

1 SENATE BILL 187

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Linda M. López

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9  
10 AN ACT

11 RELATING TO THE ENVIRONMENT; ELIMINATING LOCAL AUTHORITY TO  
12 ADMINISTER THE AIR QUALITY CONTROL ACT; REPEALING SECTIONS  
13 74-2-4 AND 74-2-16 NMSA 1978 (BEING LAWS 1967, CHAPTER 277,  
14 SECTION 4 AND LAWS 1992, CHAPTER 20, SECTION 19, AS AMENDED).

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "74-2-2. DEFINITIONS.--As used in the Air Quality Control  
20 Act:

21 A. "air contaminant" means a substance, including  
22 any particulate matter, fly ash, dust, fumes, gas, mist, smoke,  
23 vapor, micro-organisms, radioactive material, any combination  
24 thereof or any decay or reaction product thereof;

25 B. "air pollution" means the emission, except

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1 emission that occurs in nature, into the outdoor atmosphere of  
2 one or more air contaminants in quantities and of a duration  
3 that may with reasonable probability injure human health or  
4 animal or plant life or as may unreasonably interfere with the  
5 public welfare, visibility or the reasonable use of property;

6 C. "department" means the department of  
7 environment;

8 ~~[D. "director" means the administrative head of a  
9 local agency;~~

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

19 ~~[F.]~~ E. "federal act" means the federal Clean Air  
20 Act, its subsequent amendments and successor provisions;

21 ~~[G.]~~ F. "federal standard of performance" means a  
22 standard of performance, emission limitation or emission  
23 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

24 ~~[H.]~~ G. "hazardous air pollutant" means an air  
25 contaminant that has been listed as a hazardous air pollutant

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1 pursuant to the federal act;

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

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

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

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

15 ~~K. "local board" means a municipal, county or joint~~  
16 ~~air quality control board created by a local authority;~~

17 ~~L.]~~ H. "mandatory class I area" means any of the  
18 following areas in this state that were in existence on August  
19 7, 1977:

20 (1) national wilderness areas that exceed five  
21 thousand acres in size; and

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

24 ~~[M.]~~ I. "modification" means a physical change in,  
25 or change in the method of operation of, a source that results

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1 in an increase in the potential emission rate of a regulated  
2 air contaminant emitted by the source or that results in the  
3 emission of a regulated air contaminant not previously emitted,  
4 but does not include:

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

6 (2) routine maintenance, repair or  
7 replacement;

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

14 (4) unless previously limited by enforceable  
15 permit conditions:

16 (a) an increase in the production rate,  
17 if such increase does not exceed the operating design capacity  
18 of the source;

19 (b) an increase in the hours of  
20 operation; or

21 (c) use of an alternative fuel or raw  
22 material if, prior to January 6, 1975, the source was capable  
23 of accommodating such fuel or raw material or if use of an  
24 alternate fuel or raw material is caused by a natural gas  
25 curtailment or emergency allocation or ~~[an other]~~ another lack

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1 of supply of natural gas;

2 [N-] J. "nonattainment area" means for an air  
3 contaminant an area that is designated "nonattainment" with  
4 respect to that contaminant within the meaning of Section  
5 107(d) of the federal act;

6 [O-] K. "person" includes an individual,  
7 partnership, corporation, association, the state or political  
8 subdivision of the state and any agency, department or  
9 instrumentality of the United States and any of their officers,  
10 agents or employees;

11 [P-] L. "potential emission rate" means the  
12 emission rate of a source at its maximum capacity to emit a  
13 regulated air contaminant under its physical and operational  
14 design, provided any physical or operational limitation on the  
15 capacity of the source to emit a regulated air contaminant,  
16 including air pollution control equipment and restrictions on  
17 hours of operation or on the type or amount of material  
18 combusted, stored or processed, shall be treated as part of its  
19 physical and operational design only if the limitation or the  
20 effect it would have on emissions is enforceable by the  
21 department [~~or the local agency~~] pursuant to the Air Quality  
22 Control Act or the federal act;

23 [Q-] M. "regulated air contaminant" means an air  
24 contaminant, the emission or ambient concentration of which is  
25 regulated pursuant to the Air Quality Control Act or the

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1 federal act;

2 [R-] N. "secretary" means the secretary of  
3 environment;

4 [S-] O. "significant deterioration" means an  
5 increase in the ambient concentrations of an air contaminant  
6 above the levels allowed by the federal act or federal  
7 regulations for that air contaminant in the area within which  
8 the increase occurs;

9 [F-] P. "source" means a structure, building,  
10 equipment, facility, installation or operation that emits or  
11 may emit an air contaminant;

12 [U-] Q. "standard of performance" means a  
13 requirement of continuous emission reduction, including any  
14 requirement relating to operation or maintenance of a source to  
15 assure continuous emission reduction;

16 [V-] R. "state implementation plan" means a plan  
17 submitted by New Mexico to the federal environmental protection  
18 agency pursuant to 42 U.S.C. Section 7410; and

19 [W-] S. "toxic air pollutant" means an air  
20 contaminant, except a hazardous air pollutant, classified by  
21 the environmental improvement board [~~or the local board~~] as a  
22 toxic air pollutant."

