effects on health, economic and social
5 factors and physical effects on property; and

6 H. develop and present to the environmental
7 improvement board or the [~~the~~] regional board a plan for the
8 regulation, control, prevention or abatement of air pollution,
9 recognizing the differences, needs, requirements and
10 conditions in the different portions of the geographical area
11 of the department's responsibility or the [~~the~~] regional
12 authority's responsibility. "

13 Section 7. Section 74-2-5.2 NMSA 1978 (being Laws 1992,
14 Chapter 20, Section 6) is amended to read:

15 "74-2-5.2. STATE AIR POLLUTION CONTROL AGENCY--SPECIFIC
16 DUTIES AND POWERS OF THE DEPARTMENT.--The department is the
17 state air pollution control agency for all purposes under
18 federal legislation relating to air pollution. The department
19 shall:

20 A. take all action necessary to secure for the
21 state and its political subdivisions the benefits of federal
22 legislation;

23 B. advise, consult, contract with and cooperate
24 with local authorities, region two, other states, the federal
25 government and other interested persons or groups in regard to

underscored material = new
[bracketed material] = delete

1 matters of common interest in the field of air quality control
2 and initiate cooperative action between a [toeal] regional
3 authority and the department, between one [toeal] regional
4 authority and another or among any combination of [toeal]
5 regional authorities and the department for control of air
6 pollution in areas having related air pollution problems that
7 overlap the boundaries of political subdivisions; and

8 C. enter into agreements and compacts with
9 adjoining states and Indian tribes, where appropriate."

10 Section 8. Section 74-2-6 NMSA 1978 (being Laws 1967,
11 Chapter 277, Section 6, as amended) is amended to read:

12 "74-2-6. ADOPTION OF REGULATIONS--NOTICE AND HEARINGS.--

13 A. Any person may recommend or propose regulations
14 to the environmental improvement board or the [toeal] regional
15 board for adoption. Within sixty days of submission of a
16 proposed regulation, the environmental improvement board or
17 the [toeal] regional board shall determine whether to hold a
18 hearing [~~within sixty days of submission of a proposed~~
19 ~~regulation~~].

20 B. No regulations or emission control requirement
21 shall be adopted until after a public hearing by the
22 environmental improvement board or the [toeal] regional board.
23 As used in this section, "regulation" includes any amendment
24 or repeal thereof. Hearings on regulations of nonstatewide
25 application shall be held within that area that is

underscored material = new
[bracketed material] = delete

1 substantially affected by the regulation. Hearings on
2 regulations of statewide application may be held in Santa Fe
3 or within any area of the state substantially affected by the
4 regulation.

5 C. Notice of the hearing shall be given at least
6 thirty days prior to the hearing date and shall state the
7 subject, the time and the place of the hearing and the manner
8 in which interested persons may present their views. The
9 notice shall also state where interested persons may secure
10 copies of any proposed regulation or air quality standard.
11 The notice shall be published in a newspaper of general
12 circulation in the area affected. Reasonable effort shall be
13 made to give notice to all persons who have made a written
14 request to the environmental improvement board or the [~~local~~]
15 regional board for advance notice of its hearings.

16 D. At the hearing, the environmental improvement
17 board or the [~~local~~] regional board shall allow all interested
18 persons reasonable opportunity to submit data, views or
19 arguments orally or in writing and to examine witnesses
20 testifying at the hearing. Any person heard or represented at
21 the hearing shall be given written notice of the action of the
22 environmental improvement board or the [~~local~~] regional board.

23 E. The environmental improvement board or the
24 [~~local~~] regional board may designate a hearing officer to take
25 evidence in the hearing.

underscored material = new
[bracketed material] = delete

1 F. No ~~[regulations]~~ regulation or emission control
2 requirement adopted by the environmental improvement board or
3 the ~~[local]~~ regional board shall become effective until thirty
4 days after its filing under the State Rules Act. "

5 Section 9. Section 74-2-7 NMSA 1978 (being Laws 1972,
6 Chapter 51, Section 4, as amended) is amended to read:

7 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
8 IMPROVEMENT BOARD OR THE ~~[LOCAL]~~ REGIONAL TECHNICAL APPEALS
9 BOARD AND THE REGIONAL BOARD--PERMIT FEES.--

10 A. By regulation, the environmental improvement
11 board or the ~~[local]~~ regional board shall require:

12 (1) ~~[any]~~ a person intending to construct or
13 modify any source, except as otherwise specifically provided
14 by regulation, to obtain a construction permit from the
15 department or the ~~[local]~~ regional agency prior to such
16 construction or modification; and

17 (2) ~~[any]~~ a person intending to operate any
18 source for which an operating permit is required by the 1990
19 amendments to the federal act, except as otherwise
20 specifically provided by regulation, to obtain an operating
21 permit from the department or the ~~[local]~~ regional agency.

