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SENATE BILL 131

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

H. Diane Snyder

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO OCCUPATIONS; CHANGING THE POWERS AND DUTIES OF THE  
WATER QUALITY CONTROL COMMISSION AND THE DEPARTMENT OF  
ENVIRONMENT PERTAINING TO REGULATION OF UTILITY OPERATORS;  
INCREASING FEES; PROVIDING FOR HEARINGS AND APPEALS; 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~~] department as being qualified to  
operate one of the classifications of public water supply  
systems or public 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 ~~[(1)]~~ the water quality  
8 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                   F. "operate" means performing any activity.

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1 function, process control decision or system integrity decision  
2 regarding water quality or water quantity that has the  
3 potential to affect the proper functioning of a public water  
4 supply system or public wastewater facility or to affect human  
5 health, public welfare or the environment;

6 G. "person" means any agency, department or  
7 instrumentality of the United States and any of ~~[their]~~ its  
8 officers, agents or employees; the state or any agency,  
9 institution or political subdivision thereof; any public or  
10 private corporation, individual, partnership, association or  
11 other entity; and includes any officer or governing or managing  
12 body of any political subdivision or public or private  
13 corporation;

14 H. "public wastewater facility" means a system of  
15 structures, equipment and processes designed to collect and  
16 treat domestic and industrial waste and dispose of the  
17 effluent, but does not include:

18 (1) any domestic liquid waste treatment unit;

19 or

20 (2) any industrial facility subject to an  
21 industrial pretreatment program regulated by the United States  
22 environmental protection agency under the requirements of the  
23 federal Clean Water Act of 1977; and

24 I. "public water supply system" means:

25 (1) a system for the provision through pipes

1 or other constructed conveyances to the public of water for  
2 human consumption or domestic purposes if the system:

3 (a) has at least fifteen service  
4 connections; or

5 (b) regularly serves an average of at  
6 least twenty-five individuals at least sixty days of the year;  
7 and

8 (2) includes any water supply source and any  
9 treatment, storage and distribution facilities under control of  
10 the operator of the system."

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

13 "61-33-3. ADMINISTRATION-- ENFORCEMENT. --

14 A. The administration and enforcement of the  
15 Utility Operators Certification Act is vested in the  
16 ~~[commission]~~ department.

17 ~~[B. The commission may further delegate to the~~  
18 ~~department the administration and enforcement of any portion of~~  
19 ~~the Utility Operators Certification Act except:~~

20 ~~(1) the adoption of regulations; and~~

21 ~~(2) the conducting of hearings on compliance~~  
22 ~~orders.]~~

23 B. The department shall:

24 (1) approve and accredit schools and training  
25 programs designed to educate and qualify persons for

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1 certification in one of the classifications of public water  
2 supply system operators or public wastewater facility  
3 operators;

4 (2) prepare and administer written and  
5 practical examinations, based on nationally accepted standards,  
6 for certification of applicants as operators for one of the  
7 facility classifications established pursuant to Subsection A  
8 of Section 61-33-4 NMSA 1978;

9 (3) enter into agreements, contracts or  
10 cooperative arrangements with persons; and

11 (4) receive and accept financial and technical  
12 assistance. "

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

15 "61-33-4. POWERS AND DUTIES OF COMMISSION. -- The  
16 commission may adopt rules relating to the administration and  
17 enforcement of the Utility Operators Certification Act. The  
18 commission shall:

19 A. adopt [~~regulations~~] rules that classify public  
20 water supply systems and public wastewater facilities [~~into~~  
21 ~~categories for each type of utility~~] based on:

22 (1) size and type of system or facility;  
23 (2) capacity of the system or facility based  
24 on the size of the serviced area and the number and size of the  
25 users to be served;

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1 (3) ~~the~~ type and character of the water or  
2 wastewater to be treated; and

3 (4) ~~the~~ physical conditions affecting the  
4 treatment plants, collection systems and distribution systems;

5 B. adopt ~~regulations~~ rules providing standards  
6 and criteria for the certification of ~~plant~~ operators based  
7 on their qualifications and their ability to ~~supervise or~~  
8 operate public water supply systems or public wastewater  
9 facilities of the various classifications;

10 ~~C. approve and accredit schools and training~~  
11 ~~programs designed to educate and qualify persons for~~  
12 ~~certification in one of the classifications of public water~~  
13 ~~supply system operator and public wastewater facility operator;~~

14 ~~D. prepare and administer written and practical~~  
15 ~~examinations, based on nationally accepted standards, for~~  
16 ~~certification of applicants as operators for one of the~~  
17 ~~facility classifications established under Subsection A of this~~  
18 ~~section;~~