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

25 "74-2-3. ENVIRONMENTAL IMPROVEMENT BOARD.--

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1           A. In taking any action under the Air Quality  
2 Control Act, a majority of the environmental improvement board  
3 constitutes a quorum, but any action, order or decision of the  
4 environmental improvement board requires the concurrence of  
5 three members present at a meeting.

6           B. Except as provided in the Air Quality Control  
7 Act, the jurisdiction of the environmental improvement board  
8 extends to all areas of the state [~~except within the boundaries~~  
9 ~~of a local authority~~]."

10           SECTION 3. Section 74-2-5 NMSA 1978 (being Laws 1967,  
11 Chapter 277, Section 5, as amended) is amended to read:

12           "74-2-5. DUTIES AND POWERS--ENVIRONMENTAL IMPROVEMENT  
13 BOARD [~~LOCAL BOARD~~].--

14           A. The environmental improvement board [~~or the~~  
15 ~~local board~~] shall prevent or abate air pollution.

16           B. The environmental improvement board [~~or the~~  
17 ~~local board~~] shall:

18                       (1) adopt, promulgate, publish, amend and  
19 repeal rules and standards consistent with the Air Quality  
20 Control Act to attain and maintain national ambient air quality  
21 standards and prevent or abate air pollution, including:

22                               (a) rules prescribing air standards  
23 within the geographic area of the environmental improvement  
24 board's jurisdiction [~~or the local board's jurisdiction~~] or any  
25 part thereof; and

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1 (b) standards of performance that limit  
2 carbon dioxide emissions to no more than one thousand one  
3 hundred pounds per megawatt-hour ~~[on and after January 1, 2023]~~  
4 for a new or existing source that is an electric generating  
5 facility with an original installed capacity exceeding three  
6 hundred megawatts and that uses coal as a fuel source; and

7 (2) adopt a plan for the regulation, control,  
8 prevention or abatement of air pollution, recognizing the  
9 differences, needs, requirements and conditions within the  
10 geographic area of the environmental improvement board's  
11 jurisdiction ~~[or the local board's jurisdiction]~~ or any part  
12 thereof.

13 C. If the environmental improvement board ~~[or the~~  
14 ~~local board]~~ determines that emissions ~~[from sources within the~~  
15 ~~environmental improvement board's jurisdiction or the local~~  
16 ~~board's jurisdiction]~~ cause or contribute to ozone  
17 concentrations in excess of ninety-five percent of the primary  
18 national ambient air quality standard for ozone promulgated  
19 pursuant to the federal act, the environmental improvement  
20 board ~~[or the local board]~~ shall adopt a plan, including rules,  
21 to control emissions of oxides of nitrogen and volatile organic  
22 compounds to provide for attainment and maintenance of the  
23 standard. Rules adopted pursuant to this subsection shall be  
24 limited to sources of emissions within the area of the state  
25 where the ozone concentrations exceed ninety-five percent of

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1 the primary national ambient air quality standard.

2 D. Rules adopted by the environmental improvement  
3 board ~~[or the local board]~~ may:

4 (1) include rules to protect visibility in  
5 mandatory class I areas to prevent significant deterioration of  
6 air quality and to achieve national ambient air quality  
7 standards in nonattainment areas; provided that the rules shall  
8 be at least as stringent as required by the federal act and  
9 federal regulations pertaining to visibility protection in  
10 mandatory class I areas, pertaining to prevention of  
11 significant deterioration and pertaining to nonattainment  
12 areas;

13 (2) prescribe standards of performance for  
14 sources and emission standards for hazardous air pollutants  
15 that shall be at least as stringent as required by federal  
16 standards of performance;

17 (3) include rules governing emissions from  
18 solid waste incinerators that shall be at least as stringent as  
19 any applicable federal emission limitations;

20 (4) include rules requiring the installation  
21 of control technology for mercury emissions that removes the  
22 greater of what is achievable with best available control  
23 technology or ninety percent of the mercury from the input fuel  
24 for all coal-fired power plants, except for coal-fired power  
25 plants constructed and generating electric power and energy

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1 before July 1, 2007;

2 (5) require notice to the department [~~or the~~  
3 ~~local agency~~] of the intent to introduce or permit the  
4 introduction of an air contaminant into the air [~~within the~~  
5 ~~geographical area of the environmental improvement board's~~  
6 ~~jurisdiction or the local board's jurisdiction~~]; and

7 (6) require any person emitting any air  
8 contaminant to:

9 (a) install, use and maintain emission  
10 monitoring devices;

11 (b) sample emissions in accordance with  
12 methods and at locations and intervals as may be prescribed by  
13 the environmental improvement board [~~or the local board~~];

14 (c) establish and maintain records of  
15 the nature and amount of emissions;

16 (d) submit reports regarding the nature  
17 and amounts of emissions and the performance of emission  
18 control devices; and

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

21 E. Any rule adopted pursuant to this section shall  
22 be at least as stringent as federal law, if any, relating to  
23 control of motor vehicle emissions.

24 F. In making its rules, the environmental  
25 improvement board [~~or the local board~~] shall give weight it

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1 deems appropriate to all facts and circumstances, including:

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

4 (2) the public interest, including the social  
5 and economic value of the sources and subjects of air  
6 contaminants; and

7 (3) technical practicability and economic  
8 reasonableness of reducing or eliminating air contaminants from  
9 the sources involved and previous experience with equipment and  
10 methods available to control the air contaminants involved.

