

CHAPTER 74

Environmental Improvement

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Article

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74-1-1. Short title.

[Chapter 74, Article 1](#) NMSA 1978 may be cited as the "Environmental Improvement Act".

History: 1953 Comp., § 12-19-1, enacted by Laws 1971, ch. 277, § 1; recompiled as 1953 Comp., § 12-12-1 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 1; 1997, ch. 139, § 1.

74-1-2. Purpose of Environmental Improvement Act.

The purpose of the Environmental Improvement Act is to create a department that will be responsible for environmental management and consumer protection in this state in order to ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people.

History: 1953 Comp., § 12-19-2, enacted by Laws 1971, ch. 277, § 2; recompiled as 1953 Comp., § 12-12-2 by Laws 1972, ch. 51, § 9; 1997, ch. 139, § 2.

74-1-3. Definitions.

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As used in the Environmental Improvement Act:

- A. "board" means the environmental improvement board;
- B. "department" or "environmental improvement department" means the department of environment;
- C. "on-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. "On-site liquid waste system" includes holding tanks and privies but does not include systems or facilities designed to receive or treat mine or mill tailings or wastes;
- D. "person" means the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity and includes any officer or governing or managing body of any political subdivision or public or private corporation;
- E. "residential on-site liquid waste system" means an on-site liquid waste system serving up to four dwelling units; and
- F. "secretary" means the secretary of environment.

History: 1953 Comp., § 12-19-3, enacted by Laws 1971, ch. 277, § 3; recompiled as 1953 Comp., § 12-12-3 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 2; 1977, ch. 253, § 34; 1982, ch. 73, § 21; 1991, ch. 25, § 29; 1997, ch. 139, § 3.

74-1-4. Environmental improvement board; creation; organization.

A. There is created the "environmental improvement board". The board shall consist of seven members appointed by the governor, by and with the advice and consent of the senate. The members of the board shall be appointed for overlapping terms, with no term exceeding five years. No more than four members shall be appointed from any political party. At least a majority of the membership of the board shall be individuals who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the federal Clean Air Act or the Air Quality Control Act [[74-2-1](#) NMSA 1978]. Any vacancy occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term.

B. The members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [[10-8-1](#) NMSA 1978].

C. The board shall elect from its membership a chairman, vice chairman and secretary and shall establish the tenure of these offices. The board shall convene upon the call of the chairman or a majority of its members. Four members shall constitute a quorum.

History: 1953 Comp., § 12-19-5, enacted by Laws 1971, ch. 277, § 5; recompiled as 1953 Comp., § 12-12-5 by Laws 1972, ch. 51, § 9; 1990, ch. 31, § 1; 1997, ch. 139, § 4; 2001, ch. 145, § 1.

74-1-5. Environmental improvement board; duties.

The board shall promulgate all regulations applying to persons and entities outside of the department.

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History: 1953 Comp., § 12-19-6, enacted by Laws 1971, ch. 277, § 6; recompiled as 1953 Comp., § 12-12-6 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 3; 1997, ch. 139, § 5.

74-1-6. Department; powers.

The department shall have power to:

- A. sue and be sued;
- B. make contracts to carry out its delegated duties;
- C. enter into agreements with environmental and consumer protection agencies of other states and the federal government pertaining to duties of the department;
- D. enter into investigation and remediation agreements with persons potentially responsible for sites within New Mexico subject to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and such agreements shall not duplicate or take any authority from the oil conservation commission;
- E. serve as agent of the state in matters of environmental management and consumer protection not expressly delegated by law to another department, commission or political subdivision in which the United States is a party;
- F. enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction;
- G. collect civil penalties pursuant to law, including reduction or elimination of penalties for violations from persons that:
 - (1) within sixty days of the discovery of a potential violation, voluntarily report to the department potential violations of law enforced by the department;
 - (2) initiate corrective action for the potential violation;
 - (3) have not previously violated the same provision of law; and
 - (4) do not present an imminent and substantial endangerment to health or the environment by the potential violation.
- H. on the same basis as any other person, recommend and propose regulations for promulgation by the board;
- I. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the board or any other administrative agency with responsibility in the areas of environmental management or consumer protection, but shall not be given any special status over any other party; and
- J. have such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department.

