

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 285

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AMENDING A SECTION OF THE AIR QUALITY CONTROL ACT TO ALLOW THE
DEPARTMENT OF ENVIRONMENT TO DENY A PERMIT APPLICATION BASED ON
POOR ENFORCEMENT HISTORY.

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

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

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

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

(1) a person intending to construct or modify
any source, except as otherwise specifically provided by
regulation, to obtain a construction permit from the department

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1 or the local agency prior to such construction or modification;
2 and

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

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

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

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

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

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

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

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

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

21 (a) by the environmental improvement
22 board shall include provisions governing notice to nearby
23 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 shall
10 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 the
23 permit unless it is revised and issued under Section 505(c) of
24 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 0 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 or
24 equipment from a particular manufacturer if the federal
25 standards of performance, state regulations 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 of the environmental improvement board or the local board. Any
7 conditions placed upon a permit by the department or the local
8 agency shall be enforceable to the same extent as a regulation
9 of its board.

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

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

17 J. The environmental improvement board or the local
18 board may designate a hearing officer to take evidence in the
19 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 NMSA
11 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. Fees collected pursuant to this section shall be
17 deposited in:

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

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

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

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

17 P. The department or local agency may deny any
18 permit application or revoke any permit issued pursuant to the
19 Air Quality Control Act if the applicant or permittee has:

20 (1) knowingly misrepresented a material fact
21 in application for a permit;

22 (2) refused to disclose the information
23 required by the provisions of the Air Quality Control Act;

24 (3) been convicted in any court, within ten
25 years immediately preceding the date of submission of the

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1 permit application, of:

2 (a) a felony related to environmental
3 crime; or

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

7 (4) constructed or operated a facility for
8 which a permit is sought without a permit required by that act,
9 and the emissions from the unpermitted facility exceed the
10 permit requirement threshold by twenty-five percent for any
11 pollutant; or

12 (5) had any permit revoked or permanently
13 suspended for cause under the environmental laws of any state
14 or the United States.

15 Q. In making a finding under Subsection P of this
16 section, the department or local agency may consider
17 aggravating and mitigating factors.

18 R. An applicant for a permit issued pursuant to the
19 Air Quality Control Act shall file a disclosure statement with
20 the department with the information required, and on a form
21 developed, by the department.

22 S. A person shall not be required to submit the
23 disclosure statement required by this section if the person is:

24 (1) the United States or any agency or
25 instrumentality of the United States;

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1 (2) a state or any agency or political
2 subdivision of a state; or

3 (3) a corporation or an officer, director or
4 shareholder of the corporation and the corporation:

5 (a) has on file and in effect with the
6 federal securities and exchange commission a registration
7 statement required under Section 5, Chapter 38, Title 1 of the
8 federal Securities Act of 1933, as amended; and

9 (b) submits to the department with the
10 application for a permit evidence of the registration described
11 in Subparagraph (a) of this paragraph and a copy of the
12 corporation's most recent annual form 10-K or an equivalent
13 report."

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