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ARTICLE II. - AIR POLLUTION [32]

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Sec. 30-31. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air contaminant means any substance including, but not limited to, any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any decay or reaction product thereof.

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

Board means the Albuquerque-Bernalillo County Air Quality Control Board created by this article.

Department means the administrative agency of the Albuquerque-Bernalillo County Air Quality Control Board.

Director means the administrative head of the department or his authorized representative.

Emission limitation and *emission standard* means a requirement established by the board, the department, or pursuant to the federal act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to

the operation or maintenance of a source to ensure continuous reduction.

Environmental department means the environmental department of the state.

Federal act means the federal Clean Air Act, its subsequent amendments and successor provisions.

Federal standard of performance means any standard of performance, emission limitation or emission standard adopted pursuant to 42 USC 7411 or 7412.

Hazardous air pollutant means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

Mandatory class I area means any of the following areas in the state that were in existence on August 7, 1977:

(1) National wilderness areas that exceed 5,000 acres in size; and
(2) National parks that exceed 6,000 acres in size.

Modification means any physical change in, or change in the method of operation of, a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that results in the emission of any regulated air contaminant not previously emitted, but does not include:

(1) A change in ownership of the source;
(2) Routine maintenance, repair or replacement;
(3) Installation of air pollution control equipment and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal act; or
(4) Unless previously limited by enforceable permit conditions:
    a. An increase in the production rate, if such increase does not exceed the operating design capacity of the source;
    b. An increase in the hours of operation; or
    c. Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

Nonattainment area means, for any air contaminant, an area that is designated "nonattainment" with respect to that contaminant within the meaning of section 107(d) of the federal act.

Plan means any and all parts of the state implementation plan that pertain to the county that are adopted by the board for submittal by the governor of the state to the federal environmental protection agency pursuant to 42 USC 7410.

Potential emission rate means the emission rate of a source at its maximum capacity in the absence of air pollution control equipment that is not vital to production of the normal product of the source or to its normal operation, also defined by board regulations as precontrolled emissions.

Regulated air contaminant means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act.

Significant deterioration means any increase in the ambient concentrations of any air contaminant above the levels allowed by the federal act or federal regulations for that air contaminant

in the area within which the increase occurs.

Source means any structure, building, equipment, facility, installation or operation that emits or may emit any air contaminant.

Standard of performance means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to ensure continuous emission reduction.

State implementation plan means any plan submitted by the governor of the state to the federal Environmental Protection Agency pursuant to 42 USC 7410.

Toxic air pollutant means any air contaminant, except a hazardous air pollutant, classified by the board as a toxic air pollutant.

(Ord. No. 94-5, § 2, 2-2-94)
Cross reference— *Definitions generally, § 1-2.*
State law reference— *Similar provisions, NMSA 1978, § 74-2-2.*

Sec. 30-32. - Joint air quality control board.

(a) In accordance with the New Mexico Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), a joint air quality control board known as the Albuquerque-Bernalillo County Air Quality Control Board is hereby created. The board shall serve as a joint local authority acting on behalf of both the county and the City of Albuquerque. Within the exterior boundaries of the county, the board shall have authority and jurisdiction to exercise the same functions pertaining to air quality as the functions that have been delegated by the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) to the state environmental improvement board except any functions reserved exclusively for the environmental improvement board.

(b) The membership and organization of the board shall be as described below:

(1) Members of the board previously appointed and serving on February 2, 1994, shall continue serving their terms on the board. The length and termination date of their terms of office shall not be affected by the passage of this article.

(2) The board shall consist of seven members, three of whom shall be appointed by the board of county commissioners, and four of whom shall be appointed by the city.

(3) Members shall be appointed for three-year terms. No member shall serve more than two consecutive terms at a time. The positions on the board shall be staggered appointments so that no more than two city-appointee's terms expire in any single year, and no more than one county-appointee's term expires in any single year. Vacant positions shall be filled by individuals appointed by the same authority that appointed the outgoing member.