11 G. Before the environmental improvement board [~~or~~  
12 ~~local board~~] adopts a rule that is more stringent than the  
13 federal act or federal regulations, or that applies to sources  
14 not subject to regulation pursuant to the federal act or  
15 regulations, the environmental improvement board [~~or local~~  
16 ~~board~~] shall make a determination, based on substantial  
17 evidence and after notice and public hearing, that the proposed  
18 rule will be more protective of public health and the  
19 environment."

20 SECTION 4. Section 74-2-5.1 NMSA 1978 (being Laws 1992,  
21 Chapter 20, Section 5) is amended to read:

22 "74-2-5.1. DUTIES AND POWERS OF THE DEPARTMENT [~~AND THE~~  
23 ~~LOCAL AGENCY~~].--The department [~~and the local agency for their~~  
24 ~~respective jurisdictions~~] shall:

25 A. develop facts and make investigations and

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1 studies consistent with the Air Quality Control Act and, as  
2 required for enforcement of that act, enter at all reasonable  
3 times in or upon any private or public property, except private  
4 residences, that the department [~~or the local agency~~] has  
5 reasonable cause to believe is or will become a source  
6 contributing to air pollution and require the production of  
7 information relating to emissions that cause or contribute to  
8 air pollution. The results of any such investigations shall be  
9 reduced to writing if any enforcement action is contemplated,  
10 and a copy shall be furnished to the owner or occupants of the  
11 premises before the action is filed;

12 B. institute legal proceedings to compel compliance  
13 with the Air Quality Control Act or any [~~regulation~~] rule of  
14 the environmental improvement board [~~or the local board~~];

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

18 D. consult with any person proposing to construct,  
19 install or otherwise acquire an air contaminant source, device,  
20 system or control mechanism concerning the efficiency of the  
21 device, system or mechanism or the air pollution problem that  
22 may be related to the source, device, system or mechanism;  
23 provided that consultation shall not relieve any person from  
24 compliance with the Air Quality Control Act, regulations in  
25 force pursuant to that act or any other provision of law;

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1           E. establish a small business stationary source  
2 technical and environmental compliance assistance program,  
3 consistent with the provisions of Section 507 of the federal  
4 act;

5           F. accept, receive and administer grants or other  
6 funds or gifts from public and private agencies, including the  
7 federal government, or from any person;

8           G. classify and record air contaminant sources  
9 that, in its judgment, may cause or contribute to air  
10 pollution, according to levels and types of emissions and other  
11 characteristics that relate to air pollution; provided,  
12 classifications may be for application to the entire  
13 geographical area of the department's responsibility ~~[or the~~  
14 ~~local authority's responsibility]~~ or to any designated portion  
15 of that area and shall be made with special reference to the  
16 effects on health, economic and social factors and physical  
17 effects on property; and

18           H. develop and present to the environmental  
19 improvement board ~~[or the local board]~~ a plan for the  
20 regulation, control, prevention or abatement of air pollution,  
21 recognizing the differences, needs, requirements and conditions  
22 in the different portions of the geographical area of the  
23 department's responsibility ~~[or the local authority's~~  
24 ~~responsibility]."~~

25           SECTION 5. Section 74-2-5.2 NMSA 1978 (being Laws 1992,  
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1 Chapter 20, Section 6) is amended to read:

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

7 A. take all action necessary to secure for the  
8 state and its political subdivisions the benefits of federal  
9 legislation;

10 B. advise, consult, contract with and cooperate  
11 with [~~local authorities~~] other states, the federal government  
12 and other interested persons or groups in regard to matters of  
13 common interest in the field of air quality control [~~and~~  
14 ~~initiate cooperative action between a local authority and the~~  
15 ~~department, between one local authority and another or among~~  
16 ~~any combination of local authorities and the department for~~  
17 ~~control of air pollution in areas having related air pollution~~  
18 ~~problems that overlap the boundaries of political~~  
19 ~~subdivisions~~]; and

20 C. enter into agreements and compacts with  
21 adjoining states and Indian nations, tribes or pueblos, where  
22 appropriate."

23 SECTION 6. Section 74-2-6 NMSA 1978 (being Laws 1967,  
24 Chapter 277, Section 6, as amended) is amended to read:

25 "74-2-6. ADOPTION OF [~~REGULATIONS~~] RULES--NOTICE AND  
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1 HEARINGS.--

2 A. Any person may recommend or propose  
3 [~~regulations~~] rules to the environmental improvement board [~~or~~  
4 ~~the local board~~] for adoption. The environmental improvement  
5 board [~~or the local board~~] shall determine whether to hold a  
6 hearing within sixty days of submission of a proposed  
7 [~~regulation~~] rule.

8 B. No [~~regulations~~] rule or emission control  
9 requirement shall be adopted until after a public hearing by  
10 the environmental improvement board [~~or the local board~~]. As  
11 used in this section, [~~"regulation"~~] "rule" includes any  
12 amendment or repeal thereof. [~~Hearings on regulations of~~  
13 ~~nonstatewide application shall be held within that area that is~~  
14 ~~substantially affected by the regulation.~~] Hearings on  
15 [~~regulations of statewide application~~] rules may be held in  
16 Santa Fe or within any area of the state substantially affected  
17 by the [~~regulation~~] rule.

