AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE WATER QUALITY ACT TO LIMIT RULEMAKING TO SPECIFIC AUTHORITY OF THE ACT.

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

Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation; New

~~C.~~ D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water

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quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

~~D.~~ E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the

[Deleted language: "shall not specify the method to be used to prevent or abate water pollution but"]

commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

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

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

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

(4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

~~E.~~ F. shall assign responsibility for administering

its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by this act;

~~F.~~ G. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

~~G.~~ H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution

within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

~~H.~~ I. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

~~I.~~ J. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

K. shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall

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consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

~~J.~~ L. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

~~K.~~ M. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment;

~~L.~~ N. shall not require a permit for applying less

than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and

~~M.~~ O. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act."

Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

"74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

A. By regulation, the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or reuse of septage or sludge.

B. The commission shall adopt regulations establishing procedures for certifying federal water quality permits.

C. Prior to the issuance of a permit, the

1 constituent agency may require the submission of plans,
2 specifications and other relevant information that it deems
3 necessary.
4 D. The commission shall by regulation set the
5 dates upon which applications for permits shall be filed and
6 designate the time periods within which the constituent
7 agency shall, after the filing of an administratively
8 complete application for a permit, either grant the permit,
9 grant the permit subject to conditions or deny the permit.
10 The constituent agency has the burden of showing that each
11 condition is reasonable and necessary to ensure compliance
12 with the Water Quality Act and applicable regulations,
13 considering site-specific conditions. After regulations have
14 been adopted for a particular industry, permits for
15 facilities in that industry shall be subject to conditions
16 contained in the regulations. Additional conditions on a
17 final permit may be imposed if the applicant is provided with
18 an opportunity to review and provide comments in writing on
19 the draft permit conditions and to receive a written
20 explanation of the reasons for the conditions from the
21 constituent agency.

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22 E. The constituent agency shall deny any
23 application for a permit or deny the certification of a
24 federal water quality permit if:
25 (1) the effluent would not meet applicable

state or federal effluent regulations, standards of performance or limitations;

(2) any provision of the Water Quality Act would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharge's effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharge's effect on surface waters shall be measured at the point of discharge; or

Deleted: "discharges'"

(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application:

(a) knowingly misrepresented a material fact in an application for a permit;

(b) refused or failed to disclose any information required under the Water Quality Act;

(c) been convicted of a felony or other crime involving moral turpitude;

(d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state or the United

States; or

(f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance, renewal or modification of a permit. Public notice shall include:

(1) for issuance or modification of a permit:

(a) notice by mail to adjacent and nearby landowners; local, state and federal governments; land grant organizations; ditch associations; and Indian nations, tribes or pueblos;

(b) posting at a place conspicuous to the public and near the discharge or proposed discharge site; and

(c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections; and

(2) for issuance of renewals of permits:

(a) notice by mail to the interested public, municipalities, counties, land grant organizations, ditch associations and Indian nations, tribes or pueblos; and

(b) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections.

G. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. Any person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

H. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

I. Permits shall be issued for fixed terms not to exceed five years, except that for new discharges, the term of the permit shall commence on the date the discharge

1 begins, but in no event shall the term of the permit exceed
2 seven years from the date the permit was issued.
3 J. By regulation, the commission may impose
4 reasonable conditions upon permits requiring permittees to:
5 (1) install, use and maintain effluent
6 monitoring devices;
7 (2) sample effluents and receiving waters
8 for any known or suspected water contaminants in accordance
9 with methods and at locations and intervals as may be
10 prescribed by the commission;
11 (3) establish and maintain records of the
12 nature and amounts of effluents and the performance of
13 effluent control devices;
14 (4) provide any other information relating
15 to the discharge or direct or indirect release of water
16 contaminants; and
17 (5) notify a constituent agency of the
18 introduction of new water contaminants from a new source and
19 of a substantial change in volume or character of water
20 contaminants being introduced from sources in existence at
21 the time of the issuance of the permit.
22 K. The commission shall provide by regulation a
23 schedule of fees for permits, not exceeding the estimated
24 cost of investigation and issuance, modification and renewal
25 of permits. Fees collected pursuant to this section shall be

deposited in the water quality management fund.

L. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

M. A permit may be terminated or modified by the constituent agency that issued the permit prior to its date of expiration for any of the following causes:

(1) violation of any condition of the permit;

(2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;

(3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;

(4) violation of any applicable state or federal effluent regulations or limitations; or

(5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

N. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or

permittee by certified mail of the action taken and the reasons. Notice shall also be given by mail to persons who participated in the permitting action.

O. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. Unless a timely petition for review is made, the decision of the constituent agency shall be final and not subject to judicial review. The petition shall:

(1) be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action;

(2) include a statement of the issues to be raised and the relief sought; and

(3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the constituent agency.

P. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition. The commission 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 review. If the petitioner is not the applicant or

1 permittee, the applicant or permittee shall be a party to the
2 proceeding. The commission shall ensure that the public
3 receives notice of the date, time and place of the review.
4 Q. The commission shall review the record compiled
5 before the constituent agency, including the transcript of
6 any public hearing held on the application or draft permit,
7 and shall allow any party to submit arguments. The
8 commission may designate a hearing officer to review the
9 record and the arguments of the parties and recommend a
10 decision to the commission. The commission shall consider
11 and weigh only the evidence contained in the record before
12 the constituent agency and the recommended decision of the
13 hearing officer, if any, and shall not be bound by the
14 factual findings or legal conclusions of the constituent
15 agency. Based on the review of the evidence, the arguments
16 of the parties and recommendations of the hearing officer,
17 the commission shall sustain, modify or reverse the action of
18 the constituent agency. The commission shall enter ultimate
19 findings of fact and conclusions of law and keep a record of
20 the review.
21 R. Prior to the date set for review, if a party
22 shows to the satisfaction of the commission that there was no
23 reasonable opportunity to submit comment or evidence on an
24 issue being challenged, the commission shall order that
25 additional comment or evidence be taken by the constituent

agency. Based on the additional evidence, the constituent agency may revise the decision and shall promptly file with the commission the additional evidence received and action taken. The commission shall consider the additional evidence within ninety days after receipt of the additional evidence and shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the review.

S. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action."