

AN ACT

RELATING TO WATER QUALITY; PROVIDING FOR RESIDENTIAL LANDSCAPE USE OF GRAY WATER; AMENDING SECTIONS OF THE WATER QUALITY ACT; DECLARING AN EMERGENCY.

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

Section 1. Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:

A. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

B. "water contaminant" means any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954;

C. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

D. "wastes" means sewage, industrial wastes or any other liquid,

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gaseous or solid substance that may pollute any waters of the state;

E. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

F. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

G. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

H. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

I. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

J. "commission" means the water quality control commission;

K. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

- (1) the department of environment;
- (2) the state engineer and the interstate stream commission;
- (3) the department of game and fish;
- (4) the oil conservation commission;
- (5) the state parks division of the energy, minerals and natural

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resources department;

(6) the New Mexico department of agriculture;

(7) the soil and water conservation commission; and

(8) the bureau of geology and mineral resources at the New Mexico institute of mining and technology;

L. "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

M. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

N. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

O. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

P. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

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(1) to human beings; or

(2) that amounts to more than ten thousand dollars (\$10,000)

damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; ground water or surface water; or the lands of the state;

Q. "federal act" means the Federal Water Pollution Control Act, its subsequent amendment and successor provisions; and

R. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act."

Section 2. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended by Laws 2001, Chapter 240, Section 1 and by Laws 2001, Chapter 281, Section 1) 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 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 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

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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. 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 shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the 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

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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. 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. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes

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consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. 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. 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. 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;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water

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contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. 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. 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

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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. 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 3. EMERGENCY.--It is necessary for the public peace, health and safety ~~that this~~ act take effect immediately.