22 B. Regulations adopted by the environmental
23 improvement board or the ~~[local]~~ regional board shall include
24 at least the following provisions:

25 (1) requirements for the submission of

underscored material = new
[bracketed material] = delete

1 relevant information, including [~~but not limited to~~]
2 information the department or the [~~the~~] regional agency
3 deems necessary to determine that regulations and standards
4 under the Air Quality Control Act or the federal act will not
5 be violated;

6 (2) specification of the deadlines for
7 processing permit applications; provided the deadline for a
8 final decision by the department or the [~~the~~] regional
9 agency on a construction permit application may not exceed:

10 (a) ninety days after the application
11 is determined to be administratively complete, if the
12 application is not subject to requirements for prevention of
13 significant deterioration, unless the secretary or the
14 director grants an extension not to exceed ninety days for
15 good cause, including the need to have public hearings; or

16 (b) one hundred eighty days after the
17 application is determined to be administratively complete, if
18 the application is subject to requirements for prevention of
19 significant deterioration, unless the secretary or the
20 director grants an extension not to exceed ninety days for
21 good cause, including the need to have public hearings;

22 (3) that if the department or [~~the~~]
23 regional agency fails to take final action on a construction
24 permit application within the deadlines specified in Paragraph
25 (2) of this subsection, the department or [~~the~~] regional

underscored material = new
[bracketed material] = delete

1 agency shall notify the applicant in writing that an extension
2 of time is required to process the application and specify in
3 detail the grounds for the extension;

4 (4) a description of elements required before
5 the department or ~~[toeal]~~ regional agency shall deem an
6 application administratively complete;

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

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

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

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

24 (a) reviewing and acting upon any
25 application for such permit; and

underscored material = new
[bracketed material] = delete

1 (b) implementing and enforcing the
2 terms and conditions of the permit, excluding any court costs
3 or other costs associated with an enforcement action;

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

7 (8) a method for accelerated permit
8 processing that may be requested at the sole discretion of the
9 applicant at the time the applicant submits a construction
10 permit application and that:

11 (a) allows the department or [~~local~~]
12 regional agency to contract with qualified outside firms to
13 assist the department or [~~local~~] regional agency in its
14 accelerated review of the construction permit application;
15 provided that the department or [~~local~~] regional agency can
16 contract with a qualified firm that does not have a conflict
17 of interest; and

18 (b) establishes a process for the
19 department or [~~local~~] regional agency to account for the
20 expenditure of the accelerated permit processing fees;

21 (9) [~~allows for~~] additional permit
22 application fees, sufficient to cover the reasonable costs of
23 an accelerated permit application review process. Before the
24 applicant is notified that the permit application has been
25 determined to be complete, the department or [~~local board~~]

underscored material = new
[bracketed material] = delete

1 regional agency shall give the applicant a reasonable estimate
2 of costs of an accelerated permit application review process;

3 (10) 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 (11) 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 [~~the~~]
11 regional agency receives notice of objection from the United
12 States environmental protection agency before the operating
13 permit is issued, the department or the [~~the~~] regional
14 agency shall not issue the permit unless it is revised and
15 issued under Section 505(c) of 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 [~~the~~] regional agency
23 may deny any application for:

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

underscored material = new
[bracketed material] = delete

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]~~ an air
6 contaminant in excess of a federal standard of performance or
7 a regulation of the environmental improvement board or the
8 ~~[local]~~ regional 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]~~ a national or state
12 standard or, within the boundaries of a ~~[local]~~ regional
13 authority, applicable ~~[local]~~ regional ambient air quality
14 standards; or

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

17 D. The department or the ~~[local]~~ regional agency
18 may specify conditions to any permit granted under this
19 section, including:

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

25 (2) for an operating permit:

underscored material = new
[bracketed material] = delete

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

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

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

12 (d) any combination of the conditions
13 listed in this paragraph.

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

20 F. The issuance of a permit does not relieve any
21 person from the responsibility of complying with the
22 provisions of the Air Quality Control Act and any applicable
23 regulations of the environmental improvement board or the
24 [~~local~~] regional board. Any conditions placed upon a permit
25 by the department or the [~~local~~] regional agency shall be

underscored material = new
[bracketed material] = delete

1 enforceable to the same extent as a regulation of its board.

