

74-2-2. Definitions.

As used in the Air Quality Control Act:

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

B. "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;

C. "department" means the department of environment;

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

E. "emission limitation" or "emission standard" means a requirement established by the environmental improvement board or the local board, the department, the local authority or the local agency 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 assure continuous reduction;

F. "federal act" means the federal Clean Air Act, its subsequent amendments and successor provisions;

G. "federal standard of performance" means a standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

H. "hazardous air pollutant" means an air contaminant that has been listed as a hazardous air pollutant pursuant to the federal act;

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

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

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

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

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

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

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

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

M. "modification" means a physical change in, or change in the method of operation of, a source that results in an increase in the potential emission rate of a regulated air contaminant emitted by the source or that results in the emission of a 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 environmental improvement board or the local 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 a natural gas curtailment or emergency allocation or an other lack of supply of natural gas;

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

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

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

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

R. "secretary" means the secretary of environment;

S. "significant deterioration" means an increase in the ambient concentrations of an 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;

T. "source" means a structure, building, equipment, facility, installation or operation that emits or may emit an air contaminant;

U. "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction;

V. "state implementation plan" means a plan submitted by New Mexico to the federal environmental protection agency pursuant to 42 U.S.C. Section 7410; and

W. "toxic air pollutant" means an air contaminant, except a hazardous air pollutant, classified by the environmental improvement board or the local board as a toxic air pollutant.

History: 1953 Comp., § 12-14-2, enacted by Laws 1967, ch. 277, § 2; 1970, ch. 58, § 1; 1971, ch. 277, § 20; 1972, ch. 51, § 2; 1973, ch. 322, § 1; 1977, ch. 253, § 36; 1979, ch. 393, § 1; 1981, ch. 373, § 1; 1983, ch. 34, § 1; 1989, ch. 278, § 2; 1992, ch. 20, § 1; 2001, ch. 133, § 1.