(4) Nominations and appointments to the board shall be made as follows:

a. At least a majority of the membership of the board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set forth in the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), as amended, and the federal Clean Air Act, 42 USC 7401 et seq., as amended. Further, to the extent that the requirement does not conflict with this subsection (b)(4)a of this section, board members will be selected for their concerns about, and commitment to, the local ambient air quality. Therefore, selections may be made from a broad range of persons representing the public interest and who are experienced or trained in disciplines including natural sciences, humanities, social studies, finance, medicine and health, engineering or physics, law, law enforcement, education, business and industry.

b. No person employed by either the county or the City of Albuquerque shall be a

member of the board. No elected county or city official, and no member of the immediate family of any elected county or city official shall be appointed to the board.

c. County-appointed members shall be residents of the county.

d. A board member may be removed from office by the appointing authority if the member has missed three consecutive meetings or has been absent from more than 50 percent of the meetings during any 12 consecutive meetings.

e. If a vacancy occurs for reasons other than expiration of a term, the department shall promptly utilize the procedure described in subsection (b)(4)c of this section. Each vacancy shall be filled by the authority that appointed the departing member. The replacement member shall serve for the remainder of the unexpired term.

(5) Four members present shall constitute a quorum. A quorum shall be present for all matters decided by a vote of the board.

(6) Any action, order or decision of the board requires a simple majority vote of the members present, except for adoption, amendment or repeal of a board regulation, in which case the concurrence of four members shall be required.

(7) All officers of the board shall be elected annually by the board for one-year terms. No officer shall serve in the same position for more than two consecutive years.

(8) The board may adopt rules to govern its proceedings.

(c) The board shall meet in public facilities with public seating available. The board shall meet monthly if a quorum is available, unless a meeting is unnecessary or delayed for good reason. The board shall hold a minimum of six monthly meetings a year. Special additional meetings may be held as needed. Notice of time, place and agenda of meetings shall be published according to the requirements of law. Meetings, work sessions and hearings of the board shall be open to the public.

(d) The director of the department shall record all transactions and proceedings of the board and shall perform the duties required by the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.). The director is the custodian of all files and records of the board, and shall meet with the board but does not have a vote.

(e) Any member of the board who has a conflict of interest regarding a matter before the board shall disqualify himself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly, any monetary or other material benefit to the board member or the member's spouse or minor child.

(f) The county planning commission (CPC) and the city environmental planning commission (EPC) may appoint a member of the CPC and of the EPC, respectively, to be liaisons to the air quality control board. The CPC and EPC liaisons may attend board meetings and may participate in board discussions, but will not be members of the board and will not have a vote. The respective liaisons may communicate with the board and their respective planning commissions regarding air quality issues.

(Ord. No. 94-5, § 3, 2-2-94)

Cross reference— *Boards and commissions, § 2-431 et seq.*

State law reference— *Local board, NMSA 1978, § 74-2-4.*

Sec. 30-33. - Duties and powers of the board.

(a) The board, in accordance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), shall prevent or abate air pollution within the county and the City of Albuquerque.

(b) The board shall:

(1) Adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and this article to attain and maintain national

ambient air quality standards, and prevent or abate air pollution, including regulations prescribing air standards within the geographic area of the board's jurisdiction, or any part thereof; and

(2) Adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the county or any part of the county.

(c) Regulations adopted by the board may:

(1) Include regulations to protect visibility in mandatory class I areas, to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas, provided that such regulations:

a. Shall be no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

b. Shall be applicable only to sources subject to such regulation pursuant to the federal act.

(2) Prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in subsection (c)(3) of this section:

a. Shall be no more stringent than but at least as stringent as required by federal standards of performance; and

b. Shall be applicable only to sources subject to such federal standards of performance.

(3) Include regulations governing emissions from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emissions limitations.

(4) Require notice to the department of the intent to introduce or allow the introduction of an air contaminant into the air within the geographical area of the board's jurisdiction.

(5) Require any person emitting any air contaminant to:

a. Install, use and maintain emission monitoring devices;

b. Sample emissions in accordance with methods and at locations and intervals as may be prescribed by the board;

c. Establish and maintain records of the nature and amount of emissions;

d. Submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

e. Provide any other reasonable information relating to the emission of air contaminants.