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

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

17 I. A person who participated in a permitting
18 action before the regional agency and who is adversely
19 affected by the permitting action may file a petition for
20 hearing before the regional technical appeals board for the
21 regional board. The petition shall be made in writing to the
22 regional board within thirty days from the date notice is
23 given of the regional agency's action. Unless a timely
24 petition for hearing is made, the decision of the regional
25 agency is final.

underscored material = new
[bracketed material] = delete

1 J. A three-person "regional technical appeals
2 board" is created and shall hold administrative hearings on
3 the merits of appeals from permitting actions decided by the
4 regional agency. Before the regional technical appeals board
5 is appointed to hear a specific appeal, the regional board
6 shall select five individuals who reside within the board's
7 jurisdiction, are qualified by education, training and
8 experience to review technical information involved in
9 permitting actions and agree to serve as members of the
10 regional technical appeals board. If the regional board
11 receives a timely petition for an appeal hearing regarding a
12 permitting action within its jurisdiction, the chairperson or
13 vice chairperson of the regional board shall appoint three of
14 the previously selected five individuals to serve as the
15 regional technical appeals board for the appeal. If three
16 qualified individuals without a conflict of interest are not
17 available to hear a specific appeal, the chairperson or vice
18 chairperson of the regional board shall select an additional
19 qualified individual or individuals to serve on the three-
20 person regional technical appeals board. As used in this
21 subsection, "conflict of interest" means any interest that may
22 yield, directly or indirectly, any monetary or other material
23 benefit to the board member or the member's spouse or minor
24 child.

25 K. The services of a regional technical appeals

underscored material = new
[bracketed material] = delete

1 board member shall include reviewing the administrative appeal
2 pleadings; conducting an appeal hearing on the merits;
3 reviewing exhibits admitted at the hearing; preparing written
4 findings of fact and a written recommended decision;
5 submitting the findings and recommended decision to the
6 regional board; and attending and answering questions asked by
7 the regional board at the final administrative hearing on the
8 record. Following submission of a detailed request for
9 payment by each regional technical appeals board member,
10 members shall be paid a maximum of five hundred dollars (\$500)
11 each for their services, which shall be paid by the regional
12 agency whose decision is being appealed.

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

underscored material = new
[bracketed material] = delete

1 a reasonable opportunity to submit data, views or arguments
2 orally or in writing and to examine witnesses testifying at
3 the hearing. Any person submitting data, views or arguments
4 orally or in writing shall be subject to examination at the
5 hearing.

6 M If a timely petition for an administrative
7 appeal hearing is made to the regional board, within forty-
8 five days after the regional board receives the petition, the
9 regional technical appeals board shall hold an administrative
10 hearing on the merits. The regional board shall notify the
11 petitioner and the applicant or permittee, if other than the
12 petitioner, by certified mail of the date, time and place of
13 the regional technical appeals board hearing. If the subject
14 of the petition is a permitting action deemed by the regional
15 board to substantially affect the public interest, the
16 regional board shall ensure that the public receives notice of
17 the date, time and place of the regional technical appeals
18 board hearing on the merits and the final administrative
19 hearing on the record. At the regional technical appeals
20 board hearing, the public in such circumstances shall also be
21 given a reasonable opportunity to submit data, views or
22 arguments orally or in writing and to examine witnesses
23 testifying at the hearing on the merits. Any person
24 submitting data, views or arguments orally or in writing shall
25 be subject to examination at the hearing. Within ninety days

. 135895. 3

underscored material = new
[bracketed material] = delete

1 after the regional board receives the petition, the regional
2 board shall hold an administrative hearing on the record, at
3 which time the parties may make closing arguments.

4 [J-] N. The environmental improvement board [~~or~~
5 ~~the local~~], the regional technical appeals board and the
6 regional board may designate a hearing officer to take
7 evidence in the hearing. All hearings shall be recorded.

8 [K-] O. The burden of proof shall be upon the
9 petitioner. Based upon the evidence presented at the hearing,
10 the environmental improvement board [~~or the local board~~] shall
11 sustain, modify or reverse the action of the department [~~or~~
12 ~~the local agency respectively~~].

13 P. The burden of proof shall be upon the
14 petitioner. Based upon the evidence presented at the regional
15 technical appeals board hearing on the merits, findings and
16 recommended decision of the regional technical appeals board,
17 and closing arguments made at the hearing on the record before
18 the regional board, the regional board shall sustain, modify
19 or reverse the action of the regional agency. The decision of
20 the regional board shall be the final administrative appeal
21 decision.

22 Q. At the final administrative appeal hearing on
23 the record held before the regional board, the parties may
24 make closing arguments. In making its decision, the regional
25 board shall consider the pleadings, the record from the

underscored material = new
[bracketed material] = delete

1 regional technical appeals board hearing on the merits, the
2 regional technical appeals board findings of fact and
3 recommended decision and the closing arguments made before the
4 regional board.