History: 1953 Comp., § 12-19-9, enacted by Laws 1971, ch. 277, § 9; recompiled as 1953 Comp., § 12-12-9 by Laws 1972, ch. 51, § 9; 1977, ch. 253, § 35; 1982, ch. 73, § 22; 1991, ch. 25, § 30; 1994, ch. 124, § 1; 1997, ch. 139, § 6; 2009, ch. 42, § 1.

74-1-7. Department; duties.

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A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce rules and standards in the following areas:

- (1) food protection;
- (2) water supply, including implementing a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and establishing administrative penalties for enforcement;
- (3) liquid waste, including exclusive authority to collect on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;
- (4) air quality management as provided in the Air Quality Control Act [[Chapter 74, Article 2](#) NMSA 1978];
- (5) radiation control as provided in the Radiation Protection Act [[Chapter 74, Article 3](#) NMSA 1978];
- (6) noise control;
- (7) nuisance abatement;
- (8) vector control;
- (9) occupational health and safety as provided in the Occupational Health and Safety Act [[Chapter 50, Article 9](#) NMSA 1978];
- (10) sanitation of public swimming pools and public baths;
- (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;
- (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act [Medical Imaging and Radiation Therapy Health and Safety Act, [Chapter 61, Article 14E](#) NMSA 1978];
- (13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act [[Chapter 74, Article 4](#) NMSA 1978]; and
- (14) solid waste as provided in the Solid Waste Act [[74-9-1](#) through [74-9-43](#) NMSA 1978].

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

History: 1953 Comp., § 12-19-10, enacted by Laws 1971, ch. 277, § 10; recompiled as 1953 Comp., § 12-12-10 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 5; 1977, ch. 122, § 5; 1983, ch. 317, § 13; 1989, ch. 223, § 1; 1989, ch. 289, § 2; 1990, ch. 99, § 64; 1997, ch. 139, § 7; 1999, ch. 203, § 1; 2000, ch. 86, § 1; 2000, ch. 96, § 1.

74-1-7.1. Green zia program; business sensitive information confidential.

A. The department may develop and administer a pollution prevention program to be known as the "green zia program". The department may enter into contracts with the federal government,

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promulgate rules and take other actions appropriate and necessary to produce an efficient and effective program.

B. Information provided to the department in accordance with the green zia program may be subject to confidentiality if the person furnishing the information demonstrates to the department that the information would divulge confidential methods or processes entitled to protection as trade secrets. If the department determines that the information is subject to confidentiality, the secretary shall promulgate a determination of confidentiality with an order of confidentiality. Confidential information may be disclosed to employees or authorized representatives of the department, but they shall not disclose the information to any other person.

C. A person who violates an order of confidentiality by disclosing confidential information pursuant to this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) per violation or by imprisonment for a definite term of one year or both.

History: Laws 2001, ch. 93, § 1.

74-1-8. Board; duties.

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate rules and standards in the following areas:

- (1) food protection;
- (2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and rules authorizing imposition of administrative penalties for enforcement;
- (3) liquid waste, including exclusive authority to establish on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;
- (4) air quality management as provided in the Air Quality Control Act [Chapter [74](#), Article [2](#) NMSA 1978];
- (5) radiation control as provided in the Radiation Protection Act [Chapter [74](#), Article [3](#) NMSA 1978];
- (6) noise control;
- (7) nuisance abatement;
- (8) vector control;
- (9) occupational health and safety as provided in the Occupational Health and Safety Act [Chapter [50](#), Article [9](#) NMSA 1978];
- (10) sanitation of public swimming pools and public baths;
- (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;
- (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act [Medical Imaging and Radiation Therapy Health and Safety Act, Chapter [61](#), Article [14E](#) NMSA 1978];

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(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act [Chapter [74](#), Article [4](#) NMSA 1978]; and

(14) solid waste as provided in the Solid Waste Act [[74-9-1](#) through [74-9-43](#) NMSA 1978].

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund.

D. On-site liquid waste system fees shall be deposited in the liquid waste fund.

History: 1953 Comp., § 12-19-11, enacted by Laws 1971, ch. 277, § 11; recompiled as 1953 Comp., § 12-12-11 by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 6; 1977, ch. 122, § 6; 1983, ch. 317, § 14; 1989, ch. 223, § 2; 1989, ch. 289, § 3; 1990, ch. 99, § 65; 1993, ch. 100, § 2; 1997, ch. 139, § 8; 1999, ch. 203, § 2; 2000, ch. 86, § 2; 2000, ch. 96, § 2.

74-1-8.1. Legal advice.

