

Synopsis of Bill

Energy and Natural Resources Committee Substitute for House Bill 189 makes changes to the Environmental Improvement Act, 74-1-1 NMSA 1978 thru 74-1-17 NMSA 1978.

The bill prohibits any person regulated by the department to:

(1) make a false statement or representation to an employee of the department, whether oral, written or visual; (2) make a false statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed with or submitted to the department, or required by rule to be maintained by the person regulated by the department; (3) falsify, tamper with or render inaccurate any device, method or record to be relied upon by the department to monitor or track information; (4) falsify or conceal a material fact; or (5) make or use any document with the knowledge that the document contains material false statements or representations.

Penalties are then outlined for violation of the restrictions.

- Fourth degree felony: for a person who knowingly makes or takes or knowingly causes or allows another person to make or take the prohibited actions in conducting business with the department;
- Third degree felony: for both a second violation and for a person who knowingly makes or takes a prohibited action or knowingly causes or allows another person to make or take a prohibited action, and whose action results in an adverse environmental impact; and
- Second degree felony: for a person who knowingly makes or takes a prohibited action or knowingly causes or allows another person to make or take a prohibited action, and whose action creates a substantial danger of death or serious bodily injury to another person.

In addition, a person who negligently violates or negligently causes or allows another person to violate Subsection A of this section may be issued a compliance order pursuant to Section 74-1-10 NMSA 1978 with a penalty of up to ten thousand dollars (\$10,000) and may be ordered to take any action the department finds necessary to remediate the consequences of the person's negligent violation. A monetary penalty shall not be assessed under this subsection for a negligent violation that is discovered by the person regulated by the department, provided that the person immediately notifies the department of the negligent violation in writing and agrees in writing to promptly take any action the department finds necessary to remediate the consequences

Persons "regulated by the department" includes: (1) an applicant for or holder of a liquid waste permit issued or to be issued pursuant to the Environmental Improvement Act and applicable rules; (2) a person who owns a liquid waste system subject to a permit requirement who has failed to obtain the required permit; (3) an owner or operator of a public water system subject to the Environmental Improvement Act and applicable rules; or (4) an agent or other person acting on behalf of any of the persons covered by Paragraphs (1) through (3) of this subsection."

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

NMED periodically receives information which has been knowingly falsified from persons regulated by the Department in the areas of drinking water and liquid waste. False information submitted to the Department can have serious public health consequences, can lead to significant costs to innocent individuals and businesses, and can compromise NMED's regulatory programs. For example, a contractor who tests drinking water quality for the Department and reports its results to the Department has reported receiving a drinking water sample where a disinfectant had been added to prevent detection of bacterial contamination. The motive for falsifications is likely that it would relieve a rural water system from the burden of repeat testing, additional trips to a laboratory, and investigation to resolve the problem. Children and the elderly are especially susceptible to bacteriological contamination in their water. Some contamination (certain types of *E. coli*) can permanently damage kidneys leading to a lifetime on dialysis. False information can cause delay in NMED's discovery of the problem, allowing more persons to become sick and magnifying the consequences of contamination.

In another case, the Department denied a liquid waste (septic) permit. The contractor who had applied for the permit, altered it to make it appear approved, presented it to the homeowner, and installed a faulty liquid waste system which the Department never inspected because the permit and construction had been denied. Months later, liquid waste began surfacing from the faulty system and when the Department investigated, the contractor presented the altered permit to the Department, contending that it had been approved. The Department investigated and discovered the alterations to the permit and the homeowner had to pay to bring the system into compliance.

False information or omissions can have serious repercussions. NMED receives a large volume of technical information in making decisions under both its drinking water and liquid waste programs and often has to rely upon the correctness of that information. Without accurate information, facilities may be approved for an inappropriate location, activities may be permitted where they would not otherwise have been permitted, and NMED may fail to enforce when it should, compromising public health, safety, and welfare.

TECHNICAL ISSUES

The AGO points out areas that may not be clear enough:

In several locations the bill would criminalize the act of allowing another person to submit a false statement to the department, but does not explain under what circumstances a person could be held criminally responsible for falsehoods submitted by another. As written, a person with mere awareness of a falsehood who takes no steps to stop or expose the false statement could be charged criminally.

Section D criminalizes the act of making or a allowing a false statement to the department which results in "adverse environmental impact", but does not provide a definition for this phrase.

MW:GC/blm