

HOUSE BILL 633

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO UTILITY OPERATORS; AMENDING THE UTILITY OPERATORS
CERTIFICATION ACT; PROVIDING THAT THE DEPARTMENT OF ENVIRONMENT
HAS DIRECT CONTROL OVER UTILITY OPERATORS.

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 department as being qualified to operate one
of the classifications of public water supply systems or public
wastewater facilities;

~~[B. "commission" means the water quality control
commission;~~

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1 ~~G.~~ B. "department" means the department of
2 environment;

3 ~~D.~~ C. "domestic liquid waste" means human excreta
4 and water-carried waste from typical residential plumbing
5 fixtures and activities, including waste from toilets, sinks,
6 bath fixtures, clothes or dishwashing machines and floor
7 drains;

8 ~~E.~~ D. "domestic liquid waste treatment unit"
9 means any system that is designed to discharge less than two
10 thousand gallons per day and that is subject to rules
11 promulgated by the environmental improvement board pursuant to
12 Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a
13 watertight unit designed, constructed and installed to
14 stabilize only domestic liquid waste and to retain solids
15 contained in such domestic liquid waste, including septic
16 tanks;

17 ~~F.~~ E. "operate" means performing any activity,
18 function, process control decision or system integrity decision
19 regarding water quality or water quantity that has the
20 potential to affect the proper functioning of a public water
21 supply system or public wastewater facility or to affect human
22 health, public welfare or the environment;

23 ~~G.~~ F. "person" means any agency, department or
24 instrumentality of the United States and any of its officers,
25 agents or employees, the state or any agency, institution or

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1 political subdivision thereof, any public or private
2 corporation, individual, partnership, association or other
3 entity, and includes any officer or governing or managing body
4 of any political subdivision or public or private corporation;

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

9 (1) any domestic liquid waste treatment unit;
10 or

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

15 ~~[I.]~~ H. "public water supply system" means:

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

19 (a) has at least fifteen service
20 connections; or

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

24 (2) includes any water supply source and any
25 treatment, storage and distribution facilities under control of

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1 the operator of the system."

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

4 "61-33-3. ADMINISTRATION--ENFORCEMENT.--

5 A. The administration and enforcement of the
6 Utility Operators Certification Act is vested in the
7 department.

8 B. The department shall:

9 (1) approve and accredit schools and training
10 programs designed to educate and qualify persons for
11 certification in one of the classifications of public water
12 supply system operators or public wastewater facility
13 operators;

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

19 (3) enter into agreements, contracts or
20 cooperative arrangements with persons; ~~and~~

21 (4) receive and accept financial and technical
22 assistance;

23 (5) design, construct and administer one or
24 more training facilities for:

25 (a) persons who are subject to the

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1 Utility Operators Certification Act;

2 (b) persons who are subject to any other
3 program under the jurisdiction of the department; or

4 (c) persons seeking training, experience
5 and qualification pursuant to the objectives of the Utility
6 Operators Certification Act or another department program; and

7 (6) administer, test and demonstrate materials
8 and systems used in utility operator training facilities."

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

11 "61-33-4. POWERS AND DUTIES OF ~~[COMMISSION]~~ DEPARTMENT.--

12 The ~~[commission]~~ department may adopt rules relating to the
13 administration and enforcement of the Utility Operators
14 Certification Act. The ~~[commission]~~ department shall:

15 A. adopt rules that classify public water supply
16 systems and public wastewater facilities based on:

17 (1) size and type of system or facility;

18 (2) capacity of the system or facility based
19 on the size of the serviced area and the number and size of the
20 users to be served;

21 (3) type and character of the water or
22 wastewater to be treated; and

23 (4) physical conditions affecting the
24 treatment plants, collection systems and distribution systems;

25 B. adopt rules providing standards and criteria for

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1 the certification of operators based on their qualifications
2 and their ability to operate public water supply systems or
3 public wastewater facilities of the various classifications;

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

12 D. adopt and file under the State Rules Act rules
13 necessary to carry out the provisions of the Utility Operators
14 Certification Act; and

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

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

22 "61-33-9. VARIANCE PROCEDURES.--

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

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1 B. Any variance procedure established by the
2 ~~[commission]~~ department shall not allow an operating authority
3 more than six months to obtain the service of a certified
4 operator, except the ~~[commission]~~ department may give a
5 variance not to exceed eighteen months if the operator in
6 charge is involved in a training course that will bring ~~[his]~~
7 the operator's level of competency to the level required within
8 the eighteen-month period."

9 SECTION 5. Section 61-33-10 NMSA 1978 (being Laws 1992,
10 Chapter 44, Section 10, as amended) is amended to read:

11 "61-33-10. ENFORCEMENT--COMPLIANCE ORDERS.--

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

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

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

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

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

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

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

24 F. The department may appoint a hearing officer to
25 preside over the public hearing held pursuant to this section.

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1 If a hearing officer is appointed, the hearing officer shall
2 forward a recommendation based upon the record to the secretary
3 of environment, who shall make the final decision.

4 G. In connection with any proceeding pursuant to
5 the provisions of this section, the department may:

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

10 H. A person aggrieved by an adverse final decision
11 of the secretary may appeal the decision to ~~[the commission.~~
12 ~~The appeal shall be on the record. The commission may, upon~~
13 ~~motion by a party, receive either oral or written arguments by~~
14 ~~the parties limited to the evidence contained in the record]~~
15 district court pursuant to Rule 1-075 NMRA.

16 I. All penalties collected pursuant to this section
17 shall be deposited in the general fund to the credit of the
18 current school fund."

19 SECTION 6. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2019.