A. In the exercise of any of its powers or duties, the board shall act with independent legal advice. The manner in which such advice is provided shall be determined by the board, but from among one of the following:

- (1) the office of the attorney general;
- (2) independent counsel hired by the board, whether full- or part-time; or
- (3) another state agency whose function is sufficiently distinct from the department of environment to assure independent, impartial advice.

B. Notwithstanding the provisions of Subsection A of this section, attorneys from the department may act for the board in lawsuits filed against or on behalf of the board, and the attorney general may, at the request of the board, file and defend lawsuits on behalf of the board.

History: 1978 Comp., § 74-1-8.1, enacted by Laws 1982, ch. 73, § 23; 1991, ch. 25, § 31; 1997, ch. 139, § 9.

74-1-8.2. Recompiled.

74-1-8.3. Repealed.

74-1-9. Adoption of regulations; notice and hearing; appeal.

A. Any person may recommend or propose regulations to the board for promulgation. The board shall determine whether or not to hold a hearing within sixty days of submission of a proposed regulation.

B. No regulation shall be adopted until after a public hearing by the board. As used in this section, "regulation" includes any amendment or repeal thereof. Hearings on regulations of nonstatewide application shall be held within that area which is substantially affected by the regulation. Hearings on regulations of statewide application may be held at Santa Fe or within any

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area of the state substantially affected by the regulation. In making its regulations, the board shall give the weight it deems appropriate to all relevant facts and circumstances presented at the public hearing, including but not limited to:

- (1) character and degree of injury to or interference with health, welfare, animal and plant life, property and the environment;
- (2) the public interest, including the social, economic and cultural value of the regulated activity and the social, economic and cultural effects of environmental degradation; and
- (3) technical practicability, necessity for and economic reasonableness of reducing, eliminating or otherwise taking action with respect to environmental degradation.

C. The standards for regulations set forth in Subsection A [Subsection B] of this section do not apply to the promulgation of regulations under the Air Quality Control Act [[Chapter 74, Article 2](#) NMSA 1978]; or any other act in which specific standards are set forth for the board's consideration.

D. Notice of the hearing shall be given at least sixty 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 proposed language amending any existing regulation or any proposed new regulation shall be made available to the public as of the date the notice of the hearing is given. The notice shall also state where interested persons may secure copies of any proposed amendment or new regulation. The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings.

E. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, proposed changes to the proposed regulation, 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.

F. The board may designate a hearing officer to take evidence in the hearing. A transcript shall be made of the entire hearing proceedings.

G. No regulation or amendment or repeal thereof adopted by the board shall become effective until thirty days after its filing under the State Rules Act [[Chapter 14, Article 4](#) NMSA 1978].

H. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All such appeals shall be upon the transcript made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act.

I. The procedure for perfecting an appeal to the court of appeals under this section consists of the timely filing of a notice of appeal with a copy attached to the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the board.

- J. Upon appeal, the court of appeals shall set aside the regulation only if found to be:
- (1) arbitrary, capricious or an abuse of discretion;
 - (2) not supported by substantial evidence in the transcript; or
 - (3) otherwise not in accordance with law.

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History: 1953 Comp., § 12-19-13, enacted by Laws 1971, ch. 277, § 13; recompiled as 1953 Comp., § 12-12-13, by Laws 1972, ch. 51, § 9; 1973, ch. 340, § 7; 1974, ch. 64, § 1; 1982, ch. 73, § 24; 1985, ch. 17, § 1.

74-1-10. Penalty.

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (2) or (3) of Subsection A of [Section 74-1-8](#) NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period and 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.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars (\$1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars (\$100) for each violation. A penalty imposed for violation of drinking water regulations 20 NMAC 7.1 or permit conditions shall not exceed one thousand dollars (\$1,000) per violation per day. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If a violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars (\$1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of [Section 74-1-8](#) NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

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G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of [Section 74-1-8](#) NMSA 1978 shall be deposited in the state treasury to be credited to the general fund.

H. Penalties collected pursuant to violations of drinking water regulations 20 NMAC 7.1 or permit conditions pursuant to Paragraph (2) of Subsection A of [Section 74-1-8](#) NMSA 1978 shall be deposited in the state treasury to the credit of the water conservation fund.

History: 1953 Comp., § 12-12-14, enacted by Laws 1973, ch. 340, § 8; 1997, ch. 139, § 10; 1999, ch. 203, § 3.