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

15 [M-] S. Subject to the provisions of Section
16 74-2-4 NMSA 1978, if the [L-] regional board has adopted a
17 permit regulation pursuant to this section, persons
18 constructing or modifying any new source within the boundaries
19 of the [L-] regional authority shall obtain a permit from
20 the [L-] regional agency and not from the department.

21 [N-] T. Fees collected pursuant to this section
22 shall be deposited in:

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

underscored material = new
[bracketed material] = delete

1 (2) a fund created pursuant to Section
2 74-2-16 NMSA 1978 if collected by a ~~[toeal]~~ regional agency
3 pursuant to a permit regulation adopted by the ~~[toeal]~~
4 regional board pursuant to this section. "

5 Section 10. Section 74-2-8 NMSA 1978 (being Laws 1967,
6 Chapter 277, Section 8, as amended) is amended to read:

7 "74-2-8. VARIANCES. --

8 A. The environmental improvement board or the
9 ~~[toeal]~~ regional board may grant an individual variance from
10 the limitations prescribed under the Air Quality Control Act,
11 any regulation of the environmental improvement board or the
12 ~~[toeal]~~ regional board or any permit condition imposed by the
13 department or the ~~[toeal]~~ regional agency whenever it is
14 found, upon presentation of adequate proof:

15 (1) that compliance with any part of that
16 act, any regulation of the environmental improvement board or
17 the ~~[toeal]~~ regional board or any permit condition will:

18 (a) result in an arbitrary and
19 unreasonable taking of property; or

20 (b) impose an undue economic burden
21 upon any lawful business, occupation or activity; and

22 (2) that the granting of the variance will
23 not:

24 (a) result in a condition injurious to
25 health or safety; or

underscored material = new
[bracketed material] = delete

1 (b) cause or contribute to an air
2 contaminant level in excess of any primary national ambient
3 air quality standards.

4 B. No variance shall be granted pursuant to this
5 section until the environmental improvement board or the
6 [~~local~~] regional board has considered the relative interests
7 of the applicant, other owners of property likely to be
8 affected by the discharges and the general public.

9 C. Any variance or renewal thereof shall be
10 granted within the requirements of Subsection A of this
11 section and for time periods and under conditions consistent
12 with the reasons therefor and within the following
13 limitations:

14 (1) if the variance is granted on the ground
15 that there are no practicable means known or available for the
16 adequate prevention, abatement or control of the air pollution
17 involved, it shall be only until the necessary means for
18 prevention, abatement or control become known and available;

19 (2) if the variance is granted on the ground
20 that compliance with the particular requirement from which
21 variance is sought will necessitate the taking of measures
22 that, because of their extent or cost, must be spread over a
23 considerable period of time, it shall be for a period not to
24 exceed such reasonable time as, in the view of the
25 environmental improvement board or the [~~local~~] regional board,

underscored material = new
[bracketed material] = delete

1 is requisite for the taking of the necessary measures. A
2 variance granted on the ground specified in this paragraph
3 shall contain a timetable for the taking of action in an
4 expeditious manner and shall be conditioned on adherence to
5 the timetable; or

6 (3) if the variance is granted on the ground
7 that it is justified to relieve or prevent hardship of a kind
8 other than that provided for in Paragraphs (1) and (2) of this
9 subsection, it shall be for not more than one year.

10 D. Any person seeking a variance shall do so by
11 filing a petition for variance with the secretary or the
12 director charged with implementation of the Air Quality
13 Control Act at the site where the variance will apply. The
14 secretary or the director shall promptly investigate the
15 petition and make recommendation to his respective board as to
16 the disposition of the petition.

17 E. Upon receiving the recommendation of the
18 secretary or the director on the variance, the environmental
19 improvement board or the ~~[local]~~ regional board shall:

20 (1) if the secretary or the director favors a
21 variance, hold a public hearing prior to the granting of any
22 variance; and

23 (2) if the secretary or the director is
24 opposed to the granting of the variance, hold a hearing only
25 upon the request of the petitioner.

. 135895. 3

underscored material = new
[bracketed material] = delete

1 F. In the hearing, the burden of proof shall be
2 upon the petitioner."

3 Section 11. Section 74-2-9 NMSA 1978 (being Laws 1971,
4 Chapter 57, Section 1, as amended) is amended to read:

5 "74-2-9. JUDICIAL REVIEW-ADMINISTRATIVE ACTIONS. --

6 A. Any person adversely affected by an
7 administrative action taken by the environmental improvement
8 board, the ~~[toeat]~~ regional board, the secretary or the
9 director may appeal to the court of appeals. All appeals
10 shall be upon the record made at the hearing and shall be
11 taken to the court of appeals within thirty days following the
12 date of the action.

