

1 AN ACT

2 RELATING TO THE ENVIRONMENT; ALPHABETIZING AND ADDING
3 DEFINITIONS TO THE WATER QUALITY ACT; PROVIDING FOR CERTAIN
4 WATER QUALITY CONTROL COMMISSION RULES RELATING TO THE
5 REGULATION OF WATER POLLUTION; CREATING THE NEGLECTED AND
6 CONTAMINATED SITES FUND; PROVIDING FOR GENERAL PERMIT
7 COVERAGE FOR MULTIPLE DISCHARGERS; REVISING THE WATER QUALITY
8 MANAGEMENT FUND; ALLOWING FOR THE DENIAL OF PERMITS THAT
9 WOULD CONTRIBUTE TO WATER CONTAMINANT LEVELS IN EXCESS OF
10 DOWNSTREAM STATE OR TRIBAL WATER QUALITY STANDARDS; AMENDING
11 NOTICE REQUIREMENTS FOR WATER QUALITY ACT PERMITS; PROVIDING
12 FOR CERTAIN USES OF PERMIT FEES; AMENDING THE PURPOSES OF THE
13 WATER QUALITY MANAGEMENT FUND; CREATING CERTAIN EXCEPTIONS
14 FOR SURFACE WATER DISCHARGES; ADDRESSING POTENTIAL LIABILITY;
15 ENACTING THE NEW MEXICO POLLUTANT DISCHARGE ELIMINATION
16 SYSTEM ACT; REQUIRING PERMITS FOR DISCHARGES INTO WATERS OF
17 THE UNITED STATES; REQUIRING THE WATER QUALITY CONTROL
18 COMMISSION TO ADOPT RULES TO IMPLEMENT THE DISCHARGE PROGRAM;
19 PROVIDING POWERS AND DUTIES OF THE DEPARTMENT OF ENVIRONMENT;
20 PROVIDING FOR ENFORCEMENT OF THE PROGRAM; PROVIDING
21 PENALTIES; PROVIDING FOR APPEALS TO THE WATER QUALITY CONTROL
22 COMMISSION AND THE COURT OF APPEALS; PROVIDING FOR PUBLICLY
23 ACCESSIBLE RECORDS.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

1 SECTION 1. Section 74-6-2 NMSA 1978 (being Laws 1967,
2 Chapter 190, Section 2, as amended) is amended to read:

3 "74-6-2. DEFINITIONS.--As used in the Water Quality
4 Act:

5 A. "abatement costs" means costs incurred in
6 accordance with an abatement plan prepared and approved in
7 accordance with rules adopted by the commission;

8 B. "aquatic resources" means wetlands, streams,
9 lakes, rivers and other bodies of water, riparian habitats
10 and the organisms that live in them and the ecological
11 functions, services and values they provide;

12 C. "barrier" means a technical, including any log
13 reduction credits assigned, operational or managerial measure
14 to control microbial or chemical constituents;

15 D. "commission" means the water quality control
16 commission;

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

19 (1) the department;

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

22 (3) the department of game and fish;

23 (4) the oil conservation commission;

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

1 (6) the New Mexico department of
2 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
7 technology;

8 F. "compensatory mitigation" means the process of
9 restoring, establishing, enhancing or preserving wetlands,
10 streams or other aquatic resources to offset unavoidable
11 adverse impacts that remain after appropriate and practicable
12 avoidance and minimization measures have been achieved;

13 G. "department" means the department of
14 environment;

15 H. "dredged material" means material that is
16 excavated or dredged from a surface water;

17 I. "facility" means all contiguous land and
18 structures, other appurtenances and improvements on the land,
19 including any building, installation, equipment, pipe or
20 pipeline, including a pipe into a sewer or a publicly owned
21 treatment works, a well, a pit, a pond, a lagoon, an
22 impoundment, a ditch, a landfill, a storage container, a
23 motor vehicle, a rolling stock, an aircraft, a vessel or a
24 watercraft, or any site or area where a water contaminant has
25 been, is currently or is proposed to be managed, treated,

1 deposited, stored, disposed of or placed or has otherwise
2 come to be located;

