

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 50

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING FOR A PRIVATE RIGHT OF ACTION TO ENFORCE CERTAIN STATUTES; ENACTING NEW SECTIONS OF THE OIL AND GAS ACT, THE AIR QUALITY CONTROL ACT, THE HAZARDOUS WASTE ACT, THE SOLID WASTE ACT AND THE WATER QUALITY ACT; REPEALING SECTION 70-2-29 NMSA 1978 (BEING LAWS 1935, CHAPTER 72, SECTION 20, AS AMENDED).

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

SECTION 1. A new section of the Oil and Gas Act is enacted to read:

"[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

A. Except as provided in Subsection B of this section, a person who is injured in fact, economically or otherwise, or who is imminently threatened with injury, economically or otherwise, may commence a civil action on the

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1 person's own behalf against any other person who is subject to
2 or regulated by the Oil and Gas Act or a rule, permit or order
3 issued pursuant to that act alleging a past or present
4 violation of the Oil and Gas Act or a rule, permit or order
5 issued pursuant to that act related to protection of the
6 environment or prevention of waste.

7 B. No action may be brought under this section:

8 (1) unless the plaintiff has given ninety
9 days' written notice of the alleged violation to the
10 commission, the division, the attorney general and any alleged
11 violator. However, when the alleged violation constitutes an
12 immediate threat to the health or safety of the plaintiff or
13 would immediately and irreversibly impair a legal interest of
14 the plaintiff, an action under this section may be brought
15 immediately after notice is given to the proper parties; or

16 (2) if the commission or the division has
17 commenced and is diligently prosecuting a civil action in a
18 court of this state to require compliance with the Oil and Gas
19 Act or rule, permit or order issued pursuant to that act. In
20 an action commenced by the commission or division, a person who
21 has standing pursuant to Subsection A of this section and who
22 has provided notice pursuant to Paragraph (1) of this
23 subsection prior to the initiation of the action may intervene
24 as a matter of right.

25 C. Whenever an action is brought under this

1 section, the plaintiff shall serve a copy of the complaint,
2 along with a notice of the right to intervene and a copy of any
3 response to the notice letter, on the commission, the division
4 and the attorney general. The commission, the division or the
5 attorney general may intervene as a matter of right and file a
6 notice to stay the proceedings because the division commenced
7 an administrative enforcement action prior to the date the
8 action was filed, or may:

- 9 (1) support the action;
10 (2) file a motion or otherwise support
11 dismissal of the action because it has been fully resolved; or
12 (3) take such other action as is authorized by
13 law.

14 D. If neither the commission, the division nor the
15 attorney general intervenes in an action brought under this
16 section, the plaintiff shall provide the commission, the
17 division and the attorney general with a copy of any scheduling
18 order, including the scheduled trial date.

19 E. No consent decree or stipulated judgment shall
20 be entered in an action brought under this section unless the
21 court has determined, after receiving, as appropriate,
22 arguments or evidence or both, that the consent decree or
23 stipulated judgment is fair, reasonable, in the public interest
24 and furthers the goals of the Oil and Gas Act, and unless
25 either:

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1 (1) the commission or the division is a party;
2 or

3 (2) the plaintiff has provided a copy of the
4 proposed consent decree or stipulated judgment to the
5 commission and the division.

6 F. In any action brought under this section, the
7 court has jurisdiction to:

8 (1) assess a civil penalty in the amounts set
9 forth in Subsection D of Section 70-2-31 NMSA 1978 for each
10 violation;

11 (2) issue a restraining order or a temporary
12 or permanent injunction, including, as applicable, an order
13 requiring remediation of any contamination resulting from the
14 violation; or

15 (3) grant a combination of the foregoing
16 relief; and

17 (4) award reasonable costs of litigation,
18 including expert costs and attorney fees.

19 G. Any action brought under this section alleging a
20 violation of the Oil and Gas Act or the rules or requirements
21 thereunder shall be brought in a judicial district in which the
22 division could have brought suit for the alleged violation.

23 H. Penalties collected under this section shall be
24 deposited in the state treasury to be credited to the general
25 fund.

1 I. The limitations period in Section 37-1-8 NMSA
2 1978 for injuries to the person shall apply to all actions
3 brought under this section. The ninety-day time period from
4 when notice is provided to the commission, division or attorney
5 general under Paragraph (1) of Subsection B of this section
6 shall not be counted toward the limitation period.

