

## Chapter 9 Executive Department

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#### **9-7A-1. Short title.**

Sections 1 through 12 [[9-7A-1](#) through [9-7A-12](#) NMSA 1978] of this act may be cited as the "Department of Environment Act".

**History:** Laws 1991, ch. 25, § 1.

#### **9-7A-2. Definitions.**

As used in the Department of Environment Act:

A. "board" means the environmental improvement board;

B. "department" means the department of environment created under the Department of Environment Act; and

C. "secretary" means the secretary of environment.

**History:** Laws 1991, ch. 25, § 2.

#### **9-7A-3. Purpose.**

The purpose of the Department of Environment Act is to establish a single department to administer the laws and exercise the functions relating to the environment formerly administered and exercised by the health and environment department.

**History:** Laws 1991, ch. 25, § 3.

#### **9-7A-4. Department established.**

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There is created in the executive branch the "department of environment". The department shall be a cabinet department and shall include, but not be limited to, an information technology division and the programs and functions of the environmental improvement division. All references in the law to the environmental improvement agency or the environmental improvement division of the health and environment department shall be construed to mean the department. All references to the director of the environmental improvement division shall be construed to mean the secretary. The department shall consist of the staff of the environmental improvement division and such other powers, duties and personnel of the former health and environment department as may be assigned by the governor pursuant to executive order.

**History:** Laws 1991, ch. 25, § 4; 2005, ch. 110, § 4.

#### **9-7A-5. Secretary of environment; appointment.**

A. The administrative head of the department is the "secretary of environment", who shall be appointed by the governor with the consent of the senate and shall serve in the executive cabinet.

B. The secretary shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** Laws 1991, ch. 25, § 5.

#### **9-7A-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary, the department or any division of the department, except where authority conferred upon any division is explicitly exempt from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

- (1) except as otherwise provided in the Department of Environment Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;
- (2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating that delegated authority and the limitations thereto;
- (3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;
- (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;
- (5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;
- (6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

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- (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;
- (8) prepare an annual budget of the department;
- (9) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act [[Chapter 10, Article 9](#) NMSA 1978]. Persons appointed to these positions shall serve at the pleasure of the secretary;
- (10) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [[10-2-13](#) through [10-2-16](#) NMSA 1978]. The department shall pay the costs of those bonds; and
- (11) require performance bonds of department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.
- C. The secretary may apply for and receive, with the governor's approval and in the name of the department, any public or private funds, including, but not limited to, United States government funds, available to the department to carry out its programs, duties or services.
- D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no procedural regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [[Chapter 14, Article 4](#) NMSA 1978].

**History:** Laws 1991, ch. 25, § 6.

#### **9-7A-7. Organizational units of the department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 6 [[9-7A-6](#) NMSA 1978] of the Department of Environment Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** Laws 1991, ch. 25, § 7.

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#### **9-7A-8. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act [[Chapter 10, Article 9](#) NMSA 1978].

**History:** Laws 1991, ch. 25, § 8.

#### **9-7A-9. Bureaus; chiefs.**

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Environment Act. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act [[Chapter 10, Article 9](#) NMSA 1978] unless otherwise provided by law.

**History:** Laws 1991, ch. 25, § 9.

#### **9-7A-10. Advisory committees.**

A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [[9-1-1](#) through [9-1-10](#) NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978].

**History:** Laws 1991, ch. 25, § 10.

#### **9-7A-11. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of environmental programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement environmental programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program when that designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** Laws 1991, ch. 25, § 11.

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#### **9-7A-12. Environmental improvement board; exemptions from authority of secretary.**

The environmental improvement board shall receive staff support from the department. All powers, duties and responsibilities of the environmental improvement board under [Sections 25-1-1](#) through 25-1-14, [25-2-1](#) through [25-2-19](#), [25-5-1](#) through [25-5-9](#), [50-9-1](#), through [50-9-25](#), [74-1-1](#) through 74-1-11, [74-2-1](#) through [74-2-17](#), [74-3-1](#) through [74-3-16](#), [74-4-1](#) through [74-4-13](#), [74-4A-1](#) through 74-4A-19, [74-6B-1](#) through 74-6B-11 [repealed], [74-7-1](#) through [74-7-8](#), 7-8-1 through 7-8-3 [74-8-1 through 74-8-3], [74-9-1](#) through [74-9-42](#) and [75-1-1](#) through [75-1-6](#) NMSA 1978 are explicitly exempt from the authority of the secretary under the provisions of Subsection B of Section 6 [[9-7A-6](#) NMSA 1978] of the Department of Environment Act.

**History:** Laws 1991, ch. 25, § 12.

#### **9-7A-13. Water quality control commission; exemptions from authority of secretary of environment.**

The water quality control commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the water quality control commission under [Sections 47-6-11](#), [74-6-3](#) through [74-6-8](#), [74-6-10](#) and [74-6-12](#) NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [[9-7A-6](#) NMSA 1978] of the Department of Environment Act.

**History:** 1978 Comp., § 9-7-14, enacted by Laws 1977, ch. 253, § 77; recompiled as 1978 Comp., § 9-7A-13; 1991, ch. 25, § 25.

#### **9-7A-14. Occupational health and safety review commission; exemptions from authority of secretary of environment.**

The occupational health and safety review commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the occupational health and safety review commission under [Sections 50-9-9](#), [50-9-17](#) and [50-9-24](#) NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [[9-7A-6](#) NMSA 1978] of The [the] Department of Environment Act.

**History:** 1978 Comp., § 9-7-15, enacted by Laws 1977, ch. 253, § 78; recompiled as 1978 Comp., § 9-7A-14; 1991, ch. 25, § 26.

#### **9-7A-15. Technical advisory committee created; duties and powers of the committee.**

A. The "wastewater technical advisory committee" is created. The committee shall consist of five members to be appointed by and to serve at the pleasure of the secretary of environment.

The members shall include:

- (1) a wastewater treatment system engineer with at least ten years of experience in wastewater system design and construction;
- (2) a faculty member from a university or college located within New Mexico with a minimum of a master's degree in biological science, microbiology, soil science or engineering, and with a minimum of ten years of work or academic experience with wastewater treatment or wastewater treatment facility management;

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(3) a representative from the New Mexico state university water utilities technical assistance program;

(4) a class IV certified wastewater operator with at least ten years of experience; and

(5) a representative from the New Mexico home builders association.

B. The term of appointed members shall be three years. Members shall serve until their successors are appointed. Vacancies occurring in the membership of an appointed member shall be filled by the secretary for the remainder of the unexpired term.

C. The committee shall conduct open meetings as needed, but not less than quarterly.

D. The department of environment shall provide technical and legal assistance to the committee as needed.

E. The committee shall:

(1) establish procedures, practices and policies governing the committee's activities;

(2) provide standardized objective evaluation of wastewater treatment and disposal technologies for both large- and small-flow domestic, commercial and agricultural wastewater systems and submit its findings to the secretary for final approval by the secretary, who shall add the wastewater treatment and disposal technologies to the list of approved technologies maintained by the department, including the ground water quality bureau and the liquid waste program of the field operations division of the department of environment and their constituent agencies; and

(3) maintain a current list of approved wastewater technologies accessible by the public on the department's internet site.

F. Members of the committee shall receive reimbursement for expenses incurred in the performance of their duties pursuant to the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance. Expenditures for this purpose shall be made from the budgeted funds of the department.

**History:** Laws 2003, ch. 99, § 1.