(d) Any regulation adopted under this section shall be consistent with federal law, if any, relating to control of motor vehicle emission.

(e) In making its regulations, the board shall give the weight it deems appropriate to all facts and circumstances, including but not limited to:

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

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

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

(Ord. No. 94-5, § 4, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-5.*

Sec. 30-34. - Duties and powers of the department.

(a) The department shall administer and enforce the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article and any regulations adopted pursuant thereto and any other laws relating to air pollution applicable within the county and the City of Albuquerque. The staff for the board shall be provided by the City of Albuquerque. The department shall perform, within the boundaries of the county, all functions delegated to the state environment department under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), except for the duties and powers reserved exclusively for the state environment department.

(b) The department shall develop facts and make investigations and studies consistent with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and this article and, as required for enforcement of such act and this article, enter at all reasonable times in or upon any private or public property, except private residences, that the department or the local agency has reasonable cause to believe is or will become a source contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any enforcement action is contemplated, and a copy shall be furnished to the owner or occupants of the premises before the action is filed.

(c) The department shall institute legal proceedings to compel compliance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any regulation of the board.

(d) The department shall encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity.

(e) The department shall consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system or mechanism or the air pollution problem that may be related to the source, device, system or mechanism, provided that consultation shall not relieve any person from compliance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, regulations in force pursuant thereto, and any other provision of law.

(f) The department shall establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of section 507 and of the federal act.

(g) The department shall accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government or from any person.

(h) The department shall classify and record air contaminant sources that, in its judgment, may cause or contribute to air pollution according to levels and types of emissions and other characteristics that relate to air pollution, provided that classifications may be for application to the county as a whole or to any designated area of the county and city, and shall be made with special reference to effects on health, economic and social factors and physical effects on property.

(i) The department shall develop and present to the board a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the department's responsibility as established by this article.

(Ord. No. 94-5, § 5, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-5.1.*

Sec. 30-35. - Adoption of regulations; notice and hearings.

(a) Any person may recommend or propose regulations to the board for adoption. The board shall determine whether to hold a hearing within 60 days of submission of a proposed regulation.

(b) No regulation or emission control requirement shall be adopted until after a public hearing by the

board. As used in this section, the term "regulation" includes any amendment or repeal thereof.

(c) Notice of the hearing shall be given at least 30 days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or air quality standard. The notice shall be published in a newspaper of general circulation in the county and city. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of its hearings.

(d) At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board.

(e) The board may designate a hearing officer to take evidence, and the hearing officer may make recommendations to the board.

(f) No regulation or emission control requirement adopted by the board shall become effective until 30 days after its filing under the State Rules Act (NMSA 1978, §§ 14-3-24, 14-3-25, 14-4-1 et seq.).

(g) A copy of adopted air quality control regulations shall be on file in the office of the county clerk and shall be available for inspection by the public during regular business hours. Copies of such regulations shall be available to any person upon request and payment of a reasonable charge set by the county clerk.

(Ord. No. 94-5, § 6, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-6.*

Sec. 30-36. - Permits, permit appeals to the board and permit fees.

(a) By regulation, the board shall require:

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

(2) Any person intending to operate any source for which an operating permit is required pursuant to the 1990 amendments to the federal act, except as otherwise specifically provided by regulation, to obtain an operating permit from the department.

(b) Regulations adopted by the board shall include at least the following provisions:

(1) Requirements for the submission of relevant information including, but not limited to, information the department deems necessary to ensure that regulations and standards under this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act will not be violated;

(2) Specification of the deadlines for processing permit applications, provided the deadline for a final decision by the department on a construction permit application may not exceed:

a. One hundred eighty days after the application is determined to be complete, if the application is not affected by requirements for prevention of significant deterioration; or

b. Two hundred forty days after the application is determined to be complete, if the application is affected by requirements for prevention of significant deterioration.

(3) Specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit, provided the permit regulations adopted include provisions requiring that notice be given to the state environment department of all applications by any source that emits, or has a potential emission rate of, 100 tons per year or more of any regulated air contaminant, including any source of fugitive emissions

of any regulated air contaminant, at least 60 days prior to the date on which construction or major modification is to commence.