13 B. For appeals of regulations, the date of the
14 action shall be the date of the filing of the regulation by
15 the environmental improvement board or the ~~[toeat]~~ regional
16 board pursuant to the State Rules Act.

17 C. Upon appeal, the court of appeals shall set
18 aside the action only if found to be:

- 19 (1) arbitrary, capricious or an abuse of
20 discretion;
- 21 (2) not supported by substantial evidence in
22 the record; or
- 23 (3) otherwise not in accordance with law.

24 D. After a hearing and a showing of good cause by
25 the appellant, a stay of the action being appealed may be

underscored material = new
[bracketed material] = delete

1 granted:

2 (1) by the environmental improvement board,
3 the ~~[toeal]~~ regional board, the department or the ~~[toeal]~~
4 regional agency, whichever took the action being appealed; or

5 (2) by the court of appeals if the
6 environmental improvement board, the ~~[toeal]~~ regional board,
7 the department or the ~~[toeal]~~ regional agency denies a stay or
8 fails to act upon an application for a stay within sixty days
9 after receipt of the application. "

10 Section 12. Section 74-2-11 NMSA 1978 (being Laws 1992,
11 Chapter 20, Section 12) is amended to read:

12 "74-2-11. CONFIDENTIAL INFORMATION. --

13 A. Any records, reports or information obtained
14 under the Air Quality Control Act by the department, the
15 environmental improvement board, the ~~[toeal]~~ regional board or
16 the ~~[toeal]~~ regional agency shall be available to the public,
17 except that upon a satisfactory showing to the secretary, the
18 director, the environmental improvement board, the ~~[toeal]~~
19 regional board or the ~~[toeal]~~ regional agency, as applicable,
20 by any person that records, reports or information, or
21 particular parts thereof, except emission data, to which the
22 department, the ~~[toeal]~~ regional agency, the environmental
23 improvement board or the ~~[toeal]~~ regional board has access
24 under the Air Quality Control Act, if made public, would
25 divulge confidential business records or methods or processes

. 135895. 3

underscored material = new
[bracketed material] = delete

1 entitled to protection as trade secrets of that person, the
2 secretary, the director, the environmental improvement board
3 or the ~~[toeat]~~ regional board, as applicable, shall consider
4 such record, report or information, or particular portion
5 thereof, confidential in accordance with the provisions of
6 Section 14-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except
7 that such record, report or other information may be
8 disclosed:

9 (1) to other officers, employees or
10 authorized representatives of the department, the ~~[toeat]~~
11 regional agency, the environmental improvement board or the
12 ~~[toeat]~~ regional board concerned with carrying out the Air
13 Quality Control Act;

14 (2) to officers, employees or authorized
15 representatives of the United States environmental protection
16 agency concerned with carrying out the federal act; or

17 (3) when relevant, in any proceeding under
18 the Air Quality Control Act or the federal act.

19 B. The environmental improvement board or the
20 ~~[toeat]~~ regional board shall adopt regulations to implement
21 this section, including regulations specifying those business
22 records entitled to treatment as confidential records."

23 Section 13. Section 74-2-11.1 NMSA 1978 (being Laws
24 1979, Chapter 393, Section 7, as amended) is amended to read:

25 "74-2-11.1. LIMITATIONS ON REGULATIONS.--The Air Quality

. 135895. 3

underscored material = new
[bracketed material] = delete

1 Control Act does not:

2 A. authorize the environmental improvement board
3 or the [~~local~~] regional board to make any regulation with
4 respect to any condition or quality of the outdoor atmosphere
5 if the condition or air quality level and its effect are
6 confined entirely within the boundaries of the industrial or
7 manufacturing property within which the air contaminants are
8 or may be emitted and public access is restricted within such
9 boundaries;

10 B. grant to the environmental improvement board or
11 the [~~local~~] regional board any jurisdiction or authority
12 affecting the relation between employers and employees with
13 respect to or arising out of any condition of air quality; or

14 C. supersede or limit the applicability of any law
15 relating to industrial health, safety or sanitation. "

16 Section 14. Section 74-2-12 NMSA 1978 (being Laws 1992,
17 Chapter 20, Section 14) is amended to read:

18 "74-2-12. ENFORCEMENT-- COMPLIANCE ORDERS-- FIELD
19 CITATIONS. --

20 A. Whenever, on the basis of any information, the
21 secretary or the director determines that any person has
22 violated or is violating any requirement or prohibition of the
23 Air Quality Control Act, any regulation promulgated pursuant
24 to that act or any condition of a permit issued under that
25 act, the secretary or the director may:

. 135895. 3

1 (1) issue a compliance order stating with
2 reasonable specificity the nature of the violation and
3 requiring compliance immediately or within a specified time
4 period or assessing a civil penalty for any past or current
5 violation, or both; or

6 (2) commence a civil action in district court
7 for appropriate relief, including a temporary or permanent
8 injunction.

