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SENATE BILL 187

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO THE ENVIRONMENT; MODIFYING THE AIR QUALITY CONTROL ACT.

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, microorganisms, radioactive material, including source material, special nuclear material and byproduct material, as defined by the federal Atomic Energy Act of 1954, as amended, or any combination [thereof] or any decay or reaction product

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1 thereof;

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

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

10 D. "director" means the administrative head of a
11 local agency;

12 E. "emission limitation" [~~and~~] or "emission
13 standard" [~~mean~~] means a requirement established by the
14 environmental improvement board or the local board, the
15 department, the local authority or the local agency or
16 [~~pursuant to the federal act~~] by the federal environmental
17 protection agency that limits the quantity, rate or
18 concentration, or combination thereof, of emissions of air
19 contaminants on a continuous basis, including any requirements
20 relating to the operation or maintenance of a source to
21 [~~assure~~] ensure continuous reduction and any design,
22 equipment, work practice or operational standard adopted
23 pursuant to the Air Quality Control Act or the federal act ;

24 F. "federal act" means the federal Clean Air Act,
25 42 U.S.C. Sections 7401, et seq., its subsequent amendments

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1 and successor provisions;

2 G. "federal standard of performance" means any
3 standard of performance, emission limitation or emission
4 standard adopted pursuant to [~~42 U.S.C. Section 7411 or 7412~~]
5 Section 111 or 112 of the federal act;

6 H. "hazardous air pollutant" means an air
7 contaminant that has been [~~classified~~] listed as a hazardous
8 air pollutant pursuant to Section 112 (b) of the federal act;

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

12 J. "local authority" means any of the following
13 political subdivisions of the state that have, by following
14 the procedure set forth in Subsection A of Section 74-2-4 NMSA
15 1978, assumed jurisdiction for local administration and
16 enforcement of the Air Quality Control Act:

17 (1) a county that was a class A county as of
18 January 1, 1980; or

19 (2) a municipality with a population greater
20 than one hundred thousand located within a county that was a
21 class A county as of January 1, 1980;

22 K. "local board" means a municipal, county or
23 joint air quality control board created by any local
24 authority;

25 L. "mandatory class I area" means any of the

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1 following areas in this state that were in existence on August
2 7, 1977:

3 (1) national wilderness areas that exceed
4 five thousand acres in size; and

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

7 M "modification" means any physical change in, or
8 change in the method of operation of, a source that results in
9 an increase in the emission rate or the potential emission
10 rate of any regulated air contaminant emitted by the source or
11 that results in the emission of any regulated air contaminant
12 not previously emitted, but does not include:

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

14 (2) routine maintenance, repair or
15 replacement;

16 (3) installation of air pollution control
17 equipment, and all related process equipment and materials
18 necessary for its operation, undertaken for the purpose of
19 complying with regulations adopted by the environmental
20 improvement board or the local board or [~~pursuant to the~~
21 ~~federal act~~] by the federal environmental protection agency;
22 or

23 (4) unless previously limited by enforceable
24 permit conditions:

25 (a) an increase in the production rate,

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1 if such increase does not exceed the operating design capacity
2 of the source;

3 (b) an increase in the hours of
4 operation; or

5 (c) use of an alternative fuel or raw
6 material if, prior to January 6, 1975, the source was capable
7 of accommodating such fuel or raw material or if use of an
8 alternate fuel or raw material is caused by any natural gas
9 curtailment or emergency allocation or any other lack of
10 supply of natural gas;

11 N. "nonattainment area" means for any air
12 contaminant an area that is designated "nonattainment" with
13 respect to that contaminant within the meaning of Section
14 107(d) of the federal act;

15 O. "person" includes an individual, partnership,
16 corporation, association, the state or political subdivision
17 of the state and any agency, department or instrumentality of
18 the United States and any of their officers, agents or
19 employees;

20 P. "potential emission rate" means the emission
21 rate of a source at its maximum capacity to emit a regulated
22 air contaminant under its physical and operational design in
23 the absence of air pollution control equipment that is not
24 vital to production of the normal product of the source or to
25 its normal operation. Any physical or operational limitation

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1 on the capacity of the source to emit a regulated air
2 contaminant, including air pollution control equipment not
3 vital to production of the normal product or to normal
4 operation, and restrictions on hours of operation or on the
5 type or amount of material combusted, stored or processed,
6 shall be treated as part of its physical and operational
7 design if the limitation or the effect it would have on
8 emissions is enforceable pursuant to the Air Quality Control
9 Act or is federally enforceable;

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

14 R. "secretary" means the secretary of environment;

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

20 T. "source" means any structure, building,
21 equipment, facility, installation or operation that emits or
22 may emit any air contaminant;