(4) A schedule of construction permit fees sufficient to cover:

a. The reasonable costs of reviewing and acting upon any application for such permit; and

b. The reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court or other costs associated with an enforcement action.

(5) A schedule of emission fees consistent with the provisions of section 502(b)(3) of the 1990 amendments to the federal act.

(6) Specification of the maximum length of time for which a permit shall be valid, provided that for an operating permit, such period may not exceed five years.

(7) For an operating permit only:

a. Provisions consistent with sections 502(b) and 505(b) of the federal act that require: notice to, and review and comment by, the United States Environmental Protection Agency; and if the department receives notice of objection from the United States Environmental Protection Agency before the operating permit is issued, the department shall not issue the permit unless the permit is revised and issued pursuant to section 505(c) of the federal act;

b. Provisions governing renewal of the operating permit; and

c. Specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

(c) The department may deny any application for:

(1) A construction permit if it appears that the construction or modification will not meet applicable requirements of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), the federal act or any regulation adopted pursuant thereto; or

(2) An operating permit if:

a. The source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the board;

b. It appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national, state or applicable local ambient air quality standard; or

c. Any other provision of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act will be violated.

(d) The department may specify conditions to any permit granted under this section, including:

(1) For a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), the federal act or any regulations promulgated pursuant thereto; and

(2) For an operating permit:

a. Imposition of individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and the federal act or the emission rate specified in the operating permit application, whichever is most stringent;

b. Compliance with applicable federal standards of performance;

c. Imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

d. Any combination of the conditions listed in this subsection (d).

(e) This section does not authorize the department to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, regulations of the board and permit conditions may be met by machinery, devices or equipment otherwise available.

(f) The issuance of a construction or operating permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any applicable regulations of the board. Any conditions placed upon a permit by the department shall be enforceable to the same extent as a regulation of the board.

(g) Any person who participated in a permitting action before the department shall be notified by the department of the action taken by the department and the reasons for the action. Notification of the applicant shall be by certified mail.

(h) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. The petition shall be made in writing to the board within 30 days from the date notice is given of the department's action. Unless a timely request for hearing is made, the decision of the department shall be final.

(i) If a timely petition for hearing is made, the board shall hold a hearing within 90 days after receipt of the petition. The board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

(j) The board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

(k) The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.

(l) Notwithstanding any other provision of law and subject to the provisions of NMSA 1978, § 74-2-4, a final decision on a permit by the department, the board or the court of appeals that a new source will or will not meet applicable local, state, and federal air pollution standards and regulations shall be conclusive and is binding on the county, the City of Albuquerque and every state agency and, as an issue before the same, shall be deemed resolved in accordance with that final decision.

(m) Fees collected pursuant to this section shall be deposited in a fund created pursuant to NMSA 1978, § 74-2-16 if collected pursuant to a permit regulation adopted by the board pursuant to this section.

(Ord. No. 94-5, § 7, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-7.*

Sec. 30-37. - Variances.

(a) The board may grant an individual variance from the limitations prescribed under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board, or any permit condition imposed by the department whenever it is found, upon presentation of adequate proof that:

(1) Compliance with any part of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board, or any permit condition will:

a. Result in an arbitrary and unreasonable taking of property; or

b. Impose an undue economic burden upon any lawful business, occupation or activity; and

(2) The granting of the variance will not:

a. Result in a condition injurious to health or safety; or

b. Cause or contribute to an air contaminant level in excess of any primary national ambient air standard.

(b) No variance shall be granted pursuant to this section until the board has considered the relative interests of the applicant, the other owners of property likely to be affected by the discharges and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

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

(2) If the variance is granted on the grounds that compliance with the particular requirements from which variance is sought will necessitate the taking of measures that, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the board, is requisite for the taking of the necessary measures. A variance granted on the grounds specified in this subsection (c)(2) shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable.

(3) If the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (c)(2) of this section, it shall be for not more than one year.

(d) Any person seeking a variance shall do so by filing a petition for variance with the director. The director shall promptly investigate the petition and make a recommendation to the board as to the disposition of the petition.