9 B. Any order issued pursuant to Subsection A of
10 this section may include a suspension or revocation of any
11 permit, or portion thereof, issued by the secretary or the
12 director. Any penalty assessed in the order shall not exceed
13 fifteen thousand dollars (\$15,000) per day of noncompliance
14 for each violation.

15 C. Any order issued pursuant to Subsection A of
16 this section shall become final unless, no later than thirty
17 days after the order is served, the person named therein
18 submits a written request to the secretary or the director for
19 a public hearing. Upon such request, the secretary or the
20 director shall promptly conduct a public hearing. The
21 secretary or the director shall appoint an independent hearing
22 officer to preside over the public hearing. The hearing
23 officer shall make and preserve a complete record of the
24 proceedings and forward his recommendation based thereon to
25 the secretary or the director, who shall make the final

underscored material = new
[bracketed material] = delete

1 decision.

2 D. The environmental improvement board or the
3 ~~[toeat]~~ regional board may implement a field citation program
4 through regulations establishing appropriate minor violations
5 for which field citations assessing civil penalties not to
6 exceed one thousand dollars (\$1,000) per day of violation may
7 be issued by officers or employees of the department or the
8 ~~[toeat]~~ regional agency as designated by the secretary or the
9 director.

10 E. Any person to whom a field citation is issued
11 pursuant to Subsection D of this section may, within a
12 reasonable time as prescribed by regulation by the
13 environmental improvement board or the ~~[toeat]~~ regional board,
14 elect to pay the penalty assessment or to request a hearing by
15 the issuing agency on the field citation. If a request for
16 hearing is not made within the time specified in the
17 regulation, the penalty assessment in the field citation shall
18 be final.

19 F. Payment of a civil penalty required by a field
20 citation issued pursuant to Subsection D of this section shall
21 not be a defense to further enforcement by the department or
22 the ~~[toeat]~~ regional agency to correct a violation or to
23 assess the maximum statutory penalty pursuant to other
24 authorities in the Air Quality Control Act if the violation
25 continues.

. 135895. 3

underscored material = new
[bracketed material] = delete

1 G. In determining the amount of any penalty to be
2 assessed pursuant to this section, the secretary, the director
3 or the person issuing a field citation shall take into account
4 the seriousness of the violation, any good-faith efforts to
5 comply with the applicable requirements and other relevant
6 factors.

7 H. In connection with any proceeding under this
8 section, the secretary or the director may issue subpoenas for
9 the attendance and testimony of witnesses and the production
10 of relevant papers, books and documents and may adopt rules
11 for discovery procedures.

12 I. Penalties collected pursuant to an
13 administrative order or a field citation shall be deposited in
14 the:

15 (1) [~~municipal or county~~] regional agency
16 general fund, as applicable, if the administrative order or
17 field citation was directed to a source located within a
18 [~~local~~] regional authority; or

19 (2) state general fund if the administrative
20 order or field citation was directed to any other source. "

21 Section 15. Section 74-2-12.1 NMSA 1978 (being Laws
22 1992, Chapter 20, Section 15) is amended to read:

23 "74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT
24 OR [~~LOCAL~~] REGIONAL AUTHORITY. --

25 A. Any person who violates any provision of the

underscored material = new
[bracketed material] = delete

1 Air Quality Control Act or any regulation, permit condition or
2 emergency order adopted or issued pursuant to that act may be
3 assessed a civil penalty not to exceed fifteen thousand
4 dollars (\$15,000) for each day during any portion of which a
5 violation occurs.

6 B. In any action to enforce the provisions of the
7 Air Quality Control Act or any ordinance, regulation, permit
8 condition or emergency order, adopted, imposed or issued
9 pursuant to that act:

10 (1) the department shall be represented by
11 the attorney general; and

12 (2) ~~[a local]~~ within region two, the regional
13 authority ~~[that is a municipality]~~ shall be represented by the
14 attorney of the ~~[municipality; and~~

15 ~~(3) a local authority that is a county shall~~
16 ~~be represented by the district attorney within whose judicial~~
17 ~~district the county lies] regional agency. "~~

18 Section 16. Section 74-2-13 NMSA 1978 (being Laws 1972,
19 Chapter 51, Section 8, as amended) is amended to read:

20 "74-2-13. INSPECTION. --The secretary or the director or
21 an authorized representative of either, upon presentation of
22 his credentials:

