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HOUSE BILL 225

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING AND REPEALING SECTIONS OF  
THE WATER QUALITY ACT TO MOVE RULEMAKING AUTHORITY TO THE  
SECRETARY OF ENVIRONMENT AND TO STREAMLINE ADMINISTRATIVE  
PROCEDURES.

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. "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 office of the state engineer;

(3) the interstate stream commission;

(4) the department of game and fish;

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- 1                   (5) the oil conservation commission;  
2                   (6) the state parks division of the energy,  
3 minerals and natural resources department;  
4                   (7) the mining and minerals division of the  
5 energy, minerals and natural resources department;  
6                   (8) the New Mexico department of agriculture;  
7                   (9) the soil and water conservation  
8 commission; and  
9                   (10) the bureau of geology and mineral  
10 resources of the New Mexico institute of mining and technology;  
11                   B. "federal act" means the Federal Water Pollution  
12 Control Act, its subsequent amendment and its successor  
13 provisions;  
14                   ~~[A.]~~ C. "gray water" means untreated household  
15 wastewater that has not come in contact with toilet waste and  
16 includes wastewater from bathtubs, showers, washbasins, clothes  
17 washing machines and laundry tubs, but does not include  
18 wastewater from kitchen sinks or dishwashers or laundry water  
19 from the washing of material soiled with human excreta, such as  
20 diapers;  
21                   D. "new source" means:  
22                   (1) any source, the construction of which is  
23 commenced after the publication of proposed rules prescribing a  
24 standard of performance applicable to the source; or  
25                   (2) any existing source when modified to treat

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1 substantial additional volumes or when there is a substantial  
2 change in the character of water contaminants treated;

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

9 F. "secretary" means the secretary of environment;

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

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

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

21 J. "sludge" means solid, semisolid or liquid waste  
22 generated from a municipal, commercial or industrial wastewater  
23 treatment plant, water supply treatment plant or air pollution  
24 control facility that is associated with the treatment of these  
25 wastes. "Sludge" does not mean treated effluent from a

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1 wastewater treatment plant;

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

5 L. "standards of performance" means any standard,  
6 effluent limitation or effluent standard adopted pursuant to  
7 the federal act or the Water Quality Act;

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

10 (1) to human beings; or

11 (2) that amounts to more than ten thousand  
12 dollars (\$10,000) in damage or mitigation costs to flora,  
13 including agriculture crops; fish or other aquatic life;  
14 waterfowl or other birds; livestock or wildlife or their  
15 habitats; ground water or surface water; or the lands of the  
16 state;

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

20 O. "wastes" means sewage, industrial wastes or any  
21 other liquid, gaseous or solid substance that may pollute any  
22 waters of the state;

23 P. "water" means all water, including water  
24 situated wholly or partly within or bordering upon the state,  
25 whether surface or subsurface, public or private, except for

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1 private waters that do not combine with other surface or  
2 subsurface water;

3 [B-] Q. "water contaminant" means any substance  
4 that could alter, if discharged or spilled, the physical,  
5 chemical, biological or radiological qualities of water.  
6 "Water contaminant" does not mean source, special nuclear or  
7 byproduct material as defined by the federal Atomic Energy Act  
8 of 1954; and

9 [G-] R. "water pollution" means introducing or  
10 permitting the introduction into water, either directly or  
11 indirectly, of one or more water contaminants in such quantity  
12 and of such duration as may with reasonable probability injure  
13 human health, animal or plant life or property, or to  
14 unreasonably interfere with the public welfare or the use of  
15 property.

16 ~~[D. "wastes" means sewage, industrial wastes or any~~  
17 ~~other liquid, gaseous or solid substance that may pollute any~~  
18 ~~waters of the state;~~

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

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

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

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

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

16          J. ~~"commission" means the water quality control~~  
17 ~~commission;~~

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

20                 (1) ~~the department of environment;~~

21                 (2) ~~the state engineer and the interstate~~  
22 ~~stream commission;~~

23                 (3) ~~the department of game and fish;~~

24                 (4) ~~the oil conservation commission;~~

25                 (5) ~~the state parks division of the energy,~~

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1 ~~minerals and natural resources department;~~

2 ~~(6) the New Mexico department of agriculture;~~

3 ~~(7) the soil and water conservation~~

4 ~~commission; and~~

5 ~~(8) the bureau of geology and mineral~~

6 ~~resources at the New Mexico institute of mining and technology;~~

7 ~~L. "new source" means:~~

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

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

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

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

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

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1 ~~wastewater treatment plant;~~

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

4 (1) ~~to human beings; or~~

5 (2) ~~that amounts to more than ten thousand~~  
6 ~~dollars (\$10,000) damage or mitigation costs to flora,~~

7 ~~including agriculture crops; fish or other aquatic life;~~

8 ~~waterfowl or other birds; livestock or wildlife or damage to~~

9 ~~their habitats; ground water or surface water; or the lands of~~  
10 ~~the state;~~

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

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

17 SECTION 2. Section 74-6-4 NMSA 1978 (being Laws 1967,  
18 Chapter 190, Section 4, as amended) is amended to read:

19 "74-6-4. DUTIES AND POWERS OF ~~[COMMISSION]~~ SECRETARY AND  
20 CONSTITUENT AGENCIES.--

21 A. The ~~[commission: A.]~~ secretary:

22 (1) is responsible for water pollution control  
23 in the state and for all purposes of the federal act and the  
24 wellhead protection and sole source aquifer programs of the  
25 federal Safe Drinking Water Act and may take all action

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1 necessary and appropriate to secure to the state, its political  
2 subdivisions or interstate agencies the benefits of that act  
3 and those programs, except for programs administered by  
4 constituent agencies as provided in Subsection B of this  
5 section;

6 (2) may accept and supervise the  
7 administration of loans and grants from the federal government  
8 and from other sources, public or private, which loans and  
9 grants shall not be expended for other than the purposes for  
10 which provided;

11 ~~[B. shall adopt a comprehensive water quality~~  
12 ~~management program and develop a continuing planning process;~~

13 ~~G.]~~ (3) shall not adopt or promulgate a  
14 ~~[standard or regulation]~~ rule that exceeds a grant of  
15 rulemaking authority listed in the statutory section of the  
16 Water Quality Act authorizing the ~~[standard or regulation]~~  
17 rule;

18 ~~[D.]~~ (4) shall adopt rules:

19 (a) establishing a comprehensive water  
20 quality management program and continuing planning process;

21 (b) setting forth water quality  
22 standards for surface and ground waters of the state. In  
23 making standards, the secretary shall give weight that the  
24 secretary deems appropriate to all facts and circumstances,  
25 including the use and value of the water for water supplies,

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1 propagation of fish and wildlife, recreational purposes and  
2 agricultural, industrial and other purposes. These standards  
3 shall: 1) be based on credible scientific data and other  
4 evidence appropriate under the Water Quality Act [~~The standards~~  
5 ~~shall~~]; 2) include narrative standards and, as appropriate, the  
6 designated uses of the waters and the water quality criteria  
7 necessary to protect such uses; [~~The standards shall~~] and 3) at  
8 a minimum, protect the public health or welfare, enhance the  
9 quality of water and serve the purposes of the Water Quality  
10 Act; [~~In making standards, the commission shall give weight it~~  
11 ~~deems appropriate to all facts and circumstances, including the~~  
12 ~~use and value of the water for water supplies, propagation of~~  
13 ~~fish and wildlife, recreational purposes and agricultural,~~  
14 ~~industrial and other purposes;~~