74-1-11. Repealed.

74-1-12. Compliance with the federal Safe Drinking Water Act; purpose.

The purpose of this section and [Section 74-1-13](#) NMSA 1978 is to provide:

- A. an incentive for conservation of water, the state's most precious resource; and
- B. funding for certain locations in the state to comply with the federal Safe Drinking Water Act in which the United States congress mandated that the United States environmental protection agency establish drinking water standards for contaminants, require filtration and disinfection for all public water supply systems, increase enforcement authority, establish public notification requirements, implement a lead ban and implement a capacity development program for existing and newly created water systems.

History: Laws 1993, ch. 317, § 1; 1999, ch. 203, § 4.

74-1-13. Water conservation fee; imposition; definitions.

A. There is imposed on every person who operates a public water supply system a water conservation fee in an amount equal to three cents (\$.03) per thousand gallons of water produced on which the fee imposed by this subsection has not been paid.

B. The "water conservation fund" is created in the state treasury and shall be administered by the department. The fund shall consist of water conservation fees collected pursuant to this section. Balances in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. Money in the water conservation fund is appropriated to the department for administration of a public water supply program to:

(1) test public water supplies for the contaminants required to be tested pursuant to the provisions of the federal Safe Drinking Water Act, as amended, and collect chemical compliance samples as required by those provisions of the federal act;

(2) perform vulnerability assessments that will be used to assess a public water supply's susceptibility to those contaminants; and

(3) implement new requirements of the Utility Operators Certification Act [Chapter [61](#), Article [33](#) NMSA 1978] and provide training for all public water supply operators.

D. The taxation and revenue department shall provide by regulation for the manner and form of collection of the water conservation fee. All water conservation fees collected by the taxation and revenue department, less the administrative fee withheld pursuant to Section [7-1-6.41](#) NMSA 1978, shall be deposited in the water conservation fund.

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E. The fee imposed by this section shall be administered in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] and shall be paid to the taxation and revenue department by each person who operates a public water supply system in the manner required by the department on or before the twenty-fifth day of the month following the month in which the water is produced.

F. Each operator of a public water supply system shall register and comply with the provisions of Section 7-1-12 NMSA 1978 and furnish such information as may be required by the taxation and revenue department.

G. The department shall compile a list of the contaminants that require testing pursuant to Paragraph (1) of Subsection C of this section. The list shall be compiled no less than once every twelve months and include the contaminants that will be tested in the subsequent twelve months. The department shall establish by rule procedures to compile the list and to determine which contaminants that require testing will be tested in the subsequent twelve months. The determination of which contaminants will be tested shall include consideration of the availability of funds in the water conservation fund, the needs of the public water supplies being tested for additional contaminants and public health and safety.

H. As used in this section:

(1) "person" means any individual or legal entity and also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof; and

(2) "public water supply system" means a system that provides piped water to the public for human consumption and that has at least fifteen service connections or regularly services an average of at least twenty-five individuals at least sixty days per year.

History: Laws 1993, ch. 317, § 2; 1997, ch. 125, § 11; 2013, ch. 128, § 1.

74-1-13.1. Nontransient noncommunity public water systems; definition; testing and notice requirements.

A. The department of environment shall test nontransient noncommunity water systems for arsenic, fluoride and radionuclides and adopt rules for reporting and public notification for those contaminants comparable to reporting and notification requirements for community water systems. Money in the water conservation fund may be used to fulfill the requirements of this subsection.

B. As used in this section:

(1) "community water system" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents; and

(2) "nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year including but not limited to schools and factories.

History: Laws 2001, ch. 148, § 1.

74-1-14. County or municipal authority regarding on-site liquid waste system.

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Nothing in [Chapter 74, Article 1](#) NMSA 1978 limits or is intended to limit the authority of any county or municipality to adopt and enforce requirements related to on-site liquid waste systems that are at least as stringent as those in that article; provided, however, that the county or municipality has, on staff or under contract, either a registered professional engineer with education or experience in sanitary engineering or a class II wastewater operator certified by the state of New Mexico.

History: Laws 1997, ch. 139, § 11.

74-1-15. Liquid waste fund created.

The "liquid waste fund" is created in the state treasury. On-site liquid waste system fees shall be deposited in the fund. Money in the fund is appropriated to the department for administration of liquid waste regulations, and no more than two hundred thousand dollars (\$200,000) from unexpended money in the fund may be transferred to the liquid waste disposal system assistance fund, if enacted into law by the first session of the forty-ninth legislature. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary of environment's designee. Any unexpended or unencumbered balance or income earned from the money in the liquid waste fund remaining at the end of any fiscal year shall not revert to the general fund.