23 A. shall have a right of entry to, upon or through
24 any premises on which an emission source is located or on
25 which any records required to be maintained by regulations of

. 135895. 3

underscored material = new
[bracketed material] = delete

1 the environmental improvement board, the ~~[local]~~ regional
2 board or by any permit condition are located; and

3 B. may at reasonable times:

4 (1) have access to and copy any records
5 required to be established and maintained by regulations of
6 the environmental improvement board or the ~~[local]~~ regional
7 board or any permit condition;

8 (2) inspect any monitoring equipment and
9 method required by regulations of the environmental
10 improvement board, the ~~[local]~~ regional board or by any permit
11 condition; and

12 (3) sample any emissions that are required to
13 be sampled pursuant to regulation of the environmental
14 improvement board, the ~~[local]~~ regional board or any permit
15 condition. "

16 Section 17. Section 74-2-14 NMSA 1978 (being Laws 1967,
17 Chapter 277, Section 12, as amended) is amended to read:

18 "74-2-14. CRIMINAL PENALTIES. --

19 ~~[A. Notwithstanding any other provision of the Air~~
20 ~~Quality Control Act, a local authority may prescribe penalties~~
21 ~~for violations of an ordinance:~~

22 (1) ~~regulating open fire burning or~~
23 ~~residential incineration; or~~

24 (2) ~~prohibiting the removal of motor vehicle~~
25 ~~emission control devices installed as required by law and~~

. 135895. 3

underscored material = new
[bracketed material] = delete

1 ~~requiring the maintenance of such devices in operating~~
2 ~~condition.~~

3 ~~B.]~~ A. Notwithstanding any other provision of the
4 Air Quality Control Act, it is a petty misdemeanor to violate
5 any regulations of the environmental improvement board or
6 regional board:

7 (1) regulating open-fire burning or
8 residential incineration; or

9 (2) prohibiting the removal of motor vehicle
10 emission control devices installed as required by law or
11 requiring the maintenance of such devices in operating
12 condition.

13 [~~C.]~~ B. Except as provided in Subsection [~~D]~~ C of
14 this section, any person who knowingly commits any of the
15 following acts is guilty of a fourth degree felony and shall
16 be sentenced in accordance with the provisions of Section
17 31-18-15 NMSA 1978:

18 (1) violation of any regulation relating to
19 commercial or industrial incineration;

20 (2) violation of any regulation adopting any
21 federal standard of performance;

22 (3) violation of any regulation relating to
23 control of hazardous air pollutants; or

24 (4) violation of any regulation relating to
25 control of toxic air pollutants.

. 135895. 3

underscored material = new
[bracketed material] = delete

1 ~~[D-]~~ C. At any source required to have an
2 operating permit pursuant to Section 502 of the federal act,
3 any person who knowingly commits any violation of any
4 applicable standard, regulation or requirement under the Air
5 Quality Control Act or the federal act, any term or condition
6 of an operating permit or any emission fee or filing
7 requirement in any operating permit regulation of the
8 environmental improvement board or the ~~[local]~~ regional board
9 is guilty of a fourth degree felony and shall, upon
10 conviction, be punished by a fine of not more than ten
11 thousand dollars (\$10,000) per day per violation or by
12 imprisonment of not more than eighteen months or both.

13 ~~[E-]~~ D. Any person who knowingly commits any
14 violation of a regulation of the environmental improvement
15 board or the ~~[local]~~ regional board not listed in Subsection
16 A, B, C or ~~[D]~~ F of this section is guilty of a misdemeanor
17 and shall be sentenced in accordance with the provisions of
18 Section 31-19-1 NMSA 1978.

19 ~~[F-]~~ E. Any person who knowingly:
20 (1) makes any false statement, representation
21 or certification in any application, record, report, plan or
22 other document filed or required to be maintained under the
23 Air Quality Control Act, any permit issued pursuant to the Air
24 Quality Control Act or any regulation adopted pursuant to that
25 act; or

underscored material = new
[bracketed material] = delete

1 (2) falsifies, tampers with or knowingly
2 renders inaccurate any monitoring device or method required to
3 be maintained under the Air Quality Control Act, any permit
4 issued pursuant to the Air Quality Control Act or any
5 ordinance or regulation adopted pursuant to that act;
6 is guilty of a misdemeanor and shall, upon conviction, be
7 punished by a fine of not more than ten thousand dollars
8 (\$10,000) per day per violation or by imprisonment for not
9 more than twelve months or by both.