23 U. "standard of performance" means a requirement
24 of continuous emission reduction, including any requirement
25 relating to operation or maintenance of a source to [assure]

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1 ensure continuous emission reduction;

2 V. "state implementation plan" means any plan
3 submitted by New Mexico to the federal environmental
4 protection agency pursuant to [~~42 U.S.C. Section 7410~~] Section
5 110 of the federal act; and

6 W. "toxic air pollutant" means any air
7 contaminant, except a hazardous air pollutant, classified by
8 the environmental improvement board or the local board as a
9 toxic air pollutant. "

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

12 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
13 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES. --

14 A. By regulation, the environmental improvement
15 board or the local board shall require:

16 (1) any person intending to construct or
17 modify any source, except as otherwise specifically provided
18 by regulation, to obtain a construction permit from the
19 department or the local agency prior to such construction or
20 modification; and

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

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1 B. Regulations adopted by the environmental
2 improvement board or the local board shall include at least
3 the following [~~provisions~~]:

4 (1) requirements for permit applications,
5 including requirements for the submission of:

6 (a) relevant information [~~including but~~
7 ~~not limited to information~~] the department or the local agency
8 deems necessary to [~~ensure that~~] determine: 1) whether the
9 applicable standards, regulations and [standards under]
10 requirements pursuant to the Air Quality Control Act [or] and
11 the federal act will [not] be violated; and 2) the amount of
12 applicable fees; and

13 (b) for permit applications that
14 request terms and conditions, information to support the terms
15 and conditions;

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

20 (a) one hundred eighty days after the
21 application is determined to be complete, if the application
22 is not [~~affected by requirements for prevention of~~] subject to
23 regulations to prevent significant deterioration of air
24 quality; or

25 (b) two hundred forty days after the

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1 application is determined to be complete, if the application
2 is ~~[affected by requirements for prevention of]~~ subject to
3 regulations to prevent significant deterioration of air
4 quality;

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

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

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

20 (4) a schedule of construction permit fees
21 sufficient to cover:

22 (a) the reasonable costs of reviewing
23 and acting upon any application for such permit; and

24 (b) the reasonable costs of
25 implementing and enforcing the terms and conditions of the

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1 permit, excluding any court costs or other costs associated
2 with an enforcement action;

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

6 (6) specification of the maximum length of
7 time for which a permit shall be valid; provided that for an
8 operating permit, such period may not exceed five years; [~~and~~]

9 (7) for an operating permit only:

10 (a) provisions consistent with Sections
11 502(b) and 505(b) of the federal act providing: 1) notice to
12 and review and comment by the [~~United States~~] federal
13 environmental protection agency; and 2) that if the department
14 or local agency receives notice of objection from the [~~United~~
15 ~~States~~] federal environmental protection agency before the
16 operating permit is issued, the department or the local agency
17 shall not issue the permit unless it is revised and issued
18 under Section 505(c) of the federal act;

19 (b) provisions governing renewal of the
20 operating permit; and

21 (c) specification of the conditions
22 under which the operating permit may be terminated, modified
23 or revoked and reissued prior to the expiration of the term of
24 the operating permit; and

25 (8) for construction permits only.

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1 specification of the conditions under which the construction
2 permit may be terminated, modified or revoked.

3 C. The department or the local agency may deny any
4 application for:

5 (1) a construction permit if it appears that
6 the construction or modification:

7 (a) will not meet applicable standards,
8 regulations or requirements [of] pursuant to the Air Quality
9 Control Act or the federal act; [~~or any regulation adopted~~
10 ~~pursuant to either; or~~

11 ~~(2) an operating permit if:~~

12 ~~(a) the source for which the permit is~~
13 ~~sought will emit a hazardous air pollutant or any air~~
14 ~~contaminant in excess of a federal standard of performance or~~
15 ~~a regulation of the environmental improvement board or the~~
16 ~~local board]~~

17 (b) [~~it appears that the source for~~
18 ~~which the permit is sought]~~ will cause or contribute to air
19 contaminant levels in excess of any national or state ambient
20 air quality standard or, within the boundaries of a local
21 authority, applicable local ambient air quality standards; or

22 (c) will violate any other provision of
23 the Air Quality Control Act or the federal act; [~~will be~~
24 ~~violated]~~ and

25 (2) an operating permit if the source will

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1 not meet the applicable standards, regulations or requirements
2 under the Air Quality Control Act or the federal act.