7 J. Nothing in this section shall restrict any right
8 that any person or class of persons may have under any statute
9 or common law to seek enforcement of any violation of the Oil
10 and Gas Act or any rule or requirement thereunder or to seek
11 any other relief."

12 SECTION 2. A new section of the Air Quality Control Act
13 is enacted to read:

14 "[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

15 A. Except as provided in Subsections B and C of
16 this section, a person who is injured in fact, economically or
17 otherwise, or who is imminently threatened with such injury,
18 may bring a civil action on the person's own behalf against any
19 other person who is subject to or regulated by the Air Quality
20 Control Act or a rule, permit or order issued pursuant to that
21 act alleging a past or present violation of the Air Quality
22 Control Act or any rule, permit or order issued under that act.

23 B. No action may be brought under this section
24 until ninety days after the plaintiff has given written notice
25 of the alleged violation to the department, the attorney

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1 general and any alleged violator. However, when the alleged
2 violation constitutes an immediate threat to the health or
3 safety of the plaintiff or of the public or would immediately
4 and irreversibly impair a legal interest of the plaintiff, an
5 action under this section may be brought immediately after
6 notice is given to the proper parties.

7 C. No action may be brought under this section if
8 the department has commenced and is diligently prosecuting a
9 civil action in a court of this state to require compliance
10 with the Air Quality Control Act or rule, permit or order
11 issued under that act. In an action commenced by the
12 department, a person who has standing under Subsection A of
13 this section and who has provided notice under Subsection B of
14 this section prior to the initiation of the action may
15 intervene as a matter of right.

16 D. Whenever an action is brought under this
17 section, the plaintiff shall serve a copy of the complaint,
18 along with a notice of the right to intervene and a copy of any
19 response to the notice letter, on the department and the
20 attorney general. The department or the attorney general may
21 intervene as a matter of right and file a notice to stay the
22 proceedings because the department commenced an administrative
23 enforcement action prior to the date the action was filed, or
24 may:

- 25 (1) support the action;

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1 (2) file a motion or otherwise support
2 dismissal of the action because it has been fully resolved; or

3 (3) take such other action as is authorized by
4 law.

5 E. If neither the department nor the attorney
6 general intervenes in an action brought under this section, the
7 plaintiff shall provide the department and the attorney general
8 with a copy of any scheduling order, including the scheduled
9 trial date.

10 F. No consent decree or stipulated judgment shall
11 be entered in an action brought under this section unless the
12 court has determined, after receiving, as appropriate,
13 arguments or evidence or both, that the consent decree or
14 stipulated judgment is fair, reasonable, in the public interest
15 and furthers the goals of the Air Quality Control Act, and
16 unless either:

17 (1) the department is a party; or

18 (2) the plaintiff has provided a copy of the
19 proposed consent decree or stipulated judgment to the
20 department, and the department has had at least forty-five days
21 after receipt of the proposed consent decree or judgment but
22 prior to entry of the decree or judgment to prepare and submit
23 arguments or evidence or both on the proposed decree or
24 judgment to the court.

25 G. In any action brought under this section, the

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1 court has jurisdiction to:

2 (1) assess a civil penalty in the amount set
3 forth in Subsection A of Section 74-2-12.1 NMSA 1978 for each
4 violation;

5 (2) issue a restraining order or a temporary
6 or permanent injunction, including, as applicable, an order
7 requiring remediation of any contamination resulting from the
8 violation; or

9 (3) grant a combination of the foregoing
10 relief; and

11 (4) award reasonable costs of litigation,
12 including expert costs and attorney fees.

13 H. Penalties collected under this section shall be
14 deposited in:

15 (1) the municipal or county general fund if
16 the source is subject to the jurisdiction of a local authority;
17 or

18 (2) the state treasury general fund for all
19 other sources.

20 I. In any action brought under this section, if
21 jurisdiction to enforce the Air Quality Control Act has been
22 assumed by a local authority and if the complaint arose within
23 the jurisdiction of the local authority, notwithstanding the
24 definitions in Section 74-2-2 NMSA 1978, the following
25 definitions shall apply:

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1 (1) "board" means the local board created by
2 the local authority;

3 (2) "department" means the administrative
4 agency established by the local authority pursuant to Paragraph
5 (2) of Subsection A of Section 74-2-4 NMSA 1978; and

6 (3) "secretary" means the director or
7 administrative head of the local agency.