18 C. Notice of the hearing shall be given at least  
19 thirty days prior to the hearing date and shall state the  
20 subject, the time and the place of the hearing and the manner  
21 in which interested persons may present their views. The  
22 notice shall also state where interested persons may secure  
23 copies of any proposed [~~regulation~~] rule or air quality  
24 standard. The notice shall be published in a newspaper of  
25 general circulation in the area affected. Reasonable effort

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1 shall be made to give notice to all persons who have made a  
2 written request to the environmental improvement board [~~or the~~  
3 ~~local board~~] for advance notice of its hearings.

4 D. At the hearing, the environmental improvement  
5 board [~~or the local board~~] shall allow all interested persons  
6 reasonable opportunity to submit data, views or arguments  
7 orally or in writing and to examine witnesses testifying at the  
8 hearing. Any person heard or represented at the hearing shall  
9 be given written notice of the action of the environmental  
10 improvement board [~~or the local board~~].

11 E. The environmental improvement board [~~or the~~  
12 ~~local board~~] may designate a hearing officer to take evidence  
13 in the hearing.

14 F. No [~~regulations~~] rule or emission control  
15 requirement adopted by the environmental improvement board [~~or~~  
16 ~~the local board~~] shall become effective until thirty days after  
17 its filing under the State Rules Act."

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

20 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL  
21 IMPROVEMENT BOARD [~~OR THE LOCAL BOARD~~]--PERMIT FEES.--

22 A. By [~~regulation~~] rule, the environmental  
23 improvement board [~~or the local board~~] shall require:

24 (1) a person intending to construct or modify  
25 any source, except as otherwise specifically provided by

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1     ~~[regulation]~~ rule, to obtain a construction permit from the  
2     department ~~[or the local agency]~~ prior to such construction or  
3     modification; and

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

9                     B. ~~[Regulations]~~ Rules adopted by the environmental  
10    improvement board ~~[or the local board]~~ shall include at least  
11    the following provisions:

12                    (1) requirements for the submission of  
13    relevant information, including information the department ~~[or~~  
14    ~~the local agency]~~ deems necessary to determine that  
15    ~~[regulations]~~ rules and standards under the Air Quality Control  
16    Act or the federal act will not be violated;

17                    (2) specification of the deadlines for  
18    processing permit applications; provided that the deadline for  
19    a final decision by the department ~~[or the local agency]~~ on a  
20    construction permit application may not exceed:

21                      (a) ninety days after the application is  
22    determined to be administratively complete, if the application  
23    is not subject to requirements for prevention of significant  
24    deterioration, unless the secretary ~~[or the director]~~ grants an  
25    extension not to exceed ninety days for good cause, including

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1 the need to have public hearings; or

2 (b) one hundred eighty days after the  
3 application is determined to be administratively complete, if  
4 the application is subject to requirements for prevention of  
5 significant deterioration, unless the secretary [~~or the~~  
6 ~~director~~] grants an extension not to exceed ninety days for  
7 good cause, including the need to have public hearings;

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

15 (4) a description of elements required before  
16 the department [~~or local agency~~] shall deem an application  
17 administratively complete;

18 (5) specification of the public notice,  
19 comment period and public hearing, if any, required prior to  
20 the issuance of a permit; provided that the permit  
21 [~~regulations~~] rules adopted [~~(a)~~] by the environmental  
22 improvement board shall include provisions governing notice to  
23 nearby states; [~~and~~

24 (~~b~~) ~~by any local board shall include~~  
25 ~~provisions requiring that notice be given to the department of~~

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1 ~~all permit applications by any source that emits, or has a~~  
2 ~~potential emission rate of, one hundred tons per year or more~~  
3 ~~of any regulated air contaminant, including any source of~~  
4 ~~fugitive emissions of each regulated air contaminant, at least~~  
5 ~~sixty days prior to the date on which construction or major~~  
6 ~~modification is to commence;]~~

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

9 (a) reviewing and acting upon any  
10 application for such permit; and

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

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

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

21 (a) allows the department [~~or local~~  
22 ~~agency~~] to contract with qualified outside firms to assist the  
23 department [~~or local agency~~] in its accelerated review of the  
24 construction permit application; provided that the department  
25 [~~or local agency~~] can contract with a qualified firm that does

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1 not have a conflict of interest; and

2 (b) establishes a process for the  
3 department ~~[or local agency]~~ to account for the expenditure of  
4 the accelerated permit processing fees;

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

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

15 (11) for an operating permit only:

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

25 (b) provisions governing renewal of the

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1 operating permit; and

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

6 C. Except as provided in Subsection [Ø] N of this  
7 section, the department [~~or the local agency~~] may deny any  
8 application for:

9 (1) a construction permit if it appears that  
10 the construction or modification:

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

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

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

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

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

25 (1) for a construction permit:

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

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

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

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

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

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

22 E. This section does not authorize the department  
23 [~~or the local agency~~] to require the use of machinery, devices  
24 or equipment from a particular manufacturer if the federal  
25 standards of performance, state [~~regulations~~] rules and permit

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1 conditions may be met by machinery, devices or equipment  
2 otherwise available.

