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FISCAL IMPACT REPORT

SPONSOR <u>Scott/Townsend/Gallegos/Ezzell</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/21/2025</u>
SHORT TITLE <u>Air Quality Control Act Civil Penalties</u>	BILL NUMBER <u>Senate Bill 391</u>
	ANALYST <u>Davidson</u>

REVENUE* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
Air Quality Act Civil Penalties Revenue		Up to (\$20,000)	Up to (\$20,000)	Up to (\$20,000)	Up to (\$20,000)	Recurring	General Fund

Parentheses () indicate revenue decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 New Mexico Environment Department (NMED)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Senate Bill 391

Senate Bill 391 amends sections of the Air Quality Control Act relating to civil penalties regarding noncompliance with or violation provisions of the act. The bill would amend the statute such that self-reported violations are not subject to civil penalties. The bill would also exclude violations due to a “mishap” or mechanical malfunction when the permittee can demonstrate they are taking the appropriate action to remedy the mishap or malfunction.

The effective date of this bill is July 1st, 2025.

FISCAL IMPLICATIONS

Analysis from the New Mexico Environment Department (NMED) notes Senate Bill 391 would eliminate the agency’s ability to collect civil penalties for “any reported violations.” Currently, NMED assesses civil penalties against non-compliant entities and then deposits the penalty amount into the general fund. In the previous year, NMED’s Air Quality Bureau (ABQ) collected and deposited \$20 million into the general fund from civil penalties related to noncompliance. If implemented, the bill would eliminate this fluctuating revenue.

SIGNIFICANT ISSUES

Health. While there is currently no universal consensus on recommending a specific setback distance to protect citizens, proximity to oil and gas production has been associated with health risks.¹ Oil and gas production produces varying levels of methane, particulate matter, nitrogen oxide, and other chemicals compounds to be released into the air.² These chemicals from fossil fuel production have been linked to increased risk of asthma, lung diseases, and mortality, with the risk of these diseases generally found to be increasing with closer proximity to production centers that produce air pollutants.

In their annual [network review](#), the New Mexico Environment Department’s Air Quality Bureau reported Eddy and Lea counties have some of the worst air quality in the state. Both counties were in the 95th-100th percentile of national levels for ozone and in the 95th-100th percentile of state levels for particulate matter.³ Both pollutants are linked to asthma, heart disease, and preterm births. Research is being conducted in the Permian Basin is being conducted to identify sources and locations of pollutants. Preliminary results show proximity to oil and gas production is likely the cause of higher pollutant levels in the region.⁴

Agency Analysis. Analysis from NMED notes Senate Bill 391 has the potential to place the state at a disadvantage regarding enforcement of its Air Quality Control Act:

The ability to pay provision in the Air Quality Bureau Civil Penalty Policy (“Policy”) penalizes those entities that have the fiscal resources to pay higher penalties, while protecting smaller entities from outsized penalties, in an effort to deter non-compliance with state laws, regulations and permit conditions. Moreover, entities with more fiscal resources generally, by extension, have more resources to invest in compliance assurance in ways that smaller entities might not. As the U.S. Environmental Protection Agency and U.S. Department of Justice similarly use the ability to pay consideration in their penalty calculations, SB391 would place New Mexico at a disadvantage in enforcement cases.

NMED analysis points to the current requirement that entities report excess emissions to the agency; excess emissions are generally not subject to penalty mitigation or reduction. Further, in most cases excess emissions violations for facilities are occurring year after year without the facility immediately fixing the issue which is causing the repeated violations. NMED raises concerns Senate Bill 391 would remove the ability for the agency to have penalties for these violations and could impede reporting, both options the agency uses as corrective action measures.

Currently, NMED already has rules in place which require entities who self-report excess emissions to provide an affirmative defense, which includes malfunctions emergency provisions. If a self-reporting entity does provide an affirmative defense, NMED will investigate what caused the excess emissions to determine if the defense is applicable. Additionally, major source or large facilities are required to document deviations from their permits and the governing

¹ Yu-Fei Xing, Impact of PM2.5 on human respiratory system, NCBI, NLM.gov, Jill Johnston, Impact of upstream oil extraction and environmental public health: a review of evidence, NCBI, NLM.gov

² U.S. Energy Information Administration, Oil and Petroleum Production Yearly Statistics, EIA.gov

³ Air Quality Bureau, New Mexico Air Quality Bureau Annual Network Review 2024, env.nmed.gov/air-quality

⁴ National Library of Medicine, International Journal of Environmental Research and Public Health, NCBI, NLM.gov

regulations semi-annually. NMED analysis notes the bill has the potential to effectively disallow any penalties for these major sources as long as they report semi-annually, rather than reporting more promptly as is required in current statute. NMED analysis raises concerns the bill could impact the state's air quality by reducing the incentive to comply with air quality regulations.

Analysis from the New Mexico Attorney General (NMAG) notes that state law and Air Quality Bureau policy surrounding regulation of emissions are in line with the federal standards set by the U.S. Environmental Protection Agency (EPA). NMAG analysis notes the bill would eliminate specific factors from NMED's Air Quality Bureau regarding regulation and would create conflict with the state's enforcement of EPA standards and enforcement of the federal Clean Air Act.

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