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**HOUSE BILL 861**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Rhonda S. King

**AN ACT**

**RELATING TO PUBLIC WATER SYSTEMS; AMENDING THE UTILITY OPERATORS CERTIFICATION ACT; TRANSFERRING DUTIES TO THE DEPARTMENT OF ENVIRONMENT FROM THE WATER QUALITY CONTROL COMMISSION; PROVIDING FOR ADMINISTRATION OF A FUND; RAISING FEES; PROVIDING FOR GENDER NEUTRALITY; MAKING AN APPROPRIATION.**

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

**Section 1. Section 61-33-2 NMSA 1978 (being Laws 1992, Chapter 44, Section 2, as amended) is amended to read:**

**"61-33-2. DEFINITIONS. -- As used in the Utility Operators Certification Act:**

**A. "certified operator" means a person who is certified by the commission as being qualified to operate one of the classifications of water supply systems or wastewater facilities;**

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1                   ~~[B. "certified supervisor" means a person who is~~  
2 ~~certified as an operator by the commission as qualified to~~  
3 ~~operate one of the classifications of water supply systems or~~  
4 ~~wastewater facilities and who performs on-site coordinations,~~  
5 ~~direction and inspection of the operation of a public~~  
6 ~~wastewater facility or a public water supply facility;~~

7                   ~~C.]~~ B. "commission" means

8                               ~~[(1)]~~ the water quality control commission; ~~[or~~  
9                               ~~(2)]~~ the department, when used in connection  
10 with any activity or function under the Utility Operators  
11 Certification Act, the administration and enforcement of which  
12 the commission has delegated to the department;

13                   ~~D.]~~ C. "department" means the department of  
14 environment;

15                   ~~[E.]~~ D. "domestic liquid waste" means human excreta  
16 and water-carried waste from typical residential plumbing  
17 fixtures and activities, including waste from toilets, sinks,  
18 bath fixtures, clothes or dishwashing machines and floor  
19 drains;

20                   ~~[F.]~~ E. "domestic liquid waste treatment unit"  
21 means a watertight unit designed, constructed and installed to  
22 stabilize only domestic liquid waste and to retain solids  
23 contained in such domestic liquid waste, including aerobic  
24 treatment units and septic tanks;

25                   ~~[G.]~~ F. "person" means any agency, department or

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1 instrumentality of the United States and any of their officers,  
2 agents or employees, the state or any agency, institution or  
3 political subdivision thereof, any public or private  
4 corporation, individual, partnership, association or other  
5 entity, and includes any officer or governing or managing body  
6 of any political subdivision or public or private corporation;

7 ~~[H.]~~ G. "public wastewater facility" means a system  
8 of structures, equipment and processes designed to collect and  
9 treat domestic and industrial waste and dispose of the  
10 effluent, but does not include:

11 (1) any domestic liquid waste treatment unit;  
12 or

13 (2) any industrial facility subject to an  
14 industrial pretreatment program regulated by the United States  
15 environmental protection agency under the requirements of the  
16 federal Clean Water Act of 1977; and

17 ~~[F.]~~ H. "public water supply system" means:

18 (1) a system for the provision through pipes  
19 or other constructed conveyances to the public of water for  
20 human consumption or domestic purposes if the system:

21 (a) has at least fifteen service  
22 connections; or

23 (b) regularly serves an average of at  
24 least twenty-five individuals at least sixty days of the year;  
25 and

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1 (2) includes any water supply source and any  
2 treatment, storage and distribution facilities under control of  
3 the operator of the system "

4 Section 2. Section 61-33-3 NMSA 1978 (being Laws 1973,  
5 Chapter 394, Section 3, as amended) is amended to read:

6 "61-33-3. ADMINISTRATION-- ENFORCEMENT. --

7 A. The administration and enforcement of the  
8 Utility Operators Certification Act is vested in the  
9 ~~commission.~~

10 ~~B. The commission may further delegate to the~~  
11 ~~department the administration and enforcement of any portion of~~  
12 ~~the Utility Operators Certification Act except:~~

13 ~~(1) the adoption of regulations; and~~  
14 ~~(2) the conducting of hearings on compliance~~  
15 ~~orders] department.~~