8 J. The limitations period in Section 37-1-8 NMSA
9 1978 for injuries to the person shall apply to all actions
10 brought under this section. The ninety-day time period from
11 when notice is provided to the department and attorney general
12 under Subsection B of this section shall not be counted toward
13 the limitation period.

14 K. Nothing in this section shall restrict any right
15 that any person or class of persons may have under any statute
16 or common law to seek enforcement of any violation of the Air
17 Quality Control Act or any rule or requirement thereunder or to
18 seek any other relief."

19 SECTION 3. A new section of the Hazardous Waste Act is
20 enacted to read:

21 "[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

22 A. Except as provided in Subsections B and C of
23 this section, a person who is injured in fact, economically or
24 otherwise, or who is imminently threatened with such injury,
25 may bring a civil action on the person's own behalf against any

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1 other person who is subject to or regulated by the Hazardous
2 Waste Act or a rule, permit or order issued pursuant to that
3 act alleging a past or present violation of the Hazardous Waste
4 Act or any rule, permit or order issued under that act.

5 B. No action may be brought under this section
6 until ninety days after the plaintiff has given written notice
7 of the alleged violation to the department, the attorney
8 general and any alleged violator. However, when the alleged
9 violation constitutes an immediate threat to the health or
10 safety of the plaintiff or would immediately and irreversibly
11 impair a legal interest of the plaintiff, an action under this
12 section may be brought immediately after notice is given to the
13 proper parties.

14 C. No action may be brought under this section if
15 the department has commenced and is diligently prosecuting a
16 civil action in a court of this state to require compliance
17 with the Hazardous Waste Act or rule, permit or order issued
18 under that act. In an action commenced by the department, a
19 person who has standing under Subsection A of this section and
20 who has provided notice under Subsection B of this section
21 prior to the initiation of the action may intervene as a matter
22 of right.

23 D. Whenever an action is brought under this
24 section, the plaintiff shall serve a copy of the complaint,
25 along with a notice of the right to intervene and a copy of any

1 response to the notice letter, on the department and the
2 attorney general. The department or the attorney general may
3 intervene as a matter of right and file a notice to stay the
4 proceedings because the department commenced an administrative
5 enforcement action prior to the date the action was filed, or
6 may:

- 7 (1) support the action;
- 8 (2) file a motion or otherwise support
9 dismissal of the action because it has been fully resolved; or
- 10 (3) take such other action as is authorized by
11 law.

12 E. If neither the department nor the attorney
13 general intervenes in an action brought under this section, the
14 plaintiff shall provide the department and the attorney general
15 with a copy of any scheduling order, including the scheduled
16 trial date.

17 F. No consent decree or stipulated judgment may be
18 entered in an action brought under this section unless the
19 court has determined, after receiving, as appropriate,
20 arguments or evidence or both, that the consent decree or
21 stipulated judgment is fair, reasonable, in the public interest
22 and furthers the goals of the Hazardous Waste Act, and unless
23 either:

- 24 (1) the department is a party; or
- 25 (2) the plaintiff has provided a copy of the

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1 proposed consent decree or stipulated judgment to the
2 department, and the department has had at least forty-five days
3 after receipt but prior to entry of the decree or judgment to
4 prepare and submit arguments or evidence or both on the
5 proposed decree or judgment to the court.

6 G. In any action brought under this section, the
7 court has jurisdiction to:

8 (1) assess a civil penalty in the amount set
9 forth in Section 74-4-12 NMSA 1978 for each violation;

10 (2) issue a restraining order or a temporary
11 or permanent injunction, including, as applicable, an order
12 requiring remediation of any contamination resulting from the
13 violation; or

14 (3) grant a combination of the foregoing
15 relief; and

16 (4) award reasonable costs of litigation,
17 including expert costs and attorney fees.

18 H. Penalties collected under this section shall be
19 deposited in the state treasury to be credited to the hazardous
20 waste emergency fund.

21 I. The limitations period in Section 37-1-8 NMSA
22 1978 for injuries to the person shall apply to all actions
23 brought under this section. The ninety-day time period from
24 when notice is provided to the department and attorney general
25 under Subsection B of this section shall not be counted toward

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1 the limitation period.

