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SENATE BILL 880

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE NEW MEXICO ENVIRONMENTAL HEALTH ACT; REQUIRING NOTICE AND COMMUNITY IMPACT ASSESSMENT REPORTS PRIOR TO CERTAIN ACTIONS BY THE DEPARTMENT OF ENVIRONMENT; PROVIDING FOR CITIZEN ENFORCEMENT.

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

Section 1. SHORT TITLE.--This act may be cited as the "New Mexico Environmental Health Act".

Section 2. PURPOSES.--The purposes of the New Mexico Environmental Health Act are to:

A. require that the department of environment consider the effects of decisions that may have a significant impact on New Mexico communities; and

B. provide affected individuals and communities with a means to address decisions of the department of

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1 environment that violate the provisions of the New Mexico
2 Environmental Health Act.

3 Section 3. DEFINITIONS.--As used in the New Mexico
4 Environmental Health Act:

5 A. "community" means an area of human habitation
6 within New Mexico that:

7 (1) includes at least fifty individuals; and

8 (2) will or may be affected by a decision
9 significantly affecting a community;

10 B. "cumulative impact" means the impact that results
11 from the incremental impact of the action at issue when added
12 to the impact from other past, present and reasonably
13 foreseeable future actions regardless of what agency or person
14 undertakes such other actions. Cumulative impacts can result
15 from individually minor but collectively significant actions
16 taking place over a period of time;

17 C. "decision significantly affecting a community"
18 means a determination by the department pertaining to a
19 regulated facility that will or may have a significant present,
20 future or cumulative impact on the public health, environment
21 or traditional and sustainable cultural values of the residents
22 of a community. A "decision significantly affecting a
23 community" may include any decision by the department to:

24 (1) certify compliance with any applicable
25 state or United States statute or rule;

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1 (2) issue, renew, amend or deny any permit;

2 (3) issue, renew or amend any permit with
3 terms or conditions;

4 (4) issue, renew, amend or deny any variance
5 or waiver;

6 (5) issue, renew or amend any variance or
7 waiver with terms or conditions; or

8 (6) provide funding for a regulated facility;

9 D. "department" means the department of environment
10 and any of its employees or agents;

11 E. "impact" means a present, future or cumulative
12 significant effect on the public health, environment or
13 traditional and sustainable cultural values of the residents of
14 a community;

15 F. "proceeding" means any department administrative
16 or other process that could result in a decision significantly
17 affecting a community; and

18 G. "regulated facility" means an entity or
19 operation, whether privately or publicly owned and operated,
20 that has or may have a significant present, future or
21 cumulative impact on the public health, environment or
22 traditional and sustainable cultural values of the residents of
23 a community, and that is:

24 (1) authorized to be constructed or operated
25 by a decision of the department;

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1 (2) governed by a permit or other
2 authorization issued by a department; or

3 (3) funded in whole or in part by funds
4 dispensed, generated or provided by or through the department.

5 Section 4. COMMUNITY IMPACT ASSESSMENT REPORT REQUIRED.--

6 A. Prior to making a decision significantly
7 affecting a community, the owner or operator of the regulated
8 facility or, if the regulated facility is proposed, the person
9 proposing the facility shall cause to be prepared a community
10 impact assessment report. The community impact assessment
11 report shall be prepared by a contractor designated by the
12 department and shall be paid for by the owner or operator of
13 the regulated facility or, if the regulated facility is
14 proposed, the person proposing the facility. To the maximum
15 extent possible, the community impact assessment report shall
16 be written in plain language that can be understood by the
17 residents of any community that will or may be affected by the
18 regulated facility. The community impact assessment report
19 also shall be written in English and in any written language or
20 languages other than English that are estimated by the
21 department to be spoken in more than five percent of the homes
22 in a community.

23 B. At a minimum, the community impact assessment
24 report shall include the following:

25 (1) the demographic makeup of each community,

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1 including the most recent United States census data showing the
2 ethnic and racial populations and income level in that
3 community;

4 (2) the present, future and cumulative impacts
5 that the decision significantly affecting a community will or
6 may have on the public health, environment or traditional and
7 sustainable cultural values of each community;

8 (3) the other known existing and proposed
9 regulated facilities that will or may have an impact on the
10 public health, environment or traditional and sustainable
11 cultural values of each community; and

12 (4) any other known environmental factors that
13 will or may have an impact on the public health, environment or
14 traditional and sustainable cultural values of each community.