15 E. ~~shall adopt, promulgate and publish regulations]~~

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

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1     septage and sludge is generated, for which a permit or other  
2     authorization has been issued pursuant to the federal act or  
3     the Water Quality Act. [~~Regulations~~] Rules may specify a  
4     standard of performance for new sources that reflects the  
5     greatest reduction in the concentration of water contaminants  
6     that the commission determines to be achievable through  
7     application of the best available demonstrated control  
8     technology, processes, operating methods or other alternatives,  
9     including where practicable a standard permitting no discharge  
10    of pollutants. In making [~~regulations~~] rules, the [~~commission~~]  
11    secretary shall give weight [~~it~~] that the secretary deems  
12    appropriate to all relevant facts and circumstances, including:  
13    [~~(1)~~] 1) the character and degree of injury to or interference  
14    with health, welfare, environment and property; [~~(2)~~] 2) the  
15    public interest, including the social and economic value of the  
16    sources of water contaminants; [~~(3)~~] 3) the technical  
17    practicability and economic reasonableness of reducing or  
18    eliminating water contaminants from the sources involved and  
19    previous experience with equipment and methods available to  
20    control the water contaminants involved; [~~(4)~~] 4) successive  
21    uses, including but not limited to domestic, commercial,  
22    industrial, pastoral, agricultural, wildlife and recreational  
23    uses; [~~(5)~~] 5) the feasibility of a user or a subsequent user  
24    treating the water before a subsequent use; [~~(6)~~] 6) property  
25    rights and accustomed uses; and [~~(7)~~] 7) federal water quality

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1 requirements;

2 ~~[F. shall assign responsibility for administering~~  
3 ~~its regulations to constituent agencies so as to assure~~  
4 ~~adequate coverage and prevent duplication of effort. To this~~  
5 ~~end, the commission may make such classification of waters and~~  
6 ~~sources of water contaminants as will facilitate the assignment~~  
7 ~~of administrative responsibilities to constituent agencies.~~  
8 ~~The commission shall also hear and decide disputes between~~  
9 ~~constituent agencies as to jurisdiction concerning any matters~~  
10 ~~within the purpose of the Water Quality Act. In assigning~~  
11 ~~responsibilities to constituent agencies, the commission shall~~  
12 ~~give priority to the primary interests of the constituent~~  
13 ~~agencies. The department of environment shall provide~~  
14 ~~technical services, including certification of permits pursuant~~  
15 ~~to the federal act, and shall maintain a repository of the~~  
16 ~~scientific data required by this act;~~

17 ~~G. may enter into or authorize constituent agencies~~  
18 ~~to enter into agreements with the federal government or other~~  
19 ~~state governments for purposes consistent with the Water~~  
20 ~~Quality Act and receive and allocate to constituent agencies~~  
21 ~~funds made available to the commission;~~

22 ~~H. may grant an individual variance from any~~  
23 ~~regulation of the commission whenever it is found that~~  
24 ~~compliance with the regulation will impose an unreasonable~~  
25 ~~burden upon any lawful business, occupation or activity. The~~

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1 ~~commission may only grant a variance conditioned upon a person~~  
2 ~~effecting a particular abatement of water pollution within a~~  
3 ~~reasonable period of time. Any variance shall be granted for~~  
4 ~~the period of time specified by the commission. The commission~~  
5 ~~shall adopt regulations specifying the procedure under which~~  
6 ~~variances may be sought, which regulations shall provide for~~  
7 ~~the holding of a public hearing before any variance may be~~  
8 ~~granted;~~

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

20 ~~J. may adopt regulations requiring notice to it or~~  
21 ~~a constituent agency of intent to introduce or allow the~~  
22 ~~introduction of water contaminants into waters of the state;~~

23 ~~K. shall specify in regulations the measures to be~~  
24 ~~taken to prevent water pollution and to monitor water quality.~~  
25 ~~The commission may adopt regulations for particular industries.~~

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1 ~~The commission shall adopt regulations for the dairy industry~~  
2 ~~and the copper industry. The commission shall consider, in~~  
3 ~~addition to the factors listed in Subsection E of this section,~~  
4 ~~the best available scientific information. The regulations may~~  
5 ~~include variations in requirements based on site-specific~~  
6 ~~factors, such as depth and distance to ground water and~~  
7 ~~geological and hydrological conditions. The constituent agency~~  
8 ~~shall establish an advisory committee composed of persons with~~  
9 ~~knowledge and expertise particular to the industry category and~~  
10 ~~other interested stakeholders to advise the constituent agency~~  
11 ~~on appropriate regulations to be proposed for adoption by the~~  
12 ~~commission. The regulations shall be developed and adopted in~~  
13 ~~accordance with a schedule approved by the commission. The~~  
14 ~~schedule shall incorporate an opportunity for public input and~~  
15 ~~stakeholder negotiations;~~

16 ~~L. may adopt regulations establishing pretreatment~~  
17 ~~standards that prohibit or control the introduction into~~  
18 ~~publicly owned sewerage systems of water contaminants that are~~  
19 ~~not susceptible to treatment by the treatment works or that~~  
20 ~~would interfere with the operation of the treatment works;~~

21 ~~M. shall not require a permit respecting the use of~~  
22 ~~water in irrigated agriculture, except in the case of the~~  
23 ~~employment of a specific practice in connection with such~~  
24 ~~irrigation that documentation or actual case history has shown~~  
25 ~~to be hazardous to public health or the environment;~~

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1                   N. ~~shall not require a permit for applying less~~  
2 ~~than two hundred fifty gallons per day of private residential~~  
3 ~~gray water originating from a residence for the resident's~~  
4 ~~household gardening, composting or landscape irrigation if:~~

5                   (1) ~~a constructed gray water distribution~~  
6 ~~system provides for overflow into the sewer system or on-site~~  
7 ~~wastewater treatment and disposal system;~~

8                   (2) ~~a gray water storage tank is covered to~~  
9 ~~restrict access and to eliminate habitat for mosquitos or other~~  
10 ~~vectors;~~

11                   (3) ~~a gray water system is sited outside of a~~  
12 ~~floodway;~~

13                   (4) ~~gray water is vertically separated at~~  
14 ~~least five feet above the ground water table;~~

15                   (5) ~~gray water pressure piping is clearly~~  
16 ~~identified as a nonpotable water conduit;~~

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

19                   (7) ~~gray water is applied in a manner that~~  
20 ~~minimizes the potential for contact with people or domestic~~  
21 ~~pets;~~

22                   (8) ~~ponding is prohibited, application of gray~~  
23 ~~water is managed to minimize standing water on the surface and~~  
24 ~~to ensure that the hydraulic capacity of the soil is not~~  
25 ~~exceeded;~~

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1                   ~~(9) gray water is not sprayed;~~

2                   ~~(10) gray water is not discharged to a~~  
3 ~~watercourse; and~~

4                   ~~(11) gray water use within municipalities or~~  
5 ~~counties complies with all applicable municipal or county~~  
6 ~~ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;~~  
7 ~~and~~

8                   ~~0. shall coordinate application procedures and~~  
9 ~~funding cycles for loans and grants from the federal~~  
10 ~~government and from other sources, public or private, with~~  
11 ~~the local government division of the department of finance~~  
12 ~~and administration pursuant to the New Mexico Community~~  
13 ~~Assistance Act] and~~

14                   (d) specifying the measures to be taken  
15 to prevent water pollution and to monitor water quality, except  
16 as provided by Subsection B of this section. The secretary may  
17 adopt rules for particular industries and shall adopt rules for  
18 the copper mining industry, but the director of the New Mexico  
19 department of agriculture shall adopt rules for the dairy  
20 industry. The secretary shall consider, in addition to the  
21 factors listed in this section, the best available scientific  
22 information. The rules may include variations in requirements  
23 based on site-specific factors, such as depth and distance to  
24 ground water and geological and hydrological conditions. The  
25 constituent agency shall establish an advisory committee

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1 composed of persons with knowledge and expertise particular to  
2 the industry category and other interested stakeholders to  
3 advise the constituent agency on appropriate rules to be  
4 proposed for adoption by the secretary. The rules shall be  
5 developed and adopted in accordance with a schedule approved by  
6 the secretary. The schedule shall incorporate an opportunity  
7 for public input and stakeholder negotiations;

8 (5) may adopt rules:

9 (a) requiring the filing with the  
10 secretary or a constituent agency of proposed plans and  
11 specification for the construction and operation of new sewer  
12 systems, treatment works or sewerage systems or extensions,  
13 modifications of or additions to new or existing sewer systems,  
14 treatment works or sewerage systems. Filing with and approval  
15 by the federal housing administration of plans for an extension  
16 to an existing, or construction of a new, sewerage system  
17 intended to serve a subdivision solely residential in nature  
18 shall be deemed compliance with all provisions of this  
19 subsection;

20 (b) requiring notice to the secretary or  
21 a constituent agency of intent to introduce or allow the  
22 introduction of water contaminants into waters of the state;  
23 and

