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SENATE BILL 113

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

INTRODUCED BY

Cisco McSorley

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

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

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;

~~[A.]~~ B. "water contaminant" means any substance

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

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

13 ~~[C.]~~ D. "wastes" means sewage, industrial wastes or
14 any other liquid, gaseous or solid substance that may pollute
15 any waters of the state;

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

20 ~~[E.]~~ F. "treatment works" means any plant or other
21 works used for the purpose of treating, stabilizing or holding
22 wastes;

23 ~~[F.]~~ G. "sewerage system" means a system for
24 disposing of wastes, either by surface or underground methods,
25 and includes sewer systems, treatment works, disposal wells and

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1 other systems;

2 [G-] H. "water" means all water, including water
3 situated wholly or partly within or bordering upon the state,
4 whether surface or subsurface, public or private, except
5 private waters that do not combine with other surface or
6 subsurface water;

7 [H-] I. "person" means an individual or any other
8 entity, including partnerships, corporations, associations,
9 responsible business or association agents or officers, the
10 state or a political subdivision of the state or any agency,
11 department or instrumentality of the United States and any of
12 its officers, agents or employees;

13 [I-] J. "commission" means the water quality
14 control commission;

15 [J-] K. "constituent agency" means, as the context
16 may require, any or all of the following agencies of the state:

17 (1) the department of environment;

18 (2) the state engineer and the interstate
19 stream commission;

20 (3) the department of game and fish;

21 (4) the oil conservation commission;

22 (5) the state parks division of the energy,
23 minerals and natural resources department;

24 (6) the New Mexico department of agriculture;

25 (7) the soil and water conservation

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1 ~~com~~mission; and

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

4 [~~K-~~] L. "new source" means:

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

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

12 [~~L-~~] M. "source" means a building, structure,
13 facility or installation from which there is or may be a
14 discharge of water contaminants directly or indirectly into
15 water;

16 [~~M-~~] N. "septage" means the residual wastes and
17 water periodically pumped from a liquid waste treatment unit or
18 from a holding tank for maintenance or disposal purposes;

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

25 [~~0-~~] P. "substantial adverse environmental impact"

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1 means that an act or omission of the violator causes harm or
2 damage:

3 (1) to human beings; or

4 (2) that amounts to more than ten thousand
5 dollars (\$10,000) damage or mitigation costs to flora,
6 including agriculture crops; fish or other aquatic life;
7 waterfowl or other birds; livestock or wildlife or damage to
8 their habitats; ground water or surface water; or the lands of
9 the state;

10 [~~P.~~] Q. "federal act" means the Federal Water
11 Pollution Control Act, its subsequent amendment and successor
12 provisions; and

13 [~~Q.~~] R. "standards of performance" means any
14 standard, effluent limitation or effluent standard adopted
15 pursuant to the federal act or the Water Quality Act."

16 Section 2. Section 74-6-4 NMSA 1978 (being Laws 1967,
17 Chapter 190, Section 4, as amended by Laws 2001, Chapter 240,
18 Section 1 and by Laws 2001, Chapter 281, Section 1) is amended
19 to read:

20 "74-6-4. DUTIES AND POWERS OF COMMISSION. -- The
21 commission:

22 A. may accept and supervise the administration of
23 loans and grants from the federal government and from other
24 sources, public or private, which loans and grants shall not be
25 expended for other than the purposes for which provided;

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1 B. shall adopt a comprehensive water quality
2 management program and develop a continuing planning process;

3 C. shall adopt water quality standards for surface
4 and ground waters of the state based on credible scientific
5 data and other evidence appropriate under the Water Quality
6 Act. The standards shall include narrative standards and as
7 appropriate, the designated uses of the waters and the water
8 quality criteria necessary to protect such uses. The standards
9 shall at a minimum protect the public health or welfare,
10 enhance the quality of water and serve the purposes of the
11 Water Quality Act. In making standards, the commission shall
12 give weight it deems appropriate to all facts and
13 circumstances, including the use and value of the water for
14 water supplies, propagation of fish and wildlife, recreational
15 purposes and agricultural, industrial and other purposes;

16 D. shall adopt, promulgate and publish regulations
17 to prevent or abate water pollution in the state or in any
18 specific geographic area, aquifer or watershed of the state or
19 in any part thereof, or for any class of waters, and to govern
20 the disposal of septage and sludge and the use of sludge for
21 various beneficial purposes. The regulations governing the
22 disposal of septage and sludge may include the use of tracking
23 and permitting systems or other reasonable means necessary to
24 assure that septage and sludge are designated for disposal in,
25 and arrive at, disposal facilities, other than facilities on