16 B. The department shall:

17 (1) approve and accredit schools and training  
18 programs designed to educate and qualify persons for  
19 certification in one of the classifications of public water  
20 supply system operator and public wastewater facility operator;

21 (2) prepare and administer written and  
22 practical examinations, based on nationally accepted standards,  
23 for certification of applicants as operators for one of the  
24 facility classifications established pursuant to Section  
25 61-33-4 NMSA 1978;

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1                   (3) enter into agreements, contracts or  
2 cooperative arrangements with agencies of the federal, state or  
3 local governments or other organizations or individuals; and  
4                   (4) receive and accept financial and technical  
5 assistance from the federal government and other public or  
6 private agencies. "

7           Section 3.   Section 61-33-4 NMSA 1978 (being Laws 1973,  
8 Chapter 394, Section 4, as amended) is amended to read:

9           "61-33-4.   **POWERS AND DUTIES OF COMMISSION.** -- The  
10 **commission shall:**

11                   A.   adopt regulations that classify public water  
12 supply systems and public wastewater facilities into  
13 [~~categories~~] classifications for each type of utility based on:

- 14                               (1)   size and type of system or facility;
- 15                               (2)   capacity of the system or facility based  
16 on the size of the serviced area and the number and size of the  
17 users to be served;
- 18                               (3)   [~~the~~] type and character of the water or  
19 wastewater to be treated; and
- 20                               (4)   [~~the~~] physical conditions affecting the  
21 treatment plants, collection systems and distribution systems;

22                   B.   adopt regulations providing standards and  
23 criteria for the certification of plant operators based on  
24 their qualifications and their ability to [~~supervise or~~]  
25 operate public water supply systems or public wastewater

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1 facilities of the various classifications;

2 ~~[C. approve and accredit schools and training~~  
3 ~~programs designed to educate and qualify persons for~~  
4 ~~certification in one of the classifications of public water~~  
5 ~~supply system operator and public wastewater facility operator;~~

6 ~~D. prepare and administer written and practical~~  
7 ~~examinations, based on nationally accepted standards, for~~  
8 ~~certification of applicants as operators for one of the~~  
9 ~~facility classifications established under Subsection A of this~~  
10 ~~section;~~

11 ~~E. enter into agreements, contracts or cooperative~~  
12 ~~arrangements with agencies of the federal, state or local~~  
13 ~~governments or other organizations or individuals under such~~  
14 ~~terms and conditions as the agency deems appropriate;~~

15 ~~F. receive and accept financial and technical~~  
16 ~~assistance from the federal government and other public or~~  
17 ~~private agencies;~~

18 ~~G.]~~ C. appoint a seven-member board from the  
19 certified public water supply system operators and public  
20 wastewater facility operators to function with the commission  
21 to ~~[establish qualifications of operators, classify systems]~~  
22 adopt regulations and advise the ~~[administration of]~~ department  
23 on the Utility Operators Certification Act. Two board members  
24 selected by the board shall sit as commission members on  
25 matters to which that act is applicable; ~~[and~~

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1           ~~H.]~~ D. adopt and file under the State Rules Act  
2 rules and regulations necessary to carry out the provisions of  
3 the Utility Operators Certification Act; and

4           E. adopt regulations providing criteria for  
5 identifying the minimum number of certified operators needed to  
6 operate the various classifications of a public water supply  
7 system or a public wastewater facility."

8           Section 4. Section 61-33-5 NMSA 1978 (being Laws 1973,  
9 Chapter 394, Section 5, as amended) is amended to read:

10           "61-33-5. APPLICATION REQUIREMENTS--FEES--ENDORSEMENT.--

11           A. Each applicant for certification as a public  
12 water supply system operator or public wastewater facility  
13 operator shall:

14                       (1) make application on forms furnished by the  
15 [~~commission~~] department;

16                       (2) submit evidence satisfactory to the  
17 [~~commission~~] department that the applicant has reached the age  
18 of majority; and

19                       (3) pay in advance to the [~~commission~~]  
20 department fees set by regulation not to exceed:

21                               (a) for examination for certification as  
22 a public water supply system operator or a public wastewater  
23 facility operator in each classification . . . . [~~\$25.00~~] \$200

24                               (b) for issuance of a certificate  
25 . . . . . [~~10.00~~] 100

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1 (c) for the annual renewal of a  
2 certificate . . . . . [10.00] 200

3 (d) for issuance of a certificate by  
4 endorsement . . . . . [25.00] 200.