24 (c) establishing pretreatment standards  
25 that prohibit or control the introduction into publicly owned

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1 sewerage systems of water contaminants that are not susceptible  
2 to treatment by the treatment works or that would interfere  
3 with the operation of the treatment works;

4 (6) with respect to the adoption and  
5 administration of rules assigned under Subsection B of this  
6 section:

7 (a) shall provide technical services,  
8 including certification of permits pursuant to the federal act,  
9 and shall maintain a repository of the scientific data required  
10 by that act;

11 (b) may participate as a party in any  
12 rulemaking; and

13 (c) may delegate to a constituent agency  
14 authority to act as the state water pollution control agency  
15 for the purpose stated in Subsection A of this section;

16 (7) may enter into or authorize constituent  
17 agencies to enter into agreements with the federal government  
18 or other state governments for purposes consistent with the  
19 Water Quality Act and may receive and allocate to constituent  
20 agencies funds made available to the secretary;

21 (8) may grant an individual variance from any  
22 rule of the secretary whenever it is found that compliance with  
23 the rule will impose an unreasonable burden upon any lawful  
24 business, occupation or activity. The secretary may only grant  
25 a variance conditioned upon the person effecting a particular

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1 abatement of water pollution within a reasonable period of  
2 time. Any variance shall be granted for the period of time  
3 specified by the secretary. The secretary shall adopt rules  
4 specifying the procedure under which variances may be sought,  
5 which rules shall provide for the holding of a public hearing  
6 before any variance may be granted;

7 (9) shall not require a permit, nor shall a  
8 constituent agency require a permit:

9 (a) respecting the use of water in  
10 irrigated agriculture, except in the case of the employment of  
11 a specific practice in connection with such irrigation that  
12 documentation or actual case history has shown to be hazardous  
13 to public health or the environment; or

14 (b) for applying less than two hundred  
15 fifty gallons per day of private residential gray water  
16 originating from a residence for the resident's household  
17 gardening, composting or landscape irrigation if: 1) a  
18 constructed gray water distribution system provides for  
19 overflow into the sewer system or an on-site wastewater  
20 treatment and disposal system; 2) a gray water storage tank is  
21 covered to restrict access and eliminate habitat for mosquitos  
22 or other vectors; 3) a gray water system is sited outside of a  
23 flood way; 4) gray water is vertically separated at least five  
24 feet above the ground water table; 5) gray water pressure  
25 pipng is clearly identified as a nonpotable water conduit; 6)

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1 gray water is used on the site where it is generated and does  
2 not run off the property lines; 7) gray water is applied in a  
3 manner that minimizes the potential for contact with people or  
4 domestic pets; 8) ponding is prohibited, application of gray  
5 water is managed to minimize standing water on the surface and  
6 the hydraulic capacity of the soil is not exceeded; 9) gray  
7 water is not sprayed; 10) gray water is not discharged to a  
8 watercourse; and 11) 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 (10) shall coordinate application procedures  
13 and funding cycles for loans and grants from the federal  
14 government and from other sources, public or private, with the  
15 local government division of the department of finance and  
16 administration pursuant to the New Mexico Community Assistance  
17 Act.

18 B. Except as otherwise provided by this section,  
19 responsibility to adopt and administer rules in accordance with  
20 this section, including standards set forth for the secretary,  
21 is assigned as follows:

22 (1) relating to the oil and gas industry, to  
23 the oil conservation commission;

24 (2) relating to the agriculture industry, to  
25 the New Mexico department of agriculture; and

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1                   (3) relating to the mining industry, to the  
2 mining and minerals division of the energy, minerals and  
3 natural resources department."

4           SECTION 3. Section 74-6-5 NMSA 1978 (being Laws 1973,  
5 Chapter 326, Section 4, as amended) is amended to read:

6           "74-6-5. PERMITS--CERTIFICATION [~~APPEALS TO COMMISSION~~].--

7           A. By [~~regulation~~] rule, the [~~commission~~] secretary  
8 may require persons to obtain from a constituent agency  
9 designated by the [~~commission~~] secretary a permit for the  
10 discharge of any water contaminant or for the disposal or reuse  
11 of septage or sludge.

12           B. The [~~commission~~] secretary shall adopt  
13 [~~regulations~~] rules establishing procedures for certifying  
14 federal water quality permits.

15           C. Prior to the issuance of a permit, the  
16 constituent agency may require the submission of plans,  
17 specifications and other relevant information that it deems  
18 necessary.

19           D. The [~~commission~~] secretary, or the constituent  
20 agency authorized to adopt rules, shall by [~~regulation~~] rule  
21 set the dates upon which applications for permits shall be  
22 filed and designate the time periods within which the  
23 constituent agency shall, after the filing of an  
24 administratively complete application for a permit, either  
25 grant the permit, grant the permit subject to conditions or

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1 deny the permit. The constituent agency has the burden of  
2 showing that each condition is reasonable and necessary to  
3 ensure compliance with the Water Quality Act and applicable  
4 [~~regulations~~] rules, considering site-specific conditions.  
5 After [~~regulations~~] rules have been adopted for a particular  
6 industry, permits for facilities in that industry shall be  
7 subject to conditions contained in the [~~regulations~~] rules.  
8 Additional conditions on a final permit may be imposed if the  
9 applicant is provided with an opportunity to review and provide  
10 comments in writing on the draft permit conditions and to  
11 receive a written explanation of the reasons for the conditions  
12 from the constituent agency.

13 E. The secretary or constituent agency shall deny  
14 any application for a permit or deny the certification of a  
15 federal water quality permit if:

16 (1) the effluent would not meet applicable  
17 state or federal effluent rules or regulations, standards of  
18 performance or limitations;

19 (2) any provision of the Water Quality Act  
20 would be violated;

21 (3) the discharge would cause or contribute to  
22 water contaminant levels in excess of any state or federal  
23 standard. Determination of the discharge's effect on ground  
24 water shall be measured at any place of withdrawal of water for  
25 present or reasonably foreseeable future use. Determination of

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1 the discharge's effect on surface waters shall be measured at  
2 the point of discharge; or

3 (4) the applicant has, within the ten years  
4 immediately preceding the date of submission of the permit  
5 application:

6 (a) knowingly misrepresented a material  
7 fact in an application for a permit;

8 (b) refused or failed to disclose any  
9 information required under the Water Quality Act;

10 (c) been convicted of a felony or other  
11 crime involving moral turpitude;

12 (d) been convicted of a felony in any  
13 court for any crime defined by state or federal law as being a  
14 restraint of trade, price-fixing, bribery or fraud;

15 (e) exhibited a history of willful  
16 disregard for environmental laws of any state or the United  
17 States; or

18 (f) had an environmental permit revoked  
19 or permanently suspended for cause under any environmental laws  
20 of any state or the United States.

21 F. The ~~[commission]~~ secretary, or the constituent  
22 agency authorized to adopt rules, shall by ~~[regulation]~~ rule  
23 develop procedures that ensure that the public, affected  
24 governmental agencies and any other state whose water may be  
25 affected shall receive notice of each application for issuance,

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1 renewal or modification of a permit. Public notice shall  
2 include:

3 (1) for issuance or modification of a permit:

4 (a) notice by mail to adjacent and  
5 nearby landowners; local, state and federal governments; land  
6 grant organizations; ditch associations; and Indian nations,  
7 tribes or pueblos;

8 (b) posting at a place conspicuous to  
9 the public and near the discharge or proposed discharge site;  
10 and

11 (c) a display advertisement in English  
12 and Spanish in a newspaper of general circulation in the  
13 location of the discharge or proposed discharge; provided,  
14 however, that the advertisement shall not be displayed in the  
15 classified or legal advertisement sections; and

16 (2) for issuance of renewals of permits:

17 (a) notice by mail to the interested  
18 public, municipalities, counties, land grant organizations,  
19 ditch associations and Indian nations, tribes or pueblos; and

20 (b) a display advertisement in English  
21 and Spanish in a newspaper of general circulation in the  
22 location of the discharge; provided, however, that the  
23 advertisement shall not be displayed in the classified or legal  
24 advertisement sections.

25 G. No ruling shall be made on any application for a

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1 permit without opportunity for a public hearing at which all  
2 interested persons shall be given a reasonable chance to submit  
3 evidence, data, views or arguments orally or in writing and to  
4 examine witnesses testifying at the hearing. The hearing shall  
5 be recorded. Any person submitting evidence, data, views or  
6 arguments shall be subject to examination at the hearing.