10 [~~G.~~] F. Any person who knowingly releases into the
11 ambient air any hazardous air pollutant or extremely hazardous
12 substance listed pursuant to Section 302(a)(2) of the
13 Superfund Amendments and Reauthorization Act of 1986,
14 42 U.S.C. 1102(a)(2) that is not listed in Section 112 of the
15 federal act and who knows at the time of the release that he
16 creates a substantial danger of death or serious bodily injury
17 to another person is guilty of a second degree felony and,
18 upon conviction, shall be sentenced to a term of imprisonment
19 not to exceed nine years or a fine not to exceed one hundred
20 thousand dollars (\$100,000) or both. Any person, other than
21 an individual or a governmental entity, who commits such
22 violation is guilty of a second degree felony and shall be
23 fined in an amount not to exceed two hundred fifty thousand
24 dollars (\$250,000). If a conviction of any person under this
25 subsection is for a second or subsequent violation, the

underscored material = new
[bracketed material] = delete

1 maximum punishment shall be doubled with respect to both the
2 fine and the imprisonment. "

3 Section 18. Section 74-2-16 NMSA 1978 (being Laws 1992,
4 Chapter 20, Section 19) is amended to read:

5 "74-2-16. [~~MUNICIPAL OR COUNTY~~] REGION TWO AIR QUALITY
6 PERMIT FUND. --

7 A. [~~A local authority shall create within the~~
8 ~~municipal or county treasury a fund to be known as the~~
9 ~~_____ (name of municipality or county)~~]

10 The "region two air quality permit fund" is created in the
11 municipal treasury of the regional agency. All fees collected
12 by [~~a municipality or county~~] the regional agency pursuant to
13 Section 74-2-7 NMSA 1978 shall be deposited in the fund
14 [~~created pursuant to this section~~].

15 B. Money in the fund [~~created pursuant to this~~
16 ~~section~~] shall be used by the [~~municipality or county only for~~
17 ~~the purpose of paying~~] regional agency only to pay the
18 reasonable costs of:

19 (1) appealing, reviewing and acting upon any
20 application for a permit;

21 (2) [~~if the owner or operator receives a~~
22 ~~permit~~] implementing and enforcing the terms and conditions of
23 [~~such~~] a permit issued to an owner or operator, not including
24 any court costs or other costs associated with any enforcement
25 action;

. 135895. 3

underscored material = new
[bracketed material] = delete

- 1 (3) emissions and ambient monitoring;
2 (4) preparing generally applicable
3 regulations or guidance;
4 (5) modeling, analysis and demonstrations;
5 and
6 (6) preparing inventories and tracking
7 emissions. "

8 Section 19. LIBERAL INTERPRETATION. -- Sections 1 through
9 20 of this act shall be liberally construed to carry out their
10 purpose.

11 Section 20. A new section of the Air Quality Control
12 Act, Section 74-2-18 NMSA 1978, is enacted to read:

13 "74-2-18. [NEW MATERIAL] SAVING CLAUSE--CONTINUING
14 REGULATIONS. --

15 A. The creation of a regional authority, regional
16 board or regional agency shall not affect an action pending
17 for violation of an environmental improvement board
18 regulation, an ordinance of a local authority, a regulation or
19 standard adopted by a local board or a permit that is valid at
20 the time the Air Quality Control Act is amended.

21 B. Until a permit is modified and approved by the
22 regional agency, an amendment to the Air Quality Control Act
23 that authorizes a regional authority, regional board and
24 regional agency shall not affect the validity of any permit
25 issued by the department or a local agency, nor affect the

underscored material = new
[bracketed material] = delete

1 validity of any regulation or standard that has been adopted
2 by the environmental improvement board or the local board.

3 C. The provisions of the Air Quality Control Act
4 regarding a local authority, local agency or local board, and
5 the local board regulations, standards and permits, shall
6 remain in effect until the regional board is appointed and
7 adopts regulations and standards effective throughout region
8 two. "

9 Section 21. TEMPORARY PROVISION--TRANSFERS.--All money
10 in the local authority's air quality permit funds created
11 pursuant to Section 74-2-16 NMSA 1978 is transferred to the
12 region two air quality permit fund upon creation of that fund.

13 Section 22. SEVERABILITY.--If any part or application of
14 this act is held invalid, the remainder or its application to
15 other situations or persons shall not be affected.

16 Section 23. EFFECTIVE DATE.--The effective date of the
17 provisions of Sections 3, 5, 8, 19, 20 and 22 of this act is
18 March 1, 2002. The effective date of the provisions of
19 Sections 1, 2, 4, 6, 7 and 9 through 18 and 21 of this act is
20 September 1, 2002; provided that the regional board may
21 declare the effective date to be twelve months after the
22 federal environmental protection agency confirms in writing
23 that a federal Clean Air Act criteria pollutant standard has
24 been violated within region two.