3 D. The department or the local agency may specify
4 terms and conditions to any permit granted under this section,
5 including:

6 (1) for a construction permit:

7 (a) a requirement that such source
8 install and operate control technology, determined on a case-
9 by-case basis, sufficient to meet the applicable standards,
10 regulations and requirements [of] pursuant to the Air Quality
11 Control Act and the federal act; [~~and regulations promulgated~~
12 ~~pursuant to either; and~~

13 ~~(2) for an operating permit:~~

14 ~~(a) imposition of]~~ (b) individual
15 emission limits, determined on a case-by-case basis, but only
16 as restrictive as necessary to [~~meet the~~] ensure compliance
17 with the applicable standards, regulations and requirements
18 [~~of~~] pursuant to the Air Quality Control Act and the federal
19 act or the emission rate specified in the [~~operating~~] permit
20 application, whichever is more stringent;

21 (c) at the request of the applicant,
22 emission limitations and other conditions that are more
23 stringent than necessary to ensure compliance with the
24 applicable standards, regulations and requirements pursuant to
25 the Air Quality Control Act and the federal act, including

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1 enforceable conditions to limit the potential emission rate of
2 the source;

3 [~~(b)~~] (d) compliance with applicable
4 federal standards of performance;

5 [~~(c) imposition of~~] (e) reasonable
6 restrictions and limitations not relating to emission limits
7 or emission rates; or

8 [~~(d)~~] (f) any combination of the terms
9 and conditions listed above; and

10 (2) for an operating permit, terms and
11 conditions sufficient to ensure compliance with the applicable
12 standards, regulations and requirements pursuant to the Air
13 Quality Control Act and the federal act, including pertinent
14 terms and conditions in a construction permit, as determined
15 by the department or the local agency.

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

22 F. The issuance of a permit does not relieve any
23 person from the responsibility of complying with the
24 provisions of the Air Quality Control Act and any applicable
25 regulations of the environmental improvement board or the

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1 local board. Any terms or conditions [~~placed upon~~] specified
2 in a permit by the department or the local agency shall be
3 enforceable to the same extent as a regulation of its board.

4 G. Any person who participated in a permitting
5 action before the department or the local agency shall be
6 notified by the department or the local agency of the action
7 taken and the reasons for the action. Notification of the
8 applicant shall be by certified mail.

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

19 I. If a timely petition for hearing is made, the
20 environmental improvement board or the local board shall hold
21 a hearing within ninety days after receipt of the petition.
22 The environmental improvement board or the local board shall
23 notify the petitioner and the applicant or permittee, if other
24 than the petitioner, by certified mail of the date, time and
25 place of the hearing. If the subject of the petition is a

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1 permitting action deemed by the environmental improvement
2 board or the local board to substantially affect the public
3 interest, the environmental improvement board or the local
4 board shall ensure that the public receives notice of the
5 date, time and place of the hearing. The public in such
6 circumstances shall also be given a reasonable opportunity to
7 submit data, views or arguments orally or in writing and to
8 examine witnesses testifying at the hearing. Any person
9 submitting data, views or arguments orally or in writing shall
10 be subject to examination at the hearing.

11 J. The environmental improvement board or the
12 local board may designate a hearing officer to take evidence
13 in the hearing. All hearings shall be recorded.

14 K. The burden of proof shall be upon the
15 petitioner. Based upon the evidence presented at the hearing,
16 the environmental improvement board or the local board shall
17 sustain, modify or reverse the action of the department or the
18 local agency respectively.

19 L. Notwithstanding any other provision of law and
20 subject to the provisions of Section 74-2-4 NMSA 1978, a final
21 decision on a permit by the department, the environmental
22 improvement board, the local agency, the local board or the
23 court of appeals that a [new] source will or will not meet
24 applicable local, state and federal air pollution standards
25 and regulations shall be conclusive and is binding on every

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1 other state agency and as an issue before any other state
2 agency shall be deemed resolved in accordance with that final
3 decision.

4 M Subject to the provisions of Section 74-2-4
5 NMSA 1978, if the local board has adopted a permit regulation
6 pursuant to this section, persons [~~constructing or modifying~~
7 ~~any new source~~] intending to construct or modify a source or
8 to operate a source for which a construction permit or an
9 operating permit is required within the boundaries of the
10 local authority shall obtain a permit from the local agency
11 and not from the department.

12 N. Fees collected pursuant to this section shall
13 be deposited in:

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

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

21 Section 3. TEMPORARY PROVISION--EFFECT OF EXISTING
22 REGULATIONS.--A regulation of the environmental improvement
23 board or a local board that is inconsistent with this 1998 act
24 shall remain in full force and effect until amended or
25 repealed.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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5
6 January 30, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 187

13
14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 21, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.

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19 Respectfully submitted,

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24 _____
25 Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

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