7 H. The [~~commission~~] secretary, or the constituent  
8 agency authorized to adopt rules, may adopt [~~regulations~~] rules  
9 for the operation and maintenance of the permitted facility,  
10 including requirements, as may be necessary or desirable, that  
11 relate to continuity of operation, personnel training and  
12 financial responsibility, including financial responsibility  
13 for corrective action.

14 I. Permits shall be issued for fixed terms not to  
15 exceed five years, except that for new discharges, the term of  
16 the permit shall commence on the date the discharge begins, but  
17 in no event shall the term of the permit exceed seven years  
18 from the date the permit was issued.

19 J. By [~~regulation~~] rule, the [~~commission~~]  
20 secretary, or the constituent agency authorized to adopt rules,  
21 may impose reasonable conditions upon permits requiring  
22 permittees to:

- 23 (1) install, use and maintain effluent  
24 monitoring devices;  
25 (2) sample effluents and receiving waters for

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1 any known or suspected water contaminants in accordance with  
2 methods and at locations and intervals as may be prescribed by  
3 the ~~[commission]~~ secretary;

4 (3) establish and maintain records of the  
5 nature and amounts of effluents and the performance of effluent  
6 control devices;

7 (4) provide any other information relating to  
8 the discharge or direct or indirect release of water  
9 contaminants; and

10 (5) notify a constituent agency of the  
11 introduction of new water contaminants from a new source and of  
12 a substantial change in volume or character of water  
13 contaminants being introduced from sources in existence at the  
14 time of the issuance of the permit.

15 K. The ~~[commission]~~ secretary, or the constituent  
16 agency authorized to adopt rules, shall provide by ~~[regulation]~~  
17 rule a schedule of fees for permits, not exceeding the  
18 estimated cost of investigation and issuance, modification and  
19 renewal of permits. Fees collected pursuant to this section  
20 shall be deposited in the water quality management fund.

21 L. The issuance of a permit does not relieve any  
22 person from the responsibility of complying with the provisions  
23 of the Water Quality Act, any applicable ~~[regulations]~~ rules or  
24 water quality standards of the ~~[commission]~~ secretary, or the  
25 constituent agency authorized to adopt such rules, or any

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1 applicable federal laws, regulations or standards.

2 M. A permit may be terminated or modified by the  
3 secretary or constituent agency that issued the permit prior to  
4 its date of expiration for any of the following causes:

5 (1) violation of any condition of the permit;

6 (2) obtaining the permit by misrepresentation  
7 or failure to disclose fully all relevant facts;

8 (3) violation of any provisions of the Water  
9 Quality Act or any applicable [~~regulations~~] rules, standard of  
10 performance or water quality standards;

11 (4) violation of any applicable state or  
12 federal effluent rules, regulations or limitations; or

13 (5) change in any condition that requires  
14 either a temporary or permanent reduction or elimination of the  
15 permitted discharge.

16 N. If the secretary or constituent agency denies,  
17 terminates or modifies a permit or grants a permit subject to  
18 condition, the secretary or constituent agency shall notify the  
19 applicant or permittee by certified mail of the action taken  
20 and the reasons. Notice shall also be given by mail to persons  
21 who participated in the permitting action.

22 ~~[0. A person who participated in a permitting~~  
23 ~~action before a constituent agency or a person affected by a~~  
24 ~~certification of a federal permit and who is adversely affected~~  
25 ~~by such permitting action or certification may file a petition~~

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1 ~~for review before the commission. Unless a timely petition for~~  
2 ~~review is made, the decision of the constituent agency shall be~~  
3 ~~final and not subject to judicial review. The petition shall:~~

4 ~~(1) be made in writing to the commission~~  
5 ~~within thirty days from the date notice is given of the~~  
6 ~~constituent agency's action;~~

7 ~~(2) include a statement of the issues to be~~  
8 ~~raised and the relief sought; and~~

9 ~~(3) be provided to all other persons~~  
10 ~~submitting evidence, data, views or arguments in the proceeding~~  
11 ~~before the constituent agency.~~

12 ~~P. If a timely petition for review is made, the~~  
13 ~~commission shall consider the petition within ninety days after~~  
14 ~~receipt of the petition. The commission shall notify the~~  
15 ~~petitioner and the applicant or permittee, if other than the~~  
16 ~~petitioner, by certified mail of the date, time and place of~~  
17 ~~the review. If the petitioner is not the applicant or~~  
18 ~~permittee, the applicant or permittee shall be a party to the~~  
19 ~~proceeding. The commission shall ensure that the public~~  
20 ~~receives notice of the date, time and place of the review.~~

21 ~~Q. The commission shall review the record compiled~~  
22 ~~before the constituent agency, including the transcript of any~~  
23 ~~public hearing held on the application or draft permit, and~~  
24 ~~shall allow any party to submit arguments. The commission may~~  
25 ~~designate a hearing officer to review the record and the~~

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1 ~~arguments of the parties and recommend a decision to the~~  
2 ~~commission. The commission shall consider and weigh only the~~  
3 ~~evidence contained in the record before the constituent agency~~  
4 ~~and the recommended decision of the hearing officer, if any,~~  
5 ~~and shall not be bound by the factual findings or legal~~  
6 ~~conclusions of the constituent agency. Based on the review of~~  
7 ~~the evidence, the arguments of the parties and recommendations~~  
8 ~~of the hearing officer, the commission shall sustain, modify or~~  
9 ~~reverse the action of the constituent agency. The commission~~  
10 ~~shall enter ultimate findings of fact and conclusions of law~~  
11 ~~and keep a record of the review.~~

12 ~~R. Prior to the date set for review, if a party~~  
13 ~~shows to the satisfaction of the commission that there was no~~  
14 ~~reasonable opportunity to submit comment or evidence on an~~  
15 ~~issue being challenged, the commission shall order that~~  
16 ~~additional comment or evidence be taken by the constituent~~  
17 ~~agency. Based on the additional evidence, the constituent~~  
18 ~~agency may revise the decision and shall promptly file with the~~  
19 ~~commission the additional evidence received and action taken.~~  
20 ~~The commission shall consider the additional evidence within~~  
21 ~~ninety days after receipt of the additional evidence and shall~~  
22 ~~notify the petitioner and the applicant or permittee, if other~~  
23 ~~than the petitioner, of the date, time and place of the review.~~

24 ~~S. The commission shall notify the petitioner and~~  
25 ~~all other participants in the review proceeding of the action~~

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1 ~~taken by the commission and the reasons for that action.]"~~

2 SECTION 4. Section 74-6-5.1 NMSA 1978 (being Laws 1993,  
3 Chapter 291, Section 12) is amended to read:

4 "74-6-5.1. DISCLOSURE STATEMENTS.--

5 A. The ~~[commission by regulation]~~ secretary by rule  
6 may require every applicant for a permit to dispose or use  
7 septage or sludge or, within a source category designated by  
8 the ~~[commission]~~ secretary, to file with the appropriate  
9 constituent agency a disclosure statement. The disclosure  
10 statement shall be submitted on a form developed by the  
11 ~~[commission]~~ secretary and the department of public safety.  
12 The ~~[commission]~~ secretary, in cooperation with the department  
13 of public safety, shall determine the information to be  
14 contained in the disclosure statement. The disclosure  
15 statement shall be submitted to the constituent agency at the  
16 same time that the applicant files an application for a permit  
17 pursuant to Section 74-6-5 NMSA 1978. The ~~[commission]~~  
18 secretary shall adopt ~~[regulations]~~ rules designating  
19 additional categories of sources subject to the disclosure  
20 requirements of this section as it deems appropriate and  
21 necessary to carry out the purposes of this section.