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

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

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

25 I. If a timely petition for hearing is made, the

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

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

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

25 L. ~~[Notwithstanding any other provision of law and~~



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

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

16 ~~N.]~~ M. Fees collected pursuant to this section  
17 shall be deposited in [~~(1)~~] the state air quality permit fund  
18 created by Section 74-2-15 NMSA 1978 [~~if collected by the~~  
19 ~~department; or~~

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

24 ~~[O.]~~ N. The department may not deny an application  
25 for a construction permit for a cotton gin if the applicant

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

18 [P.] Q. The department ~~[or local agency]~~ may deny  
19 any permit application or revoke any permit issued pursuant to  
20 the Air Quality Control Act if, within ten years immediately  
21 preceding the date of submission of the permit application, the  
22 applicant or permittee has:

23 (1) knowingly misrepresented a material fact  
24 in an application for a permit;

25 (2) refused to disclose the information

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1 required by the provisions of the Air Quality Control Act;

2 (3) been convicted in any court of any state  
3 or the United States of:

4 (a) a felony related to environmental  
5 crime; or

6 (b) a crime defined by state or federal  
7 statute as involving or being in restraint of trade, price  
8 fixing, bribery or fraud;

9 (4) constructed or operated a facility for  
10 which a permit is sought without a permit required by the Air  
11 Quality Control Act, except when such an unpermitted facility  
12 is discovered after acquisition in the course of a timely  
13 environmental audit authorized by department ~~[or local board]~~  
14 policy and except if:

15 (a) the operator of the facility using  
16 good engineering practices and established approved calculation  
17 methodologies estimated that the facility's emissions would not  
18 require a permit pursuant to the Air Quality Control Act; and

19 (b) upon discovery of the discrepancy  
20 between the calculated pre-construction maximum facility  
21 emissions and the calculated post-construction maximum facility  
22 emissions, the operator of the facility applies for the  
23 appropriate permit within thirty calendar days; or

24 (5) had any permit revoked or permanently  
25 suspended for cause under the environmental laws of any state

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1 or the United States.

2 [Q+] P. In making a finding under Subsection [P] Q  
3 of this section, the department [~~or local agency~~] may consider  
4 aggravating and mitigating factors.

5 [R+] Q. If an applicant or permittee whose permit  
6 is being considered for denial or revocation on any basis  
7 provided by Subsection [P] Q of this section has submitted an  
8 action plan that has been approved in writing by the secretary  
9 [~~or director~~], and plan approval includes a period of operation  
10 under a conditional permit that will allow the applicant or  
11 permittee a reasonable opportunity to demonstrate its  
12 rehabilitation, the secretary [~~or director~~] may issue a  
13 conditional permit for a reasonable period of time.

14 [S+] R. An applicant for a permit pursuant to the  
15 Air Quality Control Act shall file a disclosure statement with  
16 the department [~~or local agency~~] with the information listed in  
17 Subsection [P] Q of this section, and on a form developed by  
18 the department. An existing permit holder shall provide such  
19 disclosure upon request by the department [~~or local agency~~]."

20 SECTION 8. Section 74-2-8 NMSA 1978 (being Laws 1967,  
21 Chapter 277, Section 8, as amended) is amended to read:

22 "74-2-8. VARIANCES.--

23 A. The environmental improvement board [~~or the~~  
24 ~~local board~~] may grant an individual variance from the  
25 limitations prescribed under the Air Quality Control Act, any

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1 [regulation] rule of the environmental improvement board [~~or~~  
2 ~~the local board~~] or any permit condition imposed by the  
3 department [~~or the local agency~~], whenever it is found, upon  
4 presentation of adequate proof:

5 (1) that compliance with any part of that act,  
6 any [regulation] rule of the environmental improvement board  
7 [~~or the local board~~] or any permit condition will:

8 (a) result in an arbitrary and  
9 unreasonable taking of property; or

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

12 (2) that the granting of the variance will  
13 not:

14 (a) result in a condition injurious to  
15 health or safety; or

16 (b) cause or contribute to an air  
17 contaminant level in excess of any primary national ambient air  
18 quality standards.

19 B. [~~No~~] A variance shall not be granted pursuant to  
20 this section until the environmental improvement board [~~or the~~  
21 ~~local board~~] has considered the relative interests of the  
22 applicant, other owners of property likely to be affected by  
23 the discharges and the general public.

24 C. [~~Any~~] A variance or renewal [~~thereof~~] shall be  
25 granted within the requirements of Subsection A of this section

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1 and for time periods and under conditions consistent with the  
2 reasons [~~therefor~~] for the variance of renewal and within the  
3 following limitations:

4 (1) if the variance is granted on the ground  
5 that there are no practicable means known or available for the  
6 adequate prevention, abatement or control of the air pollution  
7 involved, it shall be only until the necessary means for  
8 prevention, abatement or control become known and available;

9 (2) if the variance is granted on the ground  
10 that compliance with the particular requirement from which  
11 variance is sought will necessitate the taking of measures  
12 that, because of their extent or cost, must be spread over a  
13 considerable period of time, it shall be for a period not to  
14 exceed such reasonable time as, in the view of the  
15 environmental improvement board [~~or the local board~~], is  
16 requisite for the taking of the necessary measures. A variance  
17 granted on the ground specified in this paragraph shall contain  
18 a timetable for the taking of action in an expeditious manner  
19 and shall be conditioned on adherence to the timetable; or

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

24 D. Any person seeking a variance shall do so by  
25 filing a petition for variance with the secretary [~~or the~~

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1 ~~director~~] charged with implementation of the Air Quality  
2 Control Act at the site where the variance will apply. The  
3 secretary [~~or the director~~] shall promptly investigate the  
4 petition and make recommendation to [~~his respective~~] the  
5 environmental improvement board as to the disposition of the  
6 petition.