2 J. Nothing in this section shall restrict any right
3 that any person or class of persons may have under any statute
4 or common law to seek enforcement of any violation of the
5 Hazardous Waste Act or any rule or requirement thereunder or to
6 seek any other relief."

7 SECTION 4. A new section of the Solid Waste Act is
8 enacted to read:

9 "[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

10 A. Except as provided in Subsections B and C of
11 this section, a person who is injured in fact, economically or
12 otherwise, or who is imminently threatened with such injury,
13 may bring a civil action on the person's own behalf against any
14 other person who is subject to or regulated by the Solid Waste
15 Act or a rule, permit or order issued pursuant to that act
16 alleging a past or present violation of the Solid Waste Act or
17 any rule, permit or order issued under that act.

18 B. No action may be brought under this section
19 until ninety days after the plaintiff has given written notice
20 of the alleged violation to the department of environment, the
21 attorney general and any alleged violator. However, when the
22 alleged violation constitutes an immediate threat to the health
23 or safety of the plaintiff or would immediately and
24 irreversibly impair a legal interest of the plaintiff, an
25 action under this section may be brought immediately after

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1 notice is given to the proper parties.

2 C. No action may be brought under this section if
3 the department of environment has commenced and is diligently
4 prosecuting a civil action in a court of this state to require
5 compliance with the Solid Waste Act or rule, permit or order
6 adopted under that act. In an action commenced by the
7 department of environment, a person who has standing under
8 Subsection A of this section and who has provided notice under
9 Subsection B of this section prior to the initiation of the
10 action may intervene as a matter of right.

11 D. Whenever an action is brought under this
12 section, the plaintiff shall serve a copy of the complaint,
13 along with a notice of the right to intervene and a copy of any
14 response to the notice letter, on the department of environment
15 and the attorney general. The department of environment or the
16 attorney general may intervene as a matter of right and file a
17 notice to stay the proceedings because the department of
18 environment commenced an administrative enforcement action
19 prior to the date the action was filed, or may:

- 20 (1) support the action;
21 (2) file a motion or otherwise support
22 dismissal of the action because it has been fully resolved; or
23 (3) take such other action as is authorized by
24 law.

25 E. If neither the department of environment nor the

1 attorney general intervenes in an action brought under this
2 section, the plaintiff shall provide the department and the
3 attorney general with a copy of any scheduling order, including
4 the scheduled trial date.

5 F. No consent decree or stipulated judgment may be
6 entered in an action brought under this section unless the
7 court has determined, after receiving, as appropriate,
8 arguments or evidence or both, that the consent decree or
9 stipulated judgment is fair, reasonable, in the public interest
10 and furthers the goals of the Solid Waste Act, and unless
11 either:

12 (1) the department of environment is a party;
13 or

14 (2) the plaintiff has provided a copy of the
15 proposed consent decree or stipulated judgment to the
16 department of environment, and the department has had at least
17 forty-five days after receipt but prior to entry of the decree
18 or judgment to prepare and submit arguments or evidence or both
19 on the proposed decree or judgment to the court.

20 G. In any action brought under this section, the
21 court has jurisdiction to:

22 (1) assess a civil penalty in the amount set
23 forth in Section 74-9-38 NMSA 1978 for each violation;

24 (2) issue a restraining order or a temporary
25 or permanent injunction, including, as applicable, an order

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1 requiring remediation of any contamination resulting from the
2 violation; or

3 (3) grant a combination of the foregoing
4 relief; and

5 (4) award reasonable costs of litigation,
6 including expert costs and attorney fees.

7 H. Penalties collected under this section shall be
8 deposited in the state treasury to be credited to the solid
9 waste facility grant fund.

10 I. The limitations period in Section 37-1-8 NMSA
11 1978 for injuries to the person shall apply to all actions
12 brought under this section. The ninety-day time period from
13 when notice is provided to the department of environment and
14 attorney general under Subsection B of this section shall not
15 be counted toward the limitation period.

16 J. Nothing in this section shall restrict any right
17 that any person or class of persons may have under any statute
18 or common law to seek enforcement of any violation of the Solid
19 Waste Act or any rule or requirement thereunder or to seek any
20 other relief."