22 B. Upon a request by the constituent agency, the  
23 department of public safety shall prepare and transmit to the  
24 constituent agency an investigative report on the applicant  
25 within ninety days after the department of public safety

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1 receives an administratively complete disclosure statement  
2 prepared by the applicant for a permit. The investigative  
3 report shall be based in part upon the disclosure statement.  
4 The ninety-day deadline for preparing the investigative report  
5 may be extended by the constituent agency for a reasonable  
6 period of time for good cause. The department of public safety  
7 in preparing the investigative report may request and receive  
8 criminal history information from any other law enforcement  
9 agency or organization. The constituent agency may also  
10 request information regarding a person who will be or could  
11 reasonably be expected to be involved in management activities  
12 of the permitted facility or a person who has a controlling  
13 interest in a permitted facility. The information received  
14 from a law enforcement agency shall be kept confidential by the  
15 department of public safety to the extent that confidentiality  
16 is imposed by the law enforcement agency as a condition for  
17 providing the information to the constituent agency or the  
18 [~~commission~~] secretary.

19 C. All persons required to file a disclosure  
20 statement shall provide any assistance or information requested  
21 by the constituent agency or the department of public safety  
22 and shall cooperate in any inquiry or investigation conducted  
23 by the department of public safety. If a person required to  
24 file a disclosure statement refuses to comply with a formal  
25 request to answer an inquiry or produce information, evidence

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1 or testimony, the application of the applicant or the permit of  
2 the permittee shall be denied or terminated by the constituent  
3 agency.

4 D. If the information required to be included in  
5 the disclosure statement changes or if additional information  
6 should be added after the filing of the disclosure statement,  
7 the person required to file the disclosure statement shall  
8 provide the information to the constituent agency in writing  
9 within thirty days after the change or addition. Failure to  
10 provide the information within thirty days shall constitute the  
11 basis for the termination of a permit or denial of an  
12 application for a permit. Prior to terminating a permit or  
13 denying an application for a permit, the constituent agency  
14 shall notify the permittee or applicant of the constituent  
15 agency's intent to terminate a permit or deny an application  
16 and the constituent agency shall give the permittee or  
17 applicant fourteen days from the date of notice to  
18 satisfactorily explain why the information was not provided  
19 within the thirty-day period. The constituent agency shall  
20 consider the explanation of the permittee or applicant when  
21 determining whether to terminate the permit or deny the  
22 application for a permit.

23 E. No person shall be required to submit the  
24 disclosure statement required by this section if:

- 25 (1) the application is for a facility owned

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1 and operated by the state, a political subdivision of the state  
2 or an agency of the federal government or for the permitted  
3 disposal or use of septage or sludge on the premises where the  
4 sludge or septage is generated;

5 (2) the person has submitted a disclosure  
6 statement pursuant to this section within the previous year and  
7 no changes have occurred that would require disclosure [~~under~~]  
8 as provided in Subsection D of this section; or

9 (3) the person is a corporation or an officer,  
10 director or shareholder of that corporation and that  
11 corporation:

12 (a) has on file and in effect with the  
13 federal securities and exchange commission a registration  
14 statement required by Section 5, Chapter 38, Title 1 of the  
15 federal Securities Act of 1933, as amended;

16 (b) submits to the constituent agency  
17 with the application for a permit evidence of the registration  
18 described in Subparagraph (a) of this [~~subsection~~] paragraph  
19 and a copy of the corporation's most recent annual form 10-k or  
20 an equivalent report; and

21 (c) submits to the constituent agency on  
22 the anniversary date of the issuance of the permit evidence of  
23 registration described in Subparagraph (a) of this [~~subsection~~]  
24 paragraph and a copy of the corporation's most recent annual  
25 form 10-k or an equivalent report.

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1 F. Permit decisions made pursuant to this section  
2 shall be subject to the procedures established in Section  
3 74-6-5 NMSA 1978, including notice ~~[and appeals]~~."

4 SECTION 5. Section 74-6-5.2 NMSA 1978 (being Laws 1993,  
5 Chapter 100, Section 4) is amended to read:

6 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There  
7 is created in the state treasury the "water quality management  
8 fund" to be administered by the department of environment. All  
9 fees collected pursuant to the ~~[regulations]~~ rules adopted by  
10 the ~~[commission under Subsection H of]~~ secretary pursuant to  
11 Section 74-6-5 NMSA 1978 shall be deposited in the fund. Money  
12 in the fund is appropriated to the department of environment  
13 for the purpose of administering the ~~[regulations]~~ rules  
14 adopted by the ~~[commission]~~ secretary pursuant to Section  
15 74-6-5 NMSA 1978. Disbursements from the fund shall be made  
16 upon warrants drawn by the secretary of finance and  
17 administration pursuant to vouchers signed by the secretary of  
18 environment."

19 SECTION 6. Section 74-6-6 NMSA 1978 (being Laws 1967,  
20 Chapter 190, Section 5, as amended) is amended to read:

21 "74-6-6. ADOPTION OF ~~[REGULATIONS AND STANDARDS]~~ RULES--  
22 NOTICE AND HEARING--LEGISLATIVE REVIEW.--

23 ~~[A. No regulation or water quality standard or~~  
24 ~~amendment or repeal thereof shall be adopted until after a~~  
25 ~~public hearing.~~

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1           ~~B. Any person may petition in writing to have the~~  
2           ~~commission adopt, amend or repeal a regulation or water quality~~  
3           ~~standard. The commission shall determine whether to hold a~~  
4           ~~hearing within ninety days of submission of the petition. The~~  
5           ~~denial of such a petition shall not be subject to judicial~~  
6           ~~review.~~

7           ~~C. Hearings on regulations or water quality~~  
8           ~~standards of statewide application shall be held in Santa Fe.~~  
9           ~~Hearings on regulations or standards that are not of statewide~~  
10           ~~application may be held within the area that is substantially~~  
11           ~~affected by the regulation or standard. At least thirty days~~  
12           ~~prior to the hearing date, notice of the hearing shall be~~  
13           ~~published in the New Mexico register and a newspaper of general~~  
14           ~~circulation in the area affected and mailed to all persons who~~  
15           ~~have made a written request to the commission for advance~~  
16           ~~notice of hearings and who have provided the commission with a~~  
17           ~~mailing address. The notice shall state the subject, the time~~  
18           ~~and the place of the hearing and the manner in which interested~~  
19           ~~persons may present their views. The notice shall also state~~  
20           ~~where interested persons may secure copies of any proposed~~  
21           ~~regulation or water quality standard.~~

22           ~~D. At the hearing, the commission shall allow all~~  
23           ~~interested persons reasonable opportunity to submit data, views~~  
24           ~~or arguments orally or in writing and to examine witnesses~~  
25           ~~testifying at the hearing. The commission may designate a~~

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1 ~~hearing officer to take evidence in the hearing. Any person~~  
2 ~~heard or represented at the hearing shall be given written~~  
3 ~~notice of the action of the commission.~~

4 ~~E. No regulation or water quality standard or~~  
5 ~~amendment or repeal thereof adopted by the commission shall~~  
6 ~~become effective until thirty days after its filing in~~  
7 ~~accordance with the provisions of the State Rules Act.]~~

8 A. No rule or amendment or repeal thereof shall be  
9 adopted except in compliance with the State Rules Act and this  
10 section after a public hearing.

11 B. Any person may petition in writing to have the  
12 secretary or constituent agency adopt, amend or repeal a rule.  
13 The secretary or constituent agency shall determine whether to  
14 hold a hearing within ninety days of submission of the  
15 petition. The denial of such a petition shall not be subject  
16 to judicial review.

17 C. Hearings on rules of statewide application shall  
18 be held in Santa Fe. Hearings on rules that are not of  
19 statewide application may be held within the area that is  
20 substantially affected by the rule. At least thirty days prior  
21 to the hearing date, notice of the hearing shall be published  
22 in the New Mexico register and a newspaper of general  
23 circulation in the area affected and mailed to all persons who  
24 have made a written request to the secretary for advance notice  
25 of hearings and who have provided the secretary with a mailing

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1 address. The notice shall state the subject, the time and the  
2 place of the hearing and the manner in which interested persons  
3 may present their views. The notice shall also state where  
4 interested persons may secure copies of any proposed rule.

5 D. At the hearing, the secretary or constituent  
6 agency shall allow all interested persons reasonable  
7 opportunity to submit data, views or arguments orally or in  
8 writing and to examine witnesses testifying at the hearing.  
9 The secretary or constituent agency may designate a hearing  
10 officer to take evidence in the hearing. Any person heard or  
11 represented at the hearing shall be given written notice of the  
12 action of the secretary or constituent agency.

