

1 HOUSE BILL 507

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 James G. Townsend

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE AIR
12 QUALITY CONTROL ACT TO PROVIDE FOR EXPEDITED CONSTRUCTION.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 74-2-7 NMSA 1978 (being Laws 1972,
16 Chapter 51, Section 4, as amended) is amended to read:

17 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
18 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

19 A. By regulation, the environmental improvement
20 board or the local board shall require:

21 (1) a person intending to construct or modify
22 any source, except as otherwise specifically provided by
23 regulation, to obtain a construction permit from the department
24 or the local agency [~~prior to such construction or~~
25 ~~modification~~]; and

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

6 B. Regulations adopted by the environmental
7 improvement board or the local board shall include at least the
8 following provisions:

9 (1) requirements for the submission of
10 relevant information, including information the department or
11 the local agency deems necessary to determine that regulations
12 and standards under the Air Quality Control Act or the federal
13 act will not be violated;

14 (2) specification of the deadlines for
15 processing permit applications; provided the deadline for a
16 final decision by the department or the local agency on a
17 construction permit application may not exceed:

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

24 (b) one hundred eighty days after the
25 application is determined to be administratively complete, if

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1 the application is subject to requirements for prevention of
2 significant deterioration, unless the secretary or the director
3 grants an extension not to exceed ninety days for good cause,
4 including the need to have public hearings;

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

12 (4) a description of elements required before
13 the department or local agency shall deem an application
14 administratively complete;

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

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

22 (b) by any local board shall include
23 provisions requiring that notice be given to the department of
24 all permit applications by any source that emits, or has a
25 potential emission rate of, one hundred tons per year or more

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1 of any regulated air contaminant, including any source of
2 fugitive emissions of each regulated air contaminant, at least
3 sixty days prior to the date on which construction or major
4 modification permit is [~~to commence~~] issued;

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

7 (a) reviewing and acting upon any
8 application for such permit; and

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

12 (7) a schedule of emission fees consistent
13 with the provisions of Section 502(b)(3) of the 1990 amendments
14 to the federal act;

15 (8) a method for accelerated permit processing
16 that may be requested at the sole discretion of the applicant
17 at the time the applicant submits a construction permit
18 application and that:

19 (a) allows the department or local
20 agency to contract with qualified outside firms to assist the
21 department or local agency in its accelerated review of the
22 construction permit application; provided that the department
23 or local agency can contract with a qualified firm that does
24 not have a conflict of interest; and

25 (b) establishes a process for the

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1 department or local agency to account for the expenditure of
2 the accelerated permit processing fees;

3 (9) allowance for additional permit
4 application fees, sufficient to cover the reasonable costs of
5 an accelerated permit application review process. Before the
6 applicant is notified that the permit application has been
7 determined to be complete, the department or local agency shall
8 give the applicant a reasonable estimate of costs of an
9 accelerated permit application review process;

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

13 (11) for an operating permit only:

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

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

25 (c) specification of the conditions

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1 under which the operating permit may be terminated, modified or
2 revoked and reissued prior to the expiration of the term of the
3 operating permit.

4 C. Except as provided in Subsection 0 of this
5 section, the department or the local agency may deny any
6 application for:

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

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

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

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

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

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

23 (1) for a construction permit:

24 (a) a requirement that such source
25 install and operate control technology, determined on a case-

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1 by-case basis, sufficient to meet the standards, rules and
2 requirements of the Air Quality Control Act and the federal
3 act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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