7 E. Upon receiving the recommendation of the  
8 secretary [~~or the director~~] on the variance, the environmental  
9 improvement board [~~or the local board~~] shall:

10 (1) if the secretary [~~or the director~~] favors  
11 a variance, hold a public hearing prior to the granting of any  
12 variance; and

13 (2) if the secretary [~~or the director~~] is  
14 opposed to the granting of the variance, hold a hearing only  
15 upon the request of the petitioner.

16 F. In the hearing, the burden of proof shall be  
17 upon the petitioner."

18 SECTION 9. Section 74-2-9 NMSA 1978 (being Laws 1971,  
19 Chapter 57, Section 1, as amended) is amended to read:

20 "74-2-9. JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS.--

21 A. Any person adversely affected by an  
22 administrative action taken by the environmental improvement  
23 board [~~the local board~~] or the secretary [~~or the director~~] may  
24 appeal to the court of appeals. All appeals shall be upon the  
25 record made at the hearing and shall be taken to the court of

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1 appeals within thirty days following the date of the action.

2 B. For appeals of ~~[regulations]~~ rules, the date of  
3 the action shall be the date of the filing of the ~~[regulation]~~  
4 rule by the environmental improvement board ~~[or the local~~  
5 ~~board]~~ pursuant to the State Rules Act.

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

8 (1) arbitrary, capricious or an abuse of  
9 discretion;

10 (2) not supported by substantial evidence in  
11 the record; or

12 (3) otherwise not in accordance with law.

13 D. After a hearing and a showing of good cause by  
14 the appellant, a stay of the action being appealed may be  
15 granted:

16 (1) by the environmental improvement board  
17 ~~[the local board]~~ or the department, ~~[or the local agency]~~  
18 whichever took the action being appealed; or

19 (2) by the court of appeals if the  
20 environmental improvement board ~~[the local board]~~ or the  
21 department ~~[or the local agency]~~ denies a stay or fails to act  
22 upon an application for a stay within sixty days after receipt  
23 of the application."

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

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1 "74-2-10. EMERGENCY POWERS OF THE SECRETARY [~~AND THE~~  
2 ~~DIRECTOR~~].--

3 A. Notwithstanding any other provision of the Air  
4 Quality Control Act, if the secretary [~~or the director~~]  
5 determines that a source or combination of sources presents an  
6 imminent and substantial endangerment to the public health or  
7 welfare or to the environment, [~~he~~] the secretary may bring  
8 suit in the district court for the county in which the source  
9 is located to restrain immediately any person causing or  
10 contributing to the alleged air pollution to stop the emission  
11 of air contaminants causing or contributing to such air  
12 pollution or to take such other action as may be necessary.

13 B. If it is not practicable to assure prompt  
14 protection of the public health or welfare or the environment  
15 by commencement of a civil action, the secretary [~~or the~~  
16 ~~director~~] may issue orders necessary to protect the public  
17 health or welfare or the environment. An order shall be  
18 effective for a period of not more than twenty-four hours,  
19 unless the secretary [~~or the director~~] brings a civil action  
20 before the expiration of twenty-four hours. If the secretary  
21 [~~or the director~~] brings an action within that time, the order  
22 shall be effective thereafter for forty-eight hours or for such  
23 longer period as may be authorized by the court pending  
24 litigation."

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

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

3 A. Any records, reports or information obtained  
4 under the Air Quality Control Act by the department or the  
5 environmental improvement board [~~the local board or the local~~  
6 ~~agency~~] shall be available to the public, except that upon a  
7 satisfactory showing to the secretary [~~the director~~] or the  
8 environmental improvement board, [~~the local board or the local~~  
9 ~~agency~~] as applicable, by any person that records, reports or  
10 information, or particular parts thereof, except emission data,  
11 to which the department [~~the local agency~~] or the environmental  
12 improvement board [~~or the local board~~] has access under the Air  
13 Quality Control Act, if made public, would divulge confidential  
14 business records or methods or processes entitled to protection  
15 as trade secrets of that person, the secretary [~~the director~~]  
16 or the environmental improvement board, [~~or the local board~~] as  
17 applicable, shall consider such record, report or information,  
18 or particular portion thereof, confidential in accordance with  
19 the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C.  
20 Section 1905, except that such record, report or other  
21 information may be disclosed:

22 (1) to other officers, employees or authorized  
23 representatives of the department [~~the local agency~~] or the  
24 environmental improvement board [~~or the local board~~] concerned  
25 with carrying out the Air Quality Control Act;

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

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

6 B. The environmental improvement board [~~or the~~  
7 ~~local board~~] shall adopt [~~regulations~~] rules to implement this  
8 section, including [~~regulations~~] rules specifying those  
9 business records entitled to treatment as confidential  
10 records."