13 E. No rule or amendment or repeal thereof adopted  
14 by the secretary or constituent agency shall become effective  
15 until the secretary, the state engineer, the director of the  
16 New Mexico department of agriculture and the secretary of  
17 energy, minerals and natural resources indicate in writing  
18 their concurrence with the adopted rule.

19 F. The secretary or constituent agency shall file a  
20 copy of a rule or amendment or repeal thereof with the New  
21 Mexico legislative council at the same time it is filed with  
22 the state records center for publication in the New Mexico  
23 register under the State Rules Act. No rule or amendment or  
24 repeal thereof adopted by the secretary shall become effective  
25 until thirty days after its filing in accordance with the

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1 provisions of the State Rules Act.

2 G. The New Mexico legislative council may request  
3 an interim or standing committee to review rules in effect  
4 under the Water Quality Act. The standing or interim committee  
5 may request from the secretary or constituent agency  
6 information necessary to review the rules. The standing or  
7 interim committee may examine each rule to determine whether  
8 the:

9 (1) rule is a valid exercise of delegated  
10 legislative authority;

11 (2) statutory authority for the rule has  
12 expired or been repealed;

13 (3) rule is necessary to accomplish the  
14 apparent or expressed intent of the specific statute that the  
15 rule implements;

16 (4) rule is a reasonable implementation of the  
17 law as it applies to any affected class of persons; and

18 (5) rule affects the finances and operation of  
19 departments, agencies and institutions of the state and all of  
20 its political subdivisions.

21 H. No later than sixty days after receiving a  
22 request by the New Mexico legislative council to review a rule  
23 under the Water Quality Act, the interim or standing committee  
24 shall either approve or disapprove the rule. If the interim or  
25 standing committee approves the rule, then the rule remains in

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1 effect. If the interim or standing committee disapproves the  
2 rule, then the new effective date of the rule is the date of  
3 adjournment of the next regular session of the legislature."

4 SECTION 7. Section 74-6-7 NMSA 1978 (being Laws 1967,  
5 Chapter 190, Section 6, as amended) is amended to read:

6 "74-6-7. ADMINISTRATIVE ACTION--JUDICIAL REVIEW.--

7 ~~[A. Except as otherwise provided in the Water~~  
8 ~~Quality Act, a person who is adversely affected by a regulation~~  
9 ~~adopted by the commission or by a compliance order approved by~~  
10 ~~the commission or who participated in a permitting action or~~  
11 ~~appeal of a certification before the commission and who is~~  
12 ~~adversely affected by such action may appeal to the court of~~  
13 ~~appeals for further relief. All such appeals shall be upon the~~  
14 ~~record made before the commission and shall be taken to the~~  
15 ~~court of appeals within thirty days after the regulation,~~  
16 ~~compliance order, permitting action or certification that is~~  
17 ~~being appealed occurred. If an appeal of a regulation is made,~~  
18 ~~then the date of the commission's action shall be the date of~~  
19 ~~the filing of the regulation under the State Rules Act.~~

20 B. Upon appeal, the court of appeals shall set  
21 aside the commission's action only if it is found to be:

- 22 (1) arbitrary, capricious or an abuse of  
23 discretion;  
24 (2) not supported by substantial evidence in  
25 the record; or



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1 compliance order issued pursuant to the Water Quality Act or  
2 who participated in a permitting action or certification before  
3 a constituent agency and who is adversely affected by such  
4 action pursuant to that act may appeal to district court for  
5 further relief under Section 39-3-1.1 NMSA 1978.

6 C. Upon any appeal to the district court, if a  
7 party shows to the satisfaction of the district court that  
8 there was no reasonable opportunity to submit comments or  
9 evidence on an issue being challenged, the district court may  
10 order a trial de novo. If the district court does not order a  
11 trial de novo, the appeal shall be upon the record made before  
12 the secretary or constituent agency. The district court shall  
13 set aside the action by the secretary or constituent agency  
14 only if it is found to be:

- 15 (1) arbitrary, capricious or an abuse of  
16 discretion;  
17 (2) not supported by substantial evidence in  
18 the record;  
19 (3) otherwise not in accordance with law; or  
20 (4) unwarranted by the facts if the facts are  
21 subject to a trial de novo by the district court.

22 D. After a hearing and a showing of good cause by  
23 the appellant, a stay of the action being appealed may be  
24 granted pending the outcome of the judicial review. The stay  
25 of the action may be granted by the secretary or constituent

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1 agency prior to the filing of an appeal for judicial review or  
2 by the district court."

3 SECTION 8. Section 74-6-8 NMSA 1978 (being Laws 1967,  
4 Chapter 190, Section 7) is amended to read:

5 "74-6-8. DUTIES OF CONSTITUENT AGENCIES.--Each  
6 constituent agency shall administer [~~regulations~~] rules adopted  
7 pursuant to the Water Quality Act, responsibility for the  
8 administration of which has been assigned to it by the  
9 [~~commission~~] secretary."

10 SECTION 9. Section 74-6-9 NMSA 1978 (being Laws 1967,  
11 Chapter 190, Section 8, as amended) is amended to read:

12 "74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each  
13 constituent agency may:

14 A. receive and expend funds appropriated, donated  
15 or allocated to the constituent agency for purposes consistent  
16 with the Water Quality Act;

17 B. develop facts and make studies and  
18 investigations and require the production of documents  
19 necessary to carry out the responsibilities assigned to the  
20 constituent agency. The result of any investigation shall be  
21 reduced to writing and a copy furnished to the [~~commission~~]  
22 secretary or head of the constituent agency and to the owner or  
23 occupant of the premises investigated;

24 C. report to the [~~commission~~] secretary and to  
25 other constituent agencies water pollution conditions that are

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1 believed to require action where the circumstances are such  
2 that the responsibility appears to be outside the  
3 responsibility assigned to the agency making the report;

4 D. make every reasonable effort to obtain voluntary  
5 cooperation in the prevention or abatement of water pollution;

6 E. upon presentation of proper credentials, enter  
7 at reasonable times upon or through any premises in which a  
8 water contaminant source is located or in which are located any  
9 records required to be maintained by [~~regulations~~] rules of the  
10 federal government or the [~~commission~~] secretary; provided that  
11 entry into any private residence without the permission of the  
12 owner shall be only by order of the district court for the  
13 county in which the residence is located and that, in  
14 connection with any entry provided for in this subsection, the  
15 constituent agency may:

16 (1) have access to and reproduce for [~~their~~]  
17 its use any copy of the records;

18 (2) inspect any treatment works, monitoring  
19 equipment or methods required to be installed by [~~regulations~~]  
20 rules of the federal government or the [~~commission~~] secretary;  
21 and

22 (3) sample any effluents, water contaminant or  
23 receiving waters;

24 F. on the same basis as any other person, recommend  
25 and propose [~~regulations and standards~~] rules for promulgation

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1 by the [~~commission~~] secretary; and

2 G. on the same basis as any other person, present  
3 data, views or arguments and examine witnesses and otherwise  
4 participate at all hearings conducted by the [~~commission~~]  
5 secretary or any other administrative agency with  
6 responsibility in the areas of environmental management, public  
7 health or consumer protection, but shall not be given any  
8 special status over any other party [~~provided that the~~  
9 ~~participation by a constituent agency in a hearing shall not~~  
10 ~~require the recusal or disqualification of the commissioner~~  
11 ~~representing that constituent agency]."~~

12 SECTION 10. Section 74-6-10 NMSA 1978 (being Laws 1967,  
13 Chapter 190, Section 9, as amended) is amended to read:

14 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--  
15 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

16 A. Whenever, on the basis of any information, a  
17 constituent agency determines that a person violated or is  
18 violating a requirement [~~regulation or water quality standard~~]  
19 or rule adopted pursuant to the Water Quality Act or a  
20 condition of a permit issued pursuant to that act, the  
21 constituent agency may:

22 (1) issue a compliance order requiring  
23 compliance immediately or within a specified time period or  
24 issue a compliance order assessing a civil penalty, or both; or

25 (2) commence a civil action in district court

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1 for appropriate relief, including injunctive relief.

2 B. A compliance order issued pursuant to Paragraph  
3 (1) of Subsection A of this section may include a suspension or  
4 termination of the permit allegedly violated.