History: Laws 2000, ch. 96, § 3; 2009, ch. 203, § 2.

74-1-15.1. Liquid waste disposal system assistance fund; created; purpose.

A. The "liquid waste disposal system assistance fund" is created in the state treasury. The department shall administer the fund. The fund may be composed of appropriations and transfers of money earned from investment of the fund and otherwise accruing to the fund and transfers of money from the liquid waste fund not to exceed two hundred thousand dollars (\$200,000) from the unexpended balance in the fund. Balances remaining in the fund at the end of a fiscal year shall remain to the credit of the fund. Disbursements from the fund shall be drawn on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary's authorized representative. Money in the fund is appropriated to the department for the sole purpose of assisting indigent individuals or households that qualify for funding to accomplish one of the following purposes where there is a real or potential negative impact to public health or water quality from on-site liquid waste disposal system effluent:

- (1) to pay for a liquid waste disposal system to replace a cesspool or other failed or improper on-site liquid waste disposal system;
- (2) to purchase, install or maintain an advanced treatment system as required by the Environmental Improvement Act or regulations issued pursuant to that act;
- (3) to pay for the decommissioning and removal of a cesspool or other failed or improper on-site liquid waste disposal system; or
- (4) to pay for all or a portion of the connection fees in order to connect an individual or household to a centralized wastewater collection and treatment system.

B. Construction activities sponsored by the fund shall be performed by licensed contractors selected through competitive bid by the department and shall be managed by the department.

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C. No more than five percent of the fund shall be used by the department on an annual basis to pay for the department costs associated with management and implementation of fund activities.

D. As used in this section:

(1) "advanced treatment system" means an on-site liquid wastewater treatment system that removes a greater amount of contaminants than is accomplished by a primary treatment system;

(2) "connection fee" means the fee paid directly to a public water or wastewater system or other wastewater management organization and does not include other fees, such as legal fees, related to connecting an individual or household to a centralized wastewater collection and treatment system; and

(3) "indigent individuals or households" means individuals or households whose annual incomes do not exceed the federal poverty guidelines.

History: Laws 2009, ch. 203, § 1.

74-1-16. Water recreation facilities fund; created; fee imposition; purpose.

A. The "water recreation facilities fund" is created in the state treasury to be used to administer and enforce rules pertaining to public swimming pools, public spas and other public water recreation facilities. All fees collected pursuant to Subsection B of this section shall be deposited in the fund. Money in the fund shall not be transferred to any other fund. Disbursements from the fund shall be drawn on warrant of the secretary of finance and administration upon vouchers signed by the secretary of environment or his authorized representative.

B. The environmental improvement board may assess an annual fee not to exceed one hundred fifty dollars (\$150) on the owner or operator of a public swimming pool, public spa or other public water recreation facility to defray the cost of administering and enforcing rules adopted in accordance with the Environmental Improvement Act pertaining to public water recreation facilities. The fee shall be based on the size of the public water recreation facility.

History: Laws 2003, ch. 335, § 1.

74-1-17. Nuclear workers assistance fund created.

The "nuclear workers assistance fund" is created in the state treasury. The fund shall consist of money earned from investment of the fund and otherwise accruing to the fund and up to one-half of one percent of any award for an initial claim, including a claim for medical benefits, filed by the department on behalf of the claimants with the federal office of workers' compensation program, under the federal Energy Employees Occupational Illness Compensation Program Act of 2000, 42 USC 7384 et seq., or up to five percent of any award after the department files objections to a recommended decision denying an award, which shall be transmitted to the state treasurer for credit to the nuclear workers assistance fund. Balances remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund. The department shall administer the fund, and money in the fund is appropriated to the department for the purpose of the administration of a program to assist nuclear workers seeking claims under the federal Energy Employees Occupational Illness Compensation Program Act of 2000, 42 USC 7384 et seq. Money from the fund may be drawn on warrants of the secretary of finance and administration

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pursuant to vouchers signed by the secretary of environment or the secretary of environment's designee.

History: Laws 2010, ch. 50, § 1.

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ARTICLE 7
Environmental Compliance

Section

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74-7-1. Short title.