5 B. Fees collected pursuant to Subsection A of this  
6 section shall be deposited with the state treasurer in the  
7 "public water supply system operator and public wastewater  
8 facility operator fund", hereby created. This fund shall be  
9 used solely for the purpose of ~~making necessary refunds. At~~  
10 ~~the end of each month, the fees remaining in the fund after~~  
11 ~~refunds shall be transferred to the state general fund by the~~  
12 ~~state treasurer]~~ administration and enforcement of the Utility  
13 Operators Certification Act. Funds deposited in the public  
14 water supply system operator and public wastewater facility  
15 operator fund are appropriated to the department and shall be  
16 administered by the department. Balances in the fund at the  
17 end of a fiscal year shall not revert to the general fund, but  
18 shall accrue to the credit of the fund. Earnings on the fund  
19 shall be credited to the fund.

20 C. The ~~commission]~~ department may, in its  
21 discretion, endorse for certification without examination a  
22 public water supply system operator or a public wastewater  
23 facility operator who ~~meets the qualifications set forth in~~  
24 ~~Paragraph (2) of Subsection A of this section]~~ submits evidence  
25 satisfactory to the department that the applicant has reached



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1 the age of majority and holds a valid license or certification  
2 in any state, territory or foreign jurisdiction having  
3 standards equal to or exceeding those of New Mexico. "

4 Section 5. Section 61-33-6 NMSA 1978 (being Laws 1973,  
5 Chapter 394, Section 6, as amended) is amended to read:

6 "61-33-6. CERTIFICATION REQUIRED. --

7 A. It is unlawful to operate any public water  
8 supply system or public wastewater facility unless the public  
9 water supply system is operated by [~~or under the supervision~~  
10 ~~of~~] a certified public water supply system [~~supervisor or~~  
11 operator or the public wastewater facility is operated by [~~or~~  
12 ~~under the supervision of~~] a certified public wastewater  
13 facility operator [~~or supervisor~~].

14 B. The owner of a public water supply system or  
15 public wastewater facility shall ensure that the operation is  
16 conducted in compliance with the provisions of this section.

17 C. As used in this section, "operate any public  
18 water supply system or public wastewater facility" means any  
19 activity or function conducted to ensure the proper functioning  
20 of the public water supply system or public wastewater  
21 facility, including monitoring systems, running tests, filing  
22 reports, maintaining logs and decision-making."

23 Section 6. Section 61-33-7 NMSA 1978 (being Laws 1973,  
24 Chapter 394, Section 7, as amended) is amended to read:

25 "61-33-7. SUSPENSION AND REVOCATION. -- The [~~commission~~]

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1 department shall, under the provisions of the Uniform Licensing  
2 Act relating to notice and hearing, suspend or revoke any  
3 certification upon the grounds that the certified operator:

4 A. ~~[is guilty]~~ committed an act of fraud or deceit  
5 in procuring ~~[his]~~ a certification;

6 B. ~~[is guilty]~~ committed an act of gross  
7 incompetence in the operation ~~[or supervision of the class]~~ of  
8 a public water supply system or public wastewater facility  
9 ~~[that he is certified to supervise or operate];~~

10 C. was derelict in the performance of a duty as a  
11 certified ~~[public water supply system operator or public~~  
12 ~~wastewater facility]~~ operator;

13 D. performed in the capacity of a higher  
14 classification of certified ~~[public water supply system~~  
15 ~~operator or public wastewater facility]~~ operator ~~[for a higher~~  
16 ~~classification]~~ than that in which ~~[he]~~ the operator is  
17 certified; or

18 E. is convicted of any violation of Section 61-33-8  
19 NMSA 1978 or any state or federal water quality statutes."

20 Section 7. Section 61-33-8 NMSA 1978 (being Laws 1973,  
21 Chapter 394, Section 8, as amended) is amended to read:

22 "61-33-8. PROHIBITIONS--PENALTY.--

23 A. It is unlawful for any person not certified as a  
24 public water supply system operator or public wastewater  
25 facility operator to:

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1 (1) use the title "certified operator" or  
2 words of similar import in connection with ~~[his]~~ the  
3 employment;

4 (2) ~~[represent himself]~~ act as a certified  
5 public water supply system operator or a certified public  
6 wastewater facility operator; or

7 (3) perform the duties of ~~[a supervisor or]~~ an  
8 operator of a public water supply system or a public wastewater  
9 facility.