5 C. A compliance order shall state with reasonable  
6 specificity the nature of the violation. Any penalty assessed  
7 in the compliance order shall not exceed:

8 (1) fifteen thousand dollars (\$15,000) per day  
9 of noncompliance with the provisions in Section 74-6-5 NMSA  
10 1978, including a [~~regulation~~] rule adopted or a permit issued  
11 pursuant to that section; or

12 (2) ten thousand dollars (\$10,000) per day for  
13 each violation of a provision of the Water Quality Act other  
14 than the provisions in Section 74-6-5 NMSA 1978 or of a  
15 [~~regulation or water quality standard~~] rule adopted pursuant to  
16 the Water Quality Act.

17 D. In assessing a penalty authorized by this  
18 section, the constituent agency shall take into account the  
19 seriousness of the violation, any good faith efforts to comply  
20 with the applicable requirements and other relevant factors.

21 E. For purposes of this section, a single  
22 operational event that leads to simultaneous violations of more  
23 than one standard shall be treated as a single violation.

24 F. If a person fails to take corrective actions  
25 within the time specified in a compliance order, the

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1 constituent agency may:

2 (1) assess a civil penalty of not more than  
3 twenty-five thousand dollars (\$25,000) for each day of  
4 continued noncompliance with the compliance order; and

5 (2) suspend or terminate the permit violated  
6 by the person.

7 G. [~~Any~~] A compliance order issued by a constituent  
8 agency pursuant to this section shall become final unless, no  
9 later than thirty days after the compliance order is served,  
10 [~~any~~] a person named in the compliance order submits a written  
11 request to the [~~commission~~] secretary for a public hearing.  
12 The [~~commission~~] secretary shall conduct a public hearing  
13 within ninety days after receipt of a request.

14 H. The [~~commission~~] secretary may appoint an  
15 independent hearing officer to preside over [~~any~~] a public  
16 hearing held pursuant to Subsection [~~F~~] G of this section. The  
17 hearing officer shall:

18 (1) make and preserve a complete record of the  
19 proceedings; and

20 (2) forward to the [~~commission~~] secretary a  
21 report that includes recommendations if recommendations are  
22 requested by the [~~commission~~] secretary.

23 I. The [~~commission~~] secretary shall consider the  
24 findings of the independent hearing officer, and based on the  
25 evidence presented at the hearing, the [~~commission~~] secretary

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1 shall make a final decision regarding the compliance order.

2 J. In connection with any proceeding [~~under~~]  
3 provided for in this section, the [~~commission~~] secretary may:

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

8 K. Penalties collected pursuant to this section  
9 shall be deposited in the general fund.

10 L. As an additional means of enforcing the Water  
11 Quality Act or any [~~regulation or standard of the commission~~]  
12 applicable rules, the [~~commission~~] secretary or a constituent  
13 agency may accept an assurance of discontinuance of any act or  
14 practice deemed in violation of the Water Quality Act, or any  
15 [~~regulation or standard~~] rule adopted pursuant to that act,  
16 from any person engaging in, or who has engaged in, such act or  
17 practice, signed and acknowledged by the [~~chairman of the~~  
18 ~~commission~~] secretary or constituent agency and the party  
19 affected. Any such assurance shall specify a time limit during  
20 which the discontinuance is to be accomplished."

21 SECTION 11. Section 74-6-10.1 NMSA 1978 (being Laws 1993,  
22 Chapter 291, Section 14) is amended to read:

23 "74-6-10.1. CIVIL PENALTIES.--

24 A. Any person who does not comply with the  
25 provisions of Section 74-6-5 NMSA 1978, including any

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1     ~~[regulation]~~ rule adopted pursuant to that section or any  
2     permit issued pursuant to that section, shall be assessed civil  
3     penalties up to the amount of fifteen thousand dollars  
4     (\$15,000) per day of noncompliance for each violation.

5             B. Any person who violates any provision of the  
6     Water Quality Act other than Section 74-6-5 NMSA 1978 or any  
7     person who violates any ~~[regulation, water quality standard]~~  
8     rule or compliance order adopted pursuant to that act shall be  
9     assessed civil penalties up to the amount of ten thousand  
10    dollars (\$10,000) per day for each violation."

11            SECTION 12. Section 74-6-10.2 NMSA 1978 (being Laws 1993,  
12    Chapter 291, Section 15) is amended to read:

13            "74-6-10.2. CRIMINAL PENALTIES.--

14            A. ~~[No]~~ A person shall not:

15                    (1) discharge any water contaminant without a  
16    permit for the discharge, if a permit is required, or in  
17    violation of any condition of a permit for the discharge from  
18    the federal environmental protection agency, the ~~[commission]~~  
19    secretary or a constituent agency designated by the  
20    ~~[commission]~~ secretary;

21                    (2) make any false material statement,  
22    representation, certification or omission of material fact in  
23    an application, record, report, plan or other document filed,  
24    submitted or required to be maintained under the Water Quality  
25    Act;

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1 (3) falsify, tamper with or render inaccurate  
2 any monitoring device, method or record required to be  
3 maintained under the Water Quality Act;

4 (4) fail to monitor, sample or report as  
5 required by a permit issued pursuant to a state or federal law  
6 or regulation; or

7 (5) introduce into a sewerage system or into a  
8 publicly owned treatment works any water contaminant or  
9 hazardous substance, other than in compliance with all  
10 applicable federal, state or local requirements or permits,  
11 that the person knew or reasonably should have known could  
12 cause personal injury or property damage, ~~[which]~~ that causes  
13 the treatment works to violate an effluent limitation or  
14 condition in a permit issued to the treatment works pursuant to  
15 the Water Quality Act or applicable federal water quality  
16 statutes.

17 B. Any person who knowingly violates or knowingly  
18 causes or allows another person to violate Subsection A of this  
19 section is guilty of a fourth degree felony and shall be  
20 sentenced in accordance with the provisions of Section  
21 31-18-15 NMSA 1978.

22 C. Any person who is convicted of a second or  
23 subsequent violation of Subsection A of this section is guilty  
24 of a third degree felony and shall be sentenced in accordance  
25 with the provisions of Section 31-18-15 NMSA 1978.

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1           D. Any person who knowingly violates Subsection A  
2 of this section or knowingly causes another person to violate  
3 Subsection A of this section and thereby causes a substantial  
4 adverse environmental impact is guilty of a third degree felony  
5 and shall be sentenced in accordance with the provisions of  
6 Section 31-18-15 NMSA 1978.

7           E. Any person who knowingly violates Subsection A  
8 of this section and knows at the time of the violation that  
9 [he] the person is creating a substantial danger of death or  
10 serious bodily injury to any other person is guilty of a second  
11 degree felony and shall be sentenced in accordance with the  
12 provisions of Section 31-18-15 NMSA 1978.

13           F. A single operational event that leads to  
14 simultaneous violations of more than one water contaminant  
15 parameter shall be treated as a single violation."

16           **SECTION 13.** Section 74-6-11 NMSA 1978 (being Laws 1967,  
17 Chapter 190, Section 10, as amended) is amended to read:

18           "74-6-11. EMERGENCY--POWERS OF DELEGATED CONSTITUENT  
19 AGENCIES--PENALTIES.--

20           A. If a constituent agency determines upon receipt  
21 of evidence that a pollution source or combination of sources  
22 over which it has been delegated authority [~~by the commission~~]  
23 pursuant to the Water Quality Act poses an imminent and  
24 substantial danger to public health, it may bring suit in the  
25 district court for the county in which such a source is located

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1 to:

2 (1) restrain immediately any person causing or  
3 contributing to the alleged condition from further causing or  
4 contributing to the condition; or

5 (2) take such other action as deemed necessary  
6 and appropriate.

7 B. If it is not practicable to assure prompt  
8 protection of public health solely by commencement of a civil  
9 action as set forth in Subsection A of this section, the  
10 constituent agency may issue such orders as it deems necessary  
11 to protect public health. [~~Any~~] An order issued by the  
12 constituent agency shall be effective for not more than  
13 seventy-two hours unless the constituent agency brings an  
14 action in district court within the seventy-two-hour period.  
15 If the constituent agency brings an action within seventy-two  
16 hours of issuance of the order, the order shall be effective  
17 for one hundred sixty-eight hours or for a longer period of  
18 time authorized by the court.