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1 the premises where the septage and sludge is generated, for
2 which a permit or other authorization has been issued pursuant
3 to the federal act or the Water Quality Act. Regulations shall
4 not specify the method to be used to prevent or abate water
5 pollution but may specify a standard of performance for new
6 sources that reflects the greatest reduction in the
7 concentration of water contaminants that the commission
8 determines to be achievable through application of the best
9 available demonstrated control technology, processes, operating
10 methods or other alternatives, including where practicable a
11 standard permitting no discharge of pollutants. In making
12 regulations, the commission shall give weight it deems
13 appropriate to all relevant facts and circumstances, including:

14 (1) character and degree of injury to or
15 interference with health, welfare, environment and property;

16 (2) the public interest, including the social
17 and economic value of the sources of water contaminants;

18 (3) technical practicability and economic
19 reasonableness of reducing or eliminating water contaminants
20 from the sources involved and previous experience with
21 equipment and methods available to control the water
22 contaminants involved;

23 (4) successive uses, including but not limited
24 to domestic, commercial, industrial, pastoral, agricultural,
25 wildlife and recreational uses;

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1 (5) feasibility of a user or a subsequent user
2 treating the water before a subsequent use;

3 (6) property rights and accustomed uses; and

4 (7) federal water quality requirements;

5 E. shall assign responsibility for administering
6 its regulations to constituent agencies so as to assure
7 adequate coverage and prevent duplication of effort. To this
8 end, the commission may make such classification of waters and
9 sources of water contaminants as will facilitate the assignment
10 of administrative responsibilities to constituent agencies.

11 The commission shall also hear and decide disputes between
12 constituent agencies as to jurisdiction concerning any matters
13 within the purpose of the Water Quality Act. In assigning
14 responsibilities to constituent agencies, the commission shall
15 give priority to the primary interests of the constituent
16 agencies. The department of environment shall provide
17 technical services, including certification of permits pursuant
18 to the federal act, and shall maintain a repository of the
19 scientific data required by this act;

20 F. may enter into or authorize constituent agencies
21 to enter into agreements with the federal government or other
22 state governments for purposes consistent with the Water
23 Quality Act and receive and allocate to constituent agencies
24 funds made available to the commission;

25 G. may grant an individual variance from any

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1 regulation of the commission whenever it is found that
2 compliance with the regulation will impose an unreasonable
3 burden upon any lawful business, occupation or activity. The
4 commission may only grant a variance conditioned upon a person
5 effecting a particular abatement of water pollution within a
6 reasonable period of time. Any variance shall be granted for
7 the period of time specified by the commission. The commission
8 shall adopt regulations specifying the procedure under which
9 variances may be sought, which regulations shall provide for
10 the holding of a public hearing before any variance may be
11 granted;

12 H. may adopt regulations to require the filing with
13 it or a constituent agency of proposed plans and specifications
14 for the construction and operation of new sewer systems,
15 treatment works or sewerage systems or extensions,
16 modifications of or additions to new or existing sewer systems,
17 treatment works or sewerage systems. Filing with and approval
18 by the federal housing administration of plans for an extension
19 to an existing or construction of a new sewerage system
20 intended to serve a subdivision solely residential in nature
21 shall be deemed compliance with all provisions of this
22 subsection;

23 I. may adopt regulations requiring notice to it or
24 a constituent agency of intent to introduce or allow the
25 introduction of water contaminants into waters of the state;

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1 J. may adopt regulations establishing pretreatment
2 standards that prohibit or control the introduction into
3 publicly owned sewerage systems of water contaminants that are
4 not susceptible to treatment by the treatment works or that
5 would interfere with the operation of the treatment works;

6 K. shall not require a permit respecting the use of
7 water in irrigated agriculture, except in the case of the
8 employment of a specific practice in connection with such
9 irrigation that documentation or actual case history has shown
10 to be hazardous to public health or the environment; ~~and~~

11 L. shall not require a permit for applying less
12 than two hundred fifty gallons per day of private residential
13 gray water originating from a residence for the resident's
14 household gardening, composting or landscape irrigation if:

15 (1) a constructed gray water distribution
16 system provides for overflow into the sewage collection or on-
17 site wastewater treatment and disposal system;

18 (2) a gray water storage tank is covered to
19 restrict access and to eliminate habitat for mosquitos or other
20 vectors;

21 (3) a gray water system is sited outside of a
22 floodway;

23 (4) gray water is vertically separated at
24 least five feet above the ground water table;

25 (5) gray water pressure piping is clearly

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1 identified as a nonpotable water conduit;

2 (6) gray water is used on the site where it is
3 generated and does not run off the property lines;

4 (7) ponding is prohibited, application of gray
5 water is managed to minimize standing water on the surface and
6 standing water does not remain for more than twenty-four hours;

7 (8) gray water is not sprayed; and

8 (9) gray water use within municipalities or
9 counties complies with all applicable municipal or county
10 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

11 and

12 [E.] M shall coordinate application procedures and
13 funding cycles for loans and grants from the federal
14 government and from other sources, public or private, with
15 the local government division of the department of finance
16 and administration pursuant to the New Mexico Community
17 Assistance Act. "