(e) Upon receiving the recommendation of the director on the variance, the board shall:

(1) If the recommendation of the director favors a variance, hold a public hearing prior to the granting of any variance; and

(2) If the director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

(f) In the hearing, the burden of proof shall be upon the petitioner.

(Ord. No. 94-5, § 8, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-8.*

Sec. 30-38. - Judicial review; administrative actions.

(a) Any person adversely affected by an administrative action taken by the board or the director may appeal to the court of appeals. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within 30 days following the date of the action being appealed.

(b) For appeals of regulations, that date of the action shall be the date of the filing of the regulation by the board pursuant to the State Rules Act, (NMSA 1978, §§ 14-3-24, 14-3-25, 14-4-1 et seq.).

(c) Upon appeal, the court of appeals shall set aside the action only if found to be:

(1) Arbitrary, capricious or an abuse of discretion;

(2) Not supported by substantial evidence in the record; or

(3) Otherwise not in accordance with law.

(d) After a hearing and a showing of good cause by the appellant, a stay of action being appealed may be granted:

(1) By the board or the director, whichever took the action being appealed; or

(2) By the court of appeals if the board or the director denies a stay or fails to act upon an application for a stay within 60 days after receipt of the application.

(Ord. No. 94-5, § 9, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-9.*

Sec. 30-39. - Emergency powers of the director.

(a) Notwithstanding any other provision of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any regulation of the board, if the director of the department determines that a source or combination of sources present an imminent and substantial endangerment to the public health or welfare or to the environment, the director may bring suit in the district court for the county to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

(b) If it is not practicable to ensure prompt protection of the public health or welfare or the environment by commencement of a civil action, the director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than 24 hours, unless the director brings a civil action before the expiration of the 24 hours. If the director brings an action within that time, the order shall be effective thereafter for 48 hours or for such longer period as may be authorized by the court pending litigation.

(Ord. No. 94-5, § 10, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-10.*

Sec. 30-40. - Confidential information.

(a) Any records, reports or information obtained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article by the board or the department shall be available to the public, except that upon a satisfactory showing to the director or the board, as applicable, by any person that records, reports or information, or particular parts thereof, except emission data, to which the director or the board has access under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), if made public would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the director or the board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of NMSA 1978, § 14-2-1 and 18 USC 1905, except that such record, report or other information may be disclosed:

(1) To other officers, employees or authorized representatives of the department or the board concerned with carrying out the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.);

(2) To officers, employees or authorized representatives of the United States Environmental Protection Agency concerned with carrying out the federal act; or

(3) When relevant, in any proceeding under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act.

(b) The board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.

(Ord. No. 94-5, § 11, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-11.*

Sec. 30-41. - Limitations on article regulations.

This article does not:

(1) Authorize the board to make any regulation with respect to any condition or quality of the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries;

(2) Grant to the board any jurisdiction or authority affecting the relation between employees and employers with respect to or arising out of any condition of air quality; or

(3) Supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

(Ord. No. 94-5, § 12, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-11.1.*

Sec. 30-42. - Enforcement; compliance orders; field citations.

(a) Whenever, on the basis of any information, the director determines that any person has violated or is violating any requirement or prohibition of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation promulgated pursuant to this article, or any condition of a permit issued pursuant thereto, the director may:

(1) Issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) Commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

(b) Any order issued pursuant to subsection (a) of this section may include a suspension or revocation of any permit, or portion of a permit, issued by the director. Any penalty assessed in the order shall not exceed $15,000.00 per day of noncompliance for each violation.

(c) Any order issued pursuant to subsection (a) of this section shall become final unless, no later than 30 days after the order is served, the person named in this section submits a written request to the director for a public hearing. Upon such request, the director shall promptly conduct a public hearing. The director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the director, who shall make the final decision.

(d) The board may adopt a field citation program though regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $1,000.00 per day of violation may be issued by officers or employees of the department as designated by the director. The program will be implemented by the department.