10 B. It is unlawful for any person who operates a  
11 public water supply system or public wastewater facility to  
12 employ ~~[a supervisor or]~~ an operator of a public water supply  
13 system or a public wastewater facility who is not certified by  
14 the ~~[commission]~~ department.

15 C. Any violation of the provisions of this section  
16 is a misdemeanor. "

17 Section 8. Section 61-33-9 NMSA 1978 (being Laws 1973,  
18 Chapter 394, Section 9, as amended) is amended to read:

19 "61-33-9. VARIANCE PROCEDURES. --

20 A. The ~~[commission]~~ department shall establish by  
21 regulation a variance procedure for public water supply system  
22 and public wastewater facility operating authorities.

23 B. Any variance procedure established by the  
24 ~~[commission]~~ department shall not allow an operating authority  
25 more than six months to obtain the service of a certified

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1 operator, except the [~~commission~~] department may give a  
2 variance not to exceed eighteen months if the operator in  
3 charge is involved in a training course that will bring [~~his~~]  
4 the operator's level of competency to the level required within  
5 the eighteen-month period. "

6 Section 9. Section 61-33-10 NMSA 1978 (being Laws 1992,  
7 Chapter 44, Section 10) is amended to read:

8 "61-33-10. ENFORCEMENT-- COMPLIANCE ORDERS. --

9 A. Whenever, on the basis of any information, the  
10 [~~commission~~] department determines that any person has  
11 violated, is violating or threatens to violate any requirement  
12 of the Utility Operators Certification Act, any regulation  
13 adopted pursuant to that act or any condition of a  
14 certification issued under that act, the [~~commission~~]  
15 department may:

16 (1) issue a compliance order stating with  
17 reasonable specificity the nature of the violation or  
18 threatened violation and either requiring compliance  
19 immediately or within a specified time period or assessing a  
20 civil penalty for any past or current violation, or both; or  
21 (2) commence a civil action in district court  
22 for appropriate relief, including a temporary or permanent  
23 injunction.

24 B. Any penalty assessed in the compliance order  
25 shall not exceed two thousand five hundred dollars (\$2,500) per  
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1 day for each violation of any provision of the Utility  
2 Operators Certification Act, any regulation adopted pursuant to  
3 the provisions of that act or any condition of a certification  
4 issued under that act.

5 C. In assessing any penalty authorized by this  
6 section, the [~~commission~~] department shall take into account  
7 the seriousness of the violation, any good faith efforts to  
8 comply with the applicable requirements and other relevant  
9 factors.

10 D. If a violator fails to take corrective actions  
11 within the time specified in a compliance order, the  
12 [~~commission~~] department may assess a civil penalty of not more  
13 than five thousand dollars (\$5,000) for each day of continued  
14 noncompliance with the compliance order.

15 E. Any compliance order issued by the [~~commission~~]  
16 department pursuant to this section shall become final unless,  
17 no later than thirty days after the compliance order is served,  
18 any person named in the compliance order submits a written  
19 request to the [~~commission~~] department for a public hearing.  
20 Upon receiving such a request, the [~~commission~~] department  
21 shall promptly conduct a public hearing.

22 F. The [~~commission~~] department may appoint an  
23 independent hearing officer to preside over any public hearing  
24 held pursuant to this section. The hearing officer shall make  
25 and preserve a complete record of the proceedings and forward

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1 [his] the recommendation based upon the record to the  
2 [~~commission~~] department, which shall make the final decision.

3 G. In connection with any proceeding [~~under~~]  
4 pursuant to the provisions of this section, the [~~commission~~]  
5 department may:

- 6 (1) adopt rules for discovery procedures; and
- 7 (2) issue subpoenas for the attendance and  
8 testimony of witnesses and the production of relevant papers,  
9 books and documents.

10 H. Penalties collected pursuant to a compliance  
11 order shall be deposited in the general fund."