This act [[74-7-1](#) through [74-7-8](#) NMSA 1978] may be cited as the "Environmental Compliance Act".

History: Laws 1983, ch. 29, § 1.

74-7-2. Purpose of act.

The purpose of the Environmental Compliance Act is to foster a sensitivity to the environment, to improve industry's compliance with environmental regulations that seek to maintain the delicate ecological balance while still pursuing the industrial and technological development of New Mexico, to implement a systematic procedure to review compliance with environmental regulations and to improve the environmental regulatory process by enhancing communication between industry and regulatory agencies.

History: Laws 1983, ch. 29, § 2.

74-7-3. Definitions.

As used in the Environmental Compliance Act:

A. "board" means the environmental improvement board;

B. "director" means the director of the division;

C. "division" means the environmental improvement division of the health and environment department [department of environment];

D. "environmental audit" means a systematic assessment, analysis and evaluation by a regulated entity of its compliance with environmental laws and regulations administered by the board and the division, applicable to its operation; and

E. "regulated entity" means any person, partnership, corporation, firm, association, governmental or other entity organized and engaging in any business or activity in the state which deals with or has an impact on the environment of this state or which must by law comply with federal or state environmental protection regulations.

History: Laws 1983, ch. 29, § 3.

74-7-4. Board; duties.

The duties of the board are to:

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A. develop and maintain regulations and standards regarding environmental auditing programs; and

B. promulgate other regulations as necessary to carry out the provisions of the Environmental Compliance Act.

History: Laws 1983, ch. 29, § 4.

74-7-5. Adoption of regulations; notice and hearing; appeal.

A. No regulations shall be adopted pursuant to the Environmental Compliance Act until after a public hearing by the board. As used in this section, "regulation" includes any amendment or repeal thereof. Hearings on regulations shall be held pertaining to that environmental area which is substantially affected by the regulation. In making a regulation, the board shall give the weight it deems appropriate to all relevant facts and circumstances presented at the hearing, including but not limited to:

(1) the protection of the health and welfare of both the general public and the individual worker and the maintenance of the delicate ecological balance;

(2) the necessity for and technical practicability and economic reasonableness of taking action with respect to environmental auditing programs;

(3) the need to protect private proprietary processes;

(4) the level of management support within the specific regulated entity for the environmental auditing program;

(5) a regulated entity's established procedures to ensure compliance and correction of any environmental standards that are violated; and

(6) compliance with the requirements of the following federal laws and their associated standards, regulations and state implementing directives:

(a) the National Environmental Policy Act of 1969;

(b) the Federal Water Pollution Control Act;

(c) the Safe Drinking Water Act;

(d) the Resource Conservation and Recovery Act of 1976;

(e) the Used Oil Recycling Act of 1980;

(f) the Clean Air Act;

(g) the Toxic Substances Control Act;

(h) the Occupational Safety and Health Act of 1970;

(i) the Noise Control Act of 1972;

(j) the Hazardous Materials Transportation Act; and

(k) the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

B. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, time and place of the hearing and the manner in which interested persons may present their views. The notice shall state where interested persons may secure copies of any proposed regulation. The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings.

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C. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, pertaining to the feasibility of conducting environmental audits.

D. No regulation or amendment or repeal thereof adopted by the board shall become effective until thirty days after its filing pursuant to the State Rules Act [[Chapter 14](#), Article 4 NMSA 1978].

E. Any person who is affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All appeals shall be upon the transcript made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation pursuant to the State Rules Act.

History: Laws 1983, ch. 29, § 5.

74-7-6. Division; duties.

The division shall establish guidelines for regulated entities concerning environmental auditing programs pursuant to the rules and regulations adopted in compliance with the Environmental Compliance Act.

History: Laws 1983, ch. 29, § 6.

74-7-7. Regulated entities; environmental auditing programs.

Regulated entities may in cooperation with the division develop environmental auditing programs in compliance with the rules and regulations adopted pursuant to the Environmental Compliance Act and may then apply to the division for certification. These environmental auditing programs shall be reviewed by the division and, upon a determination of compliance with established rules and regulations, shall be certified.

History: Laws 1983, ch. 29, § 7.

74-7-8. Board and division; incentives.

Regulated entities shall be allowed a reasonable time as determined by the division to correct any potential problem areas identified in the environmental auditing process. The board and division shall develop incentives to encourage regulated entities to participate in the Environmental Compliance Act.

History: Laws 1983, ch. 29, § 8.