11 SECTION 12. Section 74-2-11.1 NMSA 1978 (being Laws 1979,  
12 Chapter 393, Section 7, as amended) is amended to read:

13 "74-2-11.1. LIMITATIONS ON [~~REGULATIONS~~] RULES.--The Air  
14 Quality Control Act does not:

15 A. authorize the environmental improvement board  
16 [~~or the local board~~] to make any [~~regulation~~] rule with respect  
17 to any condition or quality of the outdoor atmosphere if the  
18 condition or air quality level and its effect are confined  
19 entirely within the boundaries of the industrial or  
20 manufacturing property within which the air contaminants are or  
21 may be emitted and public access is restricted within such  
22 boundaries;

23 B. grant to the environmental improvement board [~~or~~  
24 ~~the local board~~] any jurisdiction or authority affecting the  
25 relation between employers and employees with respect to or

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1 arising out of any condition of air quality; or

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

4 SECTION 13. Section 74-2-12 NMSA 1978 (being Laws 1992,  
5 Chapter 20, Section 14, as amended) is amended to read:

6 "74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD  
7 CITATIONS.--

8 A. When, on the basis of any information, the  
9 secretary [~~or the director~~] determines that a person has  
10 violated or is violating a requirement or prohibition of the  
11 Air Quality Control Act, a [~~regulation~~] rule promulgated  
12 pursuant to that act or a condition of a permit issued under  
13 that act, the secretary [~~or the director~~] may:

14 (1) issue a compliance order within one year  
15 after the violation becomes known by the department [~~or the~~  
16 ~~local agency~~] stating with reasonable specificity the nature of  
17 the violation and requiring compliance immediately or within a  
18 specified time period or assessing a civil penalty for a past  
19 or current violation, or both; or

20 (2) commence a civil action in district court  
21 for appropriate relief, including a temporary or permanent  
22 injunction.

23 B. An order issued pursuant to Subsection A of this  
24 section may include a suspension or revocation of the permit or  
25 portion thereof issued by the secretary [~~or the director~~] that

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1 is alleged to have been violated. Any penalty assessed in the  
2 order shall not exceed fifteen thousand dollars (\$15,000) per  
3 day of noncompliance for each violation.

4 C. An order issued pursuant to Subsection A of this  
5 section shall become final unless, no later than thirty days  
6 after the order is served, the person named therein submits a  
7 written request to the secretary [~~or the director~~] for a public  
8 hearing. Upon such request, the secretary [~~or the director~~]  
9 shall promptly conduct a public hearing. The secretary [~~or the~~  
10 ~~director~~] shall appoint an independent hearing officer to  
11 preside over the public hearing. The hearing officer shall  
12 make and preserve a complete record of the proceedings and  
13 forward the hearing officer's recommendation based thereon to  
14 the secretary, [~~or the director~~] who shall make the final  
15 decision.

16 D. The environmental improvement board [~~or the~~  
17 ~~local board~~] may implement a field citation program through  
18 [~~regulations~~] rules establishing appropriate minor violations  
19 for which field citations assessing civil penalties not to  
20 exceed one thousand dollars (\$1,000) per day of violation may  
21 be issued by officers or employees of the department [~~or the~~  
22 ~~local agency~~] as designated by the secretary [~~or the director~~].

23 E. A person to whom a field citation is issued  
24 pursuant to Subsection D of this section may, within a  
25 reasonable time as prescribed by [~~regulation~~] rule by the

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1 environmental improvement board, [~~or the local board~~] elect to  
2 pay the penalty assessment or to request a hearing by the  
3 issuing agency on the field citation. If a request for hearing  
4 is not made within the time specified in the [~~regulation~~] rule,  
5 the penalty assessment in the field citation shall be final.

6 F. Payment of a civil penalty required by a field  
7 citation issued pursuant to Subsection D of this section shall  
8 not be a defense to further enforcement by the department [~~or~~  
9 ~~the local agency~~] to correct a violation or to assess the  
10 maximum statutory penalty pursuant to other authorities in the  
11 Air Quality Control Act if the violation continues.

12 G. In determining the amount of a penalty to be  
13 assessed pursuant to this section, the secretary [~~the director~~]  
14 or the person issuing a field citation shall take into account  
15 the seriousness of the violation, any good-faith efforts to  
16 comply with the applicable requirements and other relevant  
17 factors.

18 H. In connection with a proceeding under this  
19 section, the secretary [~~or the director~~] may issue subpoenas  
20 for the attendance and testimony of witnesses and the  
21 production of relevant papers, books and documents and may  
22 adopt rules for discovery procedures.

23 I. If a person fails to comply with an  
24 administrative order, the secretary [~~or director~~] may initiate  
25 an action to suspend or revoke the permit, or portion thereof,

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1 alleged to have been violated or to commence a civil action in  
2 district court to enforce the order, or to suspend or revoke  
3 the permit, or both.

4 J. If a person fails to pay an assessment of a  
5 civil penalty, the secretary [~~or director~~] may commence a civil  
6 action in district court to collect the civil penalties  
7 assessed in the order.

8 K. Penalties collected pursuant to this section  
9 shall be deposited in the [~~(1) municipal or county general~~  
10 ~~fund, as applicable, if the administrative order or field~~  
11 ~~citation was directed to a source located within a local~~  
12 ~~authority; or (2) state~~] general fund [~~if the administrative~~  
13 ~~order or field citation was directed to any other source~~]."

14 SECTION 14. Section 74-2-12.1 NMSA 1978 (being Laws 1992,  
15 Chapter 20, Section 15, as amended) is amended to read:

16 "74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT  
17 [~~OR LOCAL AUTHORITY~~]--LIMITATION OF ACTIONS.--

18 A. A person who violates a provision of the Air  
19 Quality Control Act or a [~~regulation~~] rule, permit condition or  
20 emergency order adopted or issued pursuant to that act may be  
21 assessed a civil penalty not to exceed fifteen thousand dollars  
22 (\$15,000) for each day during any portion of which a violation  
23 occurs.