19 C. Any person who willfully violates or fails or  
20 refuses to comply with an order issued by a constituent agency  
21 [~~under~~] pursuant to the provisions of Subsection B of this  
22 section shall, upon conviction, be punished by a fine of not  
23 more than five thousand dollars (\$5,000) for each day during  
24 which the violation, failure or refusal occurs."

25 SECTION 14. Section 74-6-12 NMSA 1978 (being Laws 1967,

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1 Chapter 190, Section 11, as amended) is amended to read:

2 "74-6-12. LIMITATIONS.--

3 A. The Water Quality Act does not grant to the  
4 [~~commission~~] secretary, to a constituent agency or to any other  
5 entity the power to take away or modify the property rights in  
6 water, nor is it the intention of the Water Quality Act to take  
7 away or modify such rights.

8 B. The Water Quality Act does not apply to [~~any~~] an  
9 activity or condition subject to [~~the authority of the~~  
10 ~~environmental improvement board pursuant to~~] the Hazardous  
11 Waste Act, the Ground Water Protection Act or the Solid Waste  
12 Act except to abate water pollution or to control the disposal  
13 or use of septage and sludge.

14 C. The Water Quality Act does not authorize the  
15 [~~commission~~] secretary or any constituent agency to adopt [~~any~~  
16 ~~regulation~~] a rule with respect to any condition or quality of  
17 water if the water pollution and its effects are confined  
18 entirely within the boundaries of property within which the  
19 water pollution occurs when the water does not combine with  
20 other waters.

21 D. The Water Quality Act does not grant to the  
22 [~~commission~~] secretary or any constituent agency any  
23 jurisdiction or authority affecting the relation between  
24 employers and employees with respect to or arising out of any  
25 condition [~~of water~~] or quality of water.

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1           E. The Water Quality Act does not supersede or  
2 limit the applicability of any law relating to industrial  
3 health, safety or sanitation.

4           F. Except as required by federal law, in the  
5 adoption of [~~regulations~~] rules and water quality standards and  
6 in an action for enforcement of the Water Quality Act and  
7 [~~regulations~~] rules adopted pursuant to that act, reasonable  
8 degradation of water quality resulting from beneficial use  
9 shall be allowed. Such degradation shall not result in  
10 impairment of water quality to the extent that water quality  
11 standards are exceeded.

12           G. The Water Quality Act does not apply to [~~any~~] an  
13 activity or condition subject to the authority of the oil  
14 conservation commission pursuant to provisions of the Oil and  
15 Gas Act, Section 70-2-12 NMSA 1978 and other laws conferring  
16 power on the oil conservation commission to prevent or abate  
17 water pollution.

18           H. When changes in dissolved oxygen, temperature,  
19 dissolved solids, sediment or turbidity in a water of the state  
20 is attributable to natural causes or to the reasonable  
21 operation of irrigation and flood control facilities that are  
22 not subject to federal or state water pollution control  
23 permitting, numerical standards for temperature, dissolved  
24 solids content, dissolved oxygen, sediment or turbidity adopted  
25 under the Water Quality Act do not apply. "Reasonable

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1 operation", as used in this subsection, shall be defined by  
2 [~~regulation~~] rule of the [~~commission~~] secretary or a  
3 constituent agency."

4 SECTION 15. Section 74-6-13 NMSA 1978 (being Laws 1967,  
5 Chapter 190, Section 12) is amended to read:

6 "74-6-13. CONSTRUCTION.--The Water Quality Act provides  
7 additional and cumulative remedies to prevent, abate and  
8 control water pollution, and nothing abridges or alters rights  
9 of action or remedies in equity under the common law or  
10 statutory law, criminal or civil. No provision of the Water  
11 Quality Act or any act done by virtue [~~thereof~~] of that act  
12 stops the state or any political subdivision or person as owner  
13 of water rights or otherwise in the exercise of [~~their~~] that  
14 person's rights in equity or under the common law or statutory  
15 law to suppress nuisances or to abate pollution."

16 SECTION 16. Section 74-6-15 NMSA 1978 (being Laws 1993,  
17 Chapter 291, Section 13) is amended to read:

18 "74-6-15. CONFIDENTIAL INFORMATION--PENALTIES.--

19 A. Records, reports or information obtained by the  
20 [~~commission~~] secretary or a constituent agency pursuant to the  
21 Water Quality Act shall be generally available to the public.  
22 All ambient water quality data and all effluent data obtained  
23 by the [~~commission~~] secretary or a constituent agency shall be  
24 available to the public. Records, reports or information or  
25 particular parts of the records, reports or information shall

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1 be held confidential if a person can demonstrate to the  
2 [~~commission~~] secretary or constituent agency that the records,  
3 reports or information or particular parts of the records,  
4 reports or information, if made public, would divulge  
5 confidential business records or methods or processes entitled  
6 to protection as trade secrets. Except that the record, report  
7 or information may be disclosed:

8 (1) to officers, employees or authorized  
9 representatives of the [~~commission~~] secretary or a constituent  
10 agency concerned with carrying out the purposes and provisions  
11 of the Water Quality Act;

12 (2) to officers, employees or authorized  
13 representatives of the United States government; or

14 (3) when relevant in any proceeding pursuant  
15 to the Water Quality Act or the federal act.

16 B. The [~~commission~~] secretary shall promulgate  
17 [~~regulations~~] rules to implement the provisions of this  
18 section, including [~~regulations~~] rules specifying business  
19 records entitled to protection as confidential.

20 C. An officer, employee or authorized  
21 representative of the [~~commission~~] secretary or a constituent  
22 agency who knowingly or willfully publishes, divulges,  
23 discloses or makes known any information that is required to be  
24 considered confidential pursuant to this section shall be fined  
25 not more than one thousand dollars (\$1,000) or [~~imprisonment~~

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1 of] imprisoned for not more than one year, or both."

2 SECTION 17. Section 74-6-16 NMSA 1978 (being Laws 1993,  
3 Chapter 291, Section 16) is amended to read:

4 "74-6-16. EFFECT AND ENFORCEMENT OF WATER QUALITY ACT  
5 DURING TRANSITION.--

6 A. All rules, regulations, water quality standards  
7 and administrative determinations of the water quality control  
8 commission and any constituent agency pertaining to the Water  
9 Quality Act that existed prior to [~~the effective date of this~~  
10 ~~1993 act~~] December 31, 2011 shall remain in full force and  
11 effect after that date until repealed or amended, unless in  
12 conflict with, prohibited by or inconsistent with the  
13 provisions of the Water Quality Act or subsequently adopted  
14 rules.

15 B. All enforcement actions taken before [~~the~~  
16 ~~effective date of this 1993 act~~] December 31, 2011 shall be  
17 valid if based upon a violation of the Water Quality Act,  
18 including any rule, regulation or water quality standard that  
19 was in effect at the time of the violation.

20 C. All rules, regulations, water quality standards  
21 and administrative determinations that need to be initiated,  
22 amended or repealed due to amendments to the Water Quality Act  
23 in 2011 shall be adopted on or before December 31, 2011."

24 SECTION 18. Section 74-6-17 NMSA 1978 (being Laws 1987,  
25 Chapter 333, Section 15, as amended) is amended to read:

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1 "74-6-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
2 The water quality control commission is terminated on July 1,  
3 [2013] 2011 pursuant to the Sunset Act. [~~The commission shall~~  
4 ~~continue to operate according to the provisions of Chapter 74,~~  
5 ~~Article 6 NMSA 1978 until July 1, 2014. Effective July 1,~~  
6 ~~2014, Sections 74-6-3 and 74-6-4 NMSA 1978 are repealed.]"~~

7 SECTION 19. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,  
8 PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July  
9 1, 2011:

10 A. all functions, personnel, appropriations, money,  
11 records, equipment, supplies and other property of the water  
12 quality control commission shall be transferred to the  
13 department of environment;

14 B. all contracts of the water quality control  
15 commission shall be binding and effective on the New Mexico  
16 department of agriculture; and

17 C. all references in law to the water quality  
18 control commission shall be deemed to be references to the  
19 secretary of environment.

20 SECTION 20. REPEAL.--Section 74-6-3.1 NMSA 1978 (being  
21 Laws 1982, Chapter 73, Section 28, as amended) is repealed.