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

23 ~~F. receive and accept financial and technical~~  
24 ~~assistance from the federal government and other public or~~  
25 ~~private agencies;~~

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1           ~~G.~~ C. appoint a seven-member board from ~~the~~  
2 certified ~~[public water supply system operators and public~~  
3 ~~wastewater facility]~~ operators to function with the commission  
4 to establish qualifications of operators, classify public water  
5 supply systems and public wastewater facilities, adopt  
6 ~~[regulations]~~ rules and advise the department on the  
7 administration of the Utility Operators Certification Act. Two  
8 board members selected by the board shall sit as commission  
9 members on matters to which that act is applicable; ~~and~~

10           ~~H.~~ D. adopt and file under the State Rules Act  
11 rules ~~[and regulations]~~ necessary to carry out the provisions  
12 of the Utility Operators Certification Act; and

13           E. adopt rules providing criteria for identifying  
14 the minimum number of certified operators needed to operate the  
15 various classifications of public water supply systems or  
16 public wastewater facilities in order to protect human health,  
17 public welfare or the environment. "

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

20           "61-33-5. APPLICATION REQUIREMENTS--FEES--FUND CREATED--  
21 ENDORSEMENT.--

22           A. ~~[Each]~~ An applicant for certification as ~~[a~~  
23 ~~public water supply system operator or public wastewater~~  
24 ~~facility]~~ a certified operator shall:

25                   (1) make application on forms furnished by the

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1     ~~[commission]~~ department;

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

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

7                     (a) for examination for certification  
8     ~~[as a public water supply system operator or a public~~  
9     ~~wastewater facility operator]~~ in each  
10    classification . . . . . ~~[\$25.00]~~ \$200;

11                     ~~[(b) for issuance of a certificate 10.00~~  
12                     ~~(e)]~~ (b) for ~~[the annual]~~ renewal of a  
13    certificate after a period set by rule . . . . . ~~[10.00]~~ \$200;

14    and

15                     ~~[(d)]~~ (c) for issuance of a certificate  
16    by endorsement . . . . . ~~[25.00]~~ \$200.

17                     B. Fees collected pursuant to Subsection A of this  
18    section shall be deposited with the state treasurer in the  
19    "public water supply system operator and public wastewater  
20    facility operator fund", hereby created. ~~[This]~~ The fund shall  
21    be used solely for the purpose of ~~[making necessary refunds.~~  
22    ~~At the end of each month, the fees remaining in the fund after~~  
23    ~~refunds shall be transferred to the state general fund by the~~  
24    ~~state treasurer]~~ administering and enforcing the Utility  
25    Operators Certification Act. The fund shall be administered by



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1 the department. Money in the fund is appropriated to the  
2 department. Balances in the fund at the end of any fiscal year  
3 shall not revert to the general fund, but shall accrue to the  
4 credit of the fund. Earnings on the fund shall be credited to  
5 the fund.

6 C. The ~~[commission]~~ department may, in its  
7 discretion, endorse for certification without examination [~~a~~  
8 ~~public water supply system operator or a public wastewater~~  
9 ~~facility]~~ an operator who [meets the qualifications set forth  
10 in Paragraph (2) of Subsection A of this section] submits  
11 evidence satisfactory to the department that the applicant has  
12 reached the age of majority and holds a valid license or  
13 certification in any state, territory or foreign jurisdiction  
14 having standards equal to or exceeding those of New Mexico.

15 D. Fees shall not be increased more than once per  
16 calendar year. The first increase of the fees shall not result  
17 in any fee greater than fifty dollars (\$50.00). Any subsequent  
18 increase of the fees shall not be more than ten percent of the  
19 existing fee. The ten percent increase allowed each calendar  
20 year may be accrued over time."

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

23 "61-33-6. CERTIFICATION REQUIRED--PROHIBITION.--It is  
24 unlawful to operate [~~any~~] or allow the operation of a public  
25 water supply system or public wastewater facility unless the

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1 ~~[public water supply]~~ system ~~[is operated by or under the~~  
2 ~~supervision of a certified public water supply system~~  
3 ~~supervisor or operator]~~ or ~~[the public wastewater]~~ facility is  
4 operated by or under the supervision of a certified ~~[public~~  
5 ~~wastewater facility]~~ operator ~~[or supervisor]~~ who meets or  
6 exceeds the appropriate certification level."