21 SECTION 5. A new section of the Water Quality Act is
22 enacted to read:

23 "[NEW MATERIAL] PRIVATE RIGHT OF ACTION.--

24 A. Except as provided in Subsections B and C of
25 this section, a person who is injured in fact, economically or

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1 otherwise, or who is imminently threatened with such injury,
2 may bring a civil action on the person's own behalf against any
3 other person who is subject to or regulated by the Water
4 Quality Act or a rule, permit or order issued pursuant to that
5 act alleging a past or present violation of the Water Quality
6 Act or a rule, permit or order issued under that act.

7 B. No action may be brought under this section
8 until ninety days after the plaintiff has given written notice
9 of the alleged violation to the constituent agency, the
10 attorney general and any alleged violator. However, when the
11 alleged violation constitutes an immediate threat to the health
12 or safety of the plaintiff or would immediately and
13 irreversibly impair a legal interest of the plaintiff, an
14 action under this section may be brought immediately after
15 notice is given to the proper parties.

16 C. No action may be brought under this section if
17 the constituent agency has commenced and is diligently
18 prosecuting a civil action in a court of this state to require
19 compliance with the Water Quality Act or rule, permit or order
20 issued under that act. In an action commenced by a constituent
21 agency, a person who has standing under Subsection A of this
22 section and who has provided notice under Subsection B of this
23 section prior to the initiation of the action may intervene as
24 a matter of right.

25 D. Whenever an action is brought under this

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1 section, the plaintiff shall serve a copy of the complaint,
2 along with a notice of the right to intervene and a copy of any
3 response to the notice letter, on the appropriate constituent
4 agency and the attorney general. The constituent agency or the
5 attorney general may intervene as a matter of right and file a
6 notice to stay the proceedings because the constituent agency
7 commenced an administrative enforcement action prior to the
8 date the action was filed, or may:

9 (1) support the action;

10 (2) seek a stay of the proceedings because the
11 department commenced an administrative enforcement action prior
12 to the date the action was filed;

13 (3) file a motion or otherwise support
14 dismissal of the action because it has been fully resolved; or

15 (4) take such other action as is authorized by
16 law.

17 E. If neither the constituent agency nor the
18 attorney general intervenes in an action brought under this
19 section, the plaintiff shall provide the constituent agency and
20 the attorney general with a copy of any scheduling order,
21 including the scheduled trial date.

22 F. No consent decree or stipulated judgment may be
23 entered in an action brought under this section unless the
24 court has determined, after receiving, as appropriate,
25 arguments or evidence or both, that the consent decree or

1 stipulated judgment is fair, reasonable, in the public interest
2 and furthers the goals of the Water Quality Act, and unless
3 either:

4 (1) the appropriate constituent agency is a
5 party; or

6 (2) the plaintiff has provided a copy of the
7 proposed consent decree or stipulated judgment to the
8 appropriate constituent agency, and the constituent agency has
9 had at least forty-five days after receipt but prior to entry
10 of the decree or judgment to prepare and submit arguments or
11 evidence or both on the proposed decree or judgment to the
12 court.

13 G. In any action brought under this section, the
14 court has jurisdiction to:

15 (1) assess a civil penalty in the amounts set
16 forth in Section 74-6-10.1 NMSA 1978 for each violation;

17 (2) issue a restraining order or a temporary
18 or permanent injunction, including, as applicable, an order
19 requiring remediation of any contamination resulting from the
20 violation; or

21 (3) grant a combination of the foregoing
22 relief; and

23 (4) award reasonable costs of litigation,
24 including expert costs and attorney fees.

25 H. Penalties collected under this section shall be

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1 deposited in the state treasury to be credited to the water
2 quality management fund.

3 I. The limitations period in Section 37-1-8 NMSA
4 1978 for injuries to the person shall apply to all actions
5 brought under this section. The ninety-day time period from
6 when notice is provided to the constituent agency and attorney
7 general under Subsection B of this section shall not be counted
8 toward the limitation period.

9 J. Nothing in this section shall restrict any right
10 that any person or class of persons may have under any statute
11 or common law to seek enforcement of any violation of the Water
12 Quality Act or any rule or requirement thereunder or to seek
13 any other relief."

14 SECTION 6. REPEAL.--Section 70-2-29 NMSA 1978 (being Laws
15 1935, Chapter 72, Section 20, as amended) is repealed.

16 SECTION 7. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2021.