24 B. A person who fails to comply with an  
25 administrative order issued pursuant to Section 74-2-12 NMSA

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1 1978 may be assessed, pursuant to a court order, a civil  
2 penalty of not more than twenty-five thousand dollars (\$25,000)  
3 for each day of noncompliance with the order.

4 C. In an action to enforce the provisions of the  
5 Air Quality Control Act or an ordinance, [~~regulation~~] rule,  
6 permit condition or order, adopted, imposed or issued pursuant  
7 to that act, [~~(1)~~] the department shall be represented by the  
8 attorney general

9 [~~(2) a local authority that is a municipality~~  
10 ~~shall be represented by the attorney of the municipality; and~~

11 [~~(3) a local authority that is a county shall~~  
12 ~~be represented by the district attorney within whose judicial~~  
13 ~~district the county lies].~~

14 D. No action for civil penalty shall be commenced  
15 more than five years from the date the violation was known by  
16 the department [~~or the local agency~~]."

17 SECTION 15. Section 74-2-13 NMSA 1978 (being Laws 1972,  
18 Chapter 51, Section 8, as amended) is amended to read:

19 "74-2-13. INSPECTION.--The secretary [~~or the director~~] or  
20 an authorized representative [~~of either~~], upon presentation of  
21 [~~his~~] credentials:

22 A. shall have a right of entry to, upon or through  
23 any premises on which an emission source is located or on which  
24 any records required to be maintained by [~~regulations~~] rules of  
25 the environmental improvement board [~~the local board~~] or by any

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1 permit condition are located; and

2 B. may at reasonable times:

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

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

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

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

16 "74-2-14. CRIMINAL PENALTIES.--

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

20 (1) ~~regulating open-fire burning or~~  
21 ~~residential incineration; or~~

22 (2) ~~prohibiting the removal of motor vehicle~~  
23 ~~emission control devices installed as required by law and~~  
24 ~~requiring the maintenance of such devices in operating~~  
25 ~~condition.~~

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1           ~~B.]~~ A. Notwithstanding any other provision of the  
2 Air Quality Control Act, it is a petty misdemeanor to violate  
3 any ~~[regulations]~~ rule of the environmental improvement board:

4                   (1) regulating open-fire burning or  
5 residential incineration; or

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

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

15                   (1) violation of any ~~[regulation]~~ rule  
16 relating to commercial or industrial incineration;

17                   (2) violation of any ~~[regulation]~~ rule  
18 adopting any federal standard of performance;

19                   (3) violation of any ~~[regulation]~~ rule  
20 relating to control of hazardous air pollutants; or

21                   (4) violation of any ~~[regulation]~~ rule  
22 relating to control of toxic air pollutants.

23           ~~[D.]~~ C. At ~~[any]~~ a source required to have an  
24 operating permit pursuant to Section 502 of the federal act,  
25 ~~[any]~~ a person who knowingly commits any violation of any

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1 applicable standard, [~~regulation~~] rule or requirement under the  
2 Air Quality Control Act or the federal act, any term or  
3 condition of an operating permit or any emission fee or filing  
4 requirement in any operating permit [~~regulation~~] rule of the  
5 environmental improvement board [~~or the local board~~] is guilty  
6 of a fourth degree felony 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 of not more  
9 than eighteen months or both.

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

16 [F. ~~Any~~] E. A person who knowingly:

17 (1) makes any false statement, representation  
18 or certification in any application, record, report, plan or  
19 other document filed or required to be maintained under the Air  
20 Quality Control Act, any permit issued pursuant to the Air  
21 Quality Control Act or any [~~regulation~~] rule adopted pursuant  
22 to that act; or

23 (2) falsifies, tampers with or knowingly  
24 renders inaccurate any monitoring device or method required to  
25 be maintained under the Air Quality Control Act, any permit

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1 issued pursuant to the Air Quality Control Act or any ordinance  
2 or ~~[regulation]~~ rule adopted pursuant to that act is guilty of  
3 a misdemeanor and shall, upon conviction, be punished by a fine  
4 of not more than ten thousand dollars (\$10,000) per day per  
5 violation or by imprisonment for not more than twelve months or  
6 by both.

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

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1           SECTION 17. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
2 ORDERS, PERMITS, PROPERTY, RECORDS, APPROPRIATIONS AND  
3 CONTRACTS.--

4           A. On July 1, 2024, all functions, orders, permits,  
5 equipment, supplies, other property, records, appropriations,  
6 money and contractual obligations of a local authority, local  
7 board or local agency authorized to administer the Air Quality  
8 Control Act before the effective date of this act are  
9 transferred to the environmental improvement board and the  
10 department of environment.

11           B. The rules, orders and decisions of a local  
12 authority, local board or local agency shall remain in effect  
13 until repealed or amended.

14           SECTION 18. REPEAL.--Sections 74-2-4 and 74-2-16 NMSA  
15 1978 (being Laws 1967, Chapter 277, Section 4 and Laws 1992,  
16 Chapter 20, Section 19, as amended) are repealed.

17           SECTION 19. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2024.