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

9 "61-33-7. SUSPENSION AND REVOCATION. -- The ~~[commission~~  
10 ~~shall, under]~~ department, in accordance with the provisions of  
11 the Uniform Licensing Act relating to notice and hearing, may  
12 suspend or revoke ~~[any]~~ a certification upon the grounds that  
13 the certified operator:

14 A. ~~[is guilty of]~~ committed fraud or deceit in  
15 procuring ~~[his]~~ the certification;

16 B. ~~[is guilty of]~~ committed gross incompetence in  
17 the operation ~~[or supervision of the class]~~ of a public water  
18 supply system or public wastewater facility ~~[that he is~~  
19 ~~certified to supervise or operate]~~;

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

23 D. performed in the capacity of a higher  
24 classification of certified ~~[public water supply system~~  
25 ~~operator or public wastewater facility]~~ operator ~~[for a higher~~

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1 ~~classification]~~ than that in which he is certified, except  
2 under the direct supervision of a certified operator who meets  
3 or exceeds the appropriate certification level for that  
4 classification of public water supply system or public  
5 wastewater facility; or

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

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

10 "61-33-8. PROHIBITIONS--PENALTY.--

11 A. It is unlawful for any person not certified as  
12 [~~a public water supply system operator or public wastewater~~  
13 ~~facility]~~ an operator to:

14 (1) use the title "certified operator" or  
15 words of similar import in connection with his employment;

16 (2) represent himself as a certified [~~public~~  
17 ~~water supply system operator or a certified public wastewater~~  
18 ~~facility]~~ operator; or

19 (3) perform the duties of a [~~supervisor or~~  
20 certified operator [~~of a public water supply system or a public~~  
21 ~~wastewater facility.~~

22 ~~B. It is unlawful for any person who operates a~~  
23 ~~public water supply system or public wastewater facility to~~  
24 ~~employ a supervisor or operator of a public water supply system~~  
25 ~~or a public wastewater facility who is not certified by the~~

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1 ~~commission~~], except under the direct supervision of a certified  
2 operator who meets or exceeds the appropriate certification  
3 level for that classification of public water supply system or  
4 public wastewater facility.

5 [C-] B. Any violation of the provisions of this  
6 section is a misdemeanor. "

7 Section 8. Section 61-33-10 NMSA 1978 (being Laws 1992,  
8 Chapter 44, Section 10) is amended to read:

9 "61-33-10. ENFORCEMENT-- COMPLIANCE ORDERS. --

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

17 (1) issue a compliance order stating with  
18 reasonable specificity the nature of the violation or  
19 threatened violation and either requiring compliance  
20 immediately or within a specified time period or assessing a  
21 civil penalty for any past or current violation, or both; or

22 (2) commence a civil action in district court  
23 for appropriate relief, including a temporary or permanent  
24 injunction.

25 B. Any penalty assessed in the compliance order

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1 shall not exceed two thousand five hundred dollars (\$2,500) per  
2 day for each violation of any provision of the Utility  
3 Operators Certification Act, any ~~regulation~~ rule adopted  
4 pursuant to the provisions of that act or any condition of a  
5 certification issued under that act.

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

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

16 E. Any compliance order issued by the ~~commission~~  
17 department pursuant to this section shall become final unless,  
18 no later than thirty days after the compliance order is served,  
19 any person named in the compliance order submits a written  
20 request to the ~~commission~~ department for a public hearing.  
21 Upon receiving ~~such~~ a request, the ~~commission~~ department  
22 shall promptly conduct a public hearing. A complete record of  
23 the proceedings shall be made and preserved.

24 F. The ~~commission~~ department may appoint ~~an~~  
25 ~~independent~~ a hearing officer to preside over ~~any~~ the public

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1 hearing held pursuant to this section. [~~The hearing officer~~  
2 ~~shall make and preserve a complete record of the proceedings~~  
3 ~~and~~] If a hearing officer is appointed, he shall forward his  
4 recommendation based upon the record to the [commission, which]  
5 secretary of environment, who shall make the final decision.

6 G. In connection with any proceeding [~~under~~]  
7 pursuant to the provisions of this section, the [commission]  
8 department may:

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

13 H. A person aggrieved by an adverse final decision  
14 of the secretary may appeal the decision to the commission.  
15 The appeal shall be on the record. The commission may, upon  
16 motion by a party, receive either oral or written arguments by  
17 the parties limited to the evidence contained in the record.

18 [~~H.-~~] I. All penalties collected pursuant to [a  
19 compliance order] this section shall be deposited in the  
20 general fund to the credit of the current school fund."

21 Section 9. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2004.