15 Section 5. PUBLIC NOTICE REQUIREMENTS.--For any decision
16 significantly affecting a community for which a community
17 impact assessment report is required, after the completion of
18 the community impact assessment report but prior to making the
19 decision significantly affecting a community, the department
20 shall cause notice of the proceeding to be given to residents
21 of each community. The notice shall be given at the time that
22 the application or other request for the decision is filed, and
23 shall be given in at least the following manner:

24 A. actual written notice of the application and the
25 proceeding shall be given to the owners of record of properties

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1 that are adjacent to the property on which the regulated
2 facility is or is proposed to be located;

3 B. notice of the application and the proceeding,
4 including any public hearing or opportunity for a public
5 hearing and the manner in which a hearing may be requested,
6 shall be published in a newspaper of general circulation in
7 each affected community;

8 C. notice of the application and the proceeding,
9 including any public hearing or opportunity for a public
10 hearing and the manner in which a hearing may be requested,
11 shall be sent by first class mail to all persons who have
12 requested notice of applications, hearings, opportunities for
13 hearings or other proceedings concerning the facility or type
14 of facility that is the subject of the application, hearing,
15 opportunity for hearing or other proceeding;

16 D. notice of the application and the proceeding,
17 including any public hearing or opportunity for a public
18 hearing and the manner in which a hearing may be requested,
19 shall be provided as early as possible on the web site of the
20 department;

21 E. the written and published notice provided for in
22 Subsections A through D of this section shall also be provided
23 to residents of each community in at least one other medium,
24 including radio or television, in a manner designed to reach
25 the maximum number of members of each community;

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1 F. the written and published notice provided for in
2 Subsections A through D of this section shall:

3 (1) be in English and in any other written
4 language or languages other than English that are estimated by
5 the department to be spoken in more than five percent of the
6 homes in a community;

7 (2) include a description of the existing or
8 proposed regulated facility, and of the application or other
9 request for the decision;

10 (3) describe where an interested person may
11 obtain a copy of the community impact assessment report; and

12 (4) include a statement indicating whether a
13 public hearing will be held or the procedure that should be
14 followed to request a public hearing; and

15 G. the notice to be published shall also be
16 published in a place in the newspaper calculated to give
17 members of the public the most effective notice.

18 Section 6. DEPARTMENT DECISION.--In making a decision
19 significantly affecting a community, the department shall take
20 into account a community impact assessment report prepared
21 concerning the decision. The department shall explain in any
22 written decision significantly affecting a community the manner
23 in which the community impact assessment report has been taken
24 into account.

25 Section 7. CITIZEN ENFORCEMENT.--

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1 A. A person having an interest that is or may be
2 adversely affected by a violation of the New Mexico
3 Environmental Health Act or any rule adopted pursuant to that
4 act may commence a civil action on the person's own behalf
5 against the department to compel compliance with that act.

6 B. No action shall be commenced pursuant to this
7 section prior to sixty days after the plaintiff has given
8 written notice to the department and to the attorney general;
9 provided, however, that when the violation complained of
10 constitutes an immediate threat to the health or safety of the
11 plaintiff or would immediately and irreversibly impair a legal
12 interest of the plaintiff, an action pursuant to this section
13 may be brought immediately after notification to the proper
14 parties.

15 C. Suits brought pursuant to this section shall be
16 brought in the district court for Santa Fe county.

17 D. The court, in issuing a final order in an action
18 brought pursuant to this section, may award costs of
19 litigation, including attorney and expert witness fees, to a
20 prevailing party or as justice requires.

21 E. An action that may be brought pursuant to this
22 section does not replace or modify any other remedy that the
23 plaintiff may have, and the plaintiff may elect to use any or
24 all of those remedies, in addition to a suit brought pursuant
25 to this section.

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1 Section 8. RULES.--The secretary of environment shall
2 promulgate such rules as are necessary to ensure compliance
3 with the provisions of the New Mexico Environmental Health Act;
4 provided that, in promulgating rules pursuant to this section,
5 the secretary shall follow the notice and hearing procedures
6 set forth in Section 74-1-9 NMSA 1978.

7 Section 9. STRICTER REQUIREMENTS NOT AFFECTED.--Nothing
8 in the New Mexico Environmental Health Act shall be construed
9 to preempt more stringent or more extensive requirements of any
10 rules adopted for any program administered by the department.