(e) Any person to whom a field citation is issued pursuant to subsection (d) of this section may, within a reasonable time as prescribed by regulation by the board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

(f) Payment of a civil penalty required by a field citation issued pursuant to subsection (d) of this section shall not be a defense to further enforcement by the department to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article if the violation continues.

(g) In determining the amount of any penalty to be assessed pursuant to this section, the director

or the individual issuing a field citation shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

(h) In connection with any proceeding under this section, the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

(i) Penalties collected pursuant to an administrative order or a field citation shall be deposited in the county or City of Albuquerque general fund, as applicable.

(Ord. No. 94-5, § 13, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-12.*

Sec. 30-43. - Civil penalty; representation of the county and the city.

(a) Any person who violates any provision of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board or any permit condition or emergency order adopted or issued pursuant to that act or this article may be assessed a civil penalty not to exceed $15,000.00 for each day during any portion of which a violation occurs.

(b) In any court action to enforce the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article or regulation, permit condition or emergency order, adopted, imposed or issued pursuant thereto:

(1) The county shall be represented by the district attorney; and

(2) The City of Albuquerque shall be represented by the city attorney.

(Ord. No. 94-5, § 14, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-12.1.*

Sec. 30-44. - Inspection.

The director or an authorized representative, upon presentation of departmental credentials:

(1) Shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the board or any permit conditions are located; and

(2) May at reasonable times:

a. Have access to and copy any records required to be established and maintained by regulations of the board or any permit condition;

b. Inspect any monitoring equipment and method required by regulation of the board or by any permit condition; and

c. Sample any emissions that are required to be sampled pursuant to regulation of the board or any permit condition.

(3) If premises described in subsection (1) or (2) of this section are unoccupied, a department employee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and demand entry.

(4) If entry is refused, the department shall proceed to obtain a search warrant by filing the documents and following the procedures required by the district court or metropolitan court. The sworn statement filed in conjunction with the application for the search warrant or order shall:

a. Set forth the particular premises, or portion of the premises, sought to be inspected;

b. State that the owner or occupant of the premises, or portion of the premises, has refused entry;

c. State that inspection of the premises or portion of the premises is necessary to determine whether it complies with the requirements of this article;

d. Set forth the particular provisions of this article sought to be enforced;

e. Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion of the premises, which constitutes a violation of this article; and

f. State that the department or the department's designated representative is authorized by the county manager to make the inspection.

(Ord. No. 94-5, § 15, 2-2-94)

State law reference— *Similar provisions, NMSA 1978, § 74-2-13.*

Sec. 30-45. - Enforcement summaries.

The department shall deliver to the county manager and the board of county commissioners, and to the mayor and city councilors or the designated representatives of any of them, a copy of the monthly enforcement summary which the department submits to the board.

(Ord. No. 94-5, § 16, 2-2-94)

Sec. 30-46. - Criminal penalties for violation of article.

(a) Any person who knowingly commits any violation of this article or NMSA 1978, § 74-2-14(C) shall be punished as provided in section 1-6

(b) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or a board regulation or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method to be maintained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article or regulation adopted pursuant thereto is guilty of a misdemeanor and shall, upon conviction, be punished as provided in section 1-6

(c) Except as provided in NMSA 1978, § 74-2-14(C), (D), any person who knowingly commits any violation of a regulation of the board is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-19-1.

(Ord. No. 94-5, § 17, 2-2-94)

Sec. 30-47. - Local air quality permit fund.

(a) Pursuant to NMSA 1978, § 74-2-16 and this article, the city will establish an environmental health department air quality permit fund.

(b) All fees collected by the department shall be deposited in the fund created in subsection (a) of this section, and shall be used by the city only for the purpose of paying the reasonable costs of funding the department's performance for the county and the city of the following permitting functions required by the federal Clean Air Act Amendments of 1990 as follows:

(1) Reviewing and acting upon any application for a permit;

(2) If the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis and demonstration; and

(6) Preparing inventories and tracking emissions.

(Ord. No. 94-5, § 18, 2-2-94)

Secs. 30-48—30-75. - Reserved.

FOOTNOTE(S):

(32) ***State Law reference***— *Air Quality Control Act, NMSA 1978, § 74-2-1 et seq.* (Back)