3 J. "federal act" means the Federal Water Pollution
4 Control Act and its subsequent amendment and successor
5 provisions;

6 K. "fill material" means material that is placed
7 in a surface water where the material has the effect of
8 replacing any portion of a surface water with dry land or
9 changing the bottom elevation of a surface water; "fill
10 material" does not include trash, garbage or incidental
11 fallback resulting from excavation activities when small
12 volumes of material fall back to substantially the same place
13 as the initial removal;

14 L. "general permit" means a permit that applies to
15 one or more categories or subcategories of discharges, sludge
16 use or disposal practices or facilities within a geographic
17 area, including the state or a region, basin or watershed in
18 the state;

19 M. "general permit coverage" means authorization
20 to discharge pursuant to a general permit and any additional
21 permit conditions required by a constituent agency;

22 N. "gray water" means untreated household
23 wastewater that has not come in contact with toilet waste and
24 includes wastewater from bathtubs, showers, washbasins,
25 clothes washing machines and laundry tubs, but does not

1 include wastewater from kitchen sinks or dishwashers or
2 laundry water from the washing of material soiled with human
3 excreta, such as diapers;

4 O. "new source" means:

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

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

12 P. "pathogen" means a microorganism capable of
13 causing illness in humans;

14 Q. "person" means an individual or other entity,
15 including partnerships, corporations, associations,
16 responsible business or association agents or officers, the
17 state or a political subdivision of the state or an agency, a
18 department or an instrumentality of the United States and any
19 of its officers, agents or employees;

20 R. "point source" means a discernable, confined
21 and discrete conveyance, including a pipe, ditch, channel,
22 tunnel, conduit, well, discrete fissure, container, rolling
23 stock, concentrated animal feeding operation, landfill
24 leachate collection system or vessel or other floating craft
25 from which water contaminants are or may be discharged;

1 "point source" does not include a discharge composed entirely
2 of return flows from irrigated agriculture or agricultural
3 storm water runoff;

4 S. "produced water" means a fluid that is an
5 incidental byproduct from drilling for or the production of
6 oil and gas;

7 T. "responsible party" means:

8 (1) the owner and operator of a facility;

9 (2) a person who, at the time of disposal of
10 any water contaminant, owned or operated a facility at or
11 from which such water contaminants were disposed;

12 (3) a person who, by contract, agreement or
13 otherwise, arranged for disposal or treatment, or arranged
14 with a transporter for transport for disposal or treatment,
15 of water contaminants owned or possessed by the person, or by
16 any other party or entity, at a facility owned or operated by
17 another party or entity and containing such water
18 contaminants; and

19 (4) a person who accepts or accepted any
20 water contaminants for transport to disposal or treatment
21 facilities or sites selected by the person, from which there
22 is a release, or a threatened release that causes the
23 incurrence of response costs, of a water contaminant;

24 U. "septage" means the residual wastes and water
25 periodically pumped from a liquid waste treatment unit or

1 holding tank for maintenance or disposal purposes;

2 V. "sewer system" means pipelines, conduits,
3 pumping stations, force mains or other structures, devices,
4 appurtenances or facilities used for collecting or conducting
5 wastes to an ultimate point for treatment or disposal;

6 W. "sewerage system" means a system for disposing
7 of wastes, either by surface or underground methods, and
8 includes sewer systems, treatment works, disposal wells and
9 other systems;

10 X. "sludge" means solid, semi-solid or liquid
11 waste generated from a municipal, a commercial or an
12 industrial wastewater treatment plant, a water supply
13 treatment plant or an air pollution control facility that is
14 associated with the treatment of these wastes. "Sludge" does
15 not mean treated effluent from a wastewater treatment plant;

16 Y. "source" means a building, a structure, a
17 facility or an installation from which there is or may be a
18 discharge of water contaminants directly or indirectly into
19 water;

20 Z. "standards of performance" means a standard, an
21 effluent limitation or an effluent standard adopted pursuant
22 to the federal act or the Water Quality Act;

23 AA. "substantial adverse environmental impact"
24 means that an act or omission of the violator causes harm or
25 damage:

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

8 BB. "surface water discharge" means:

- 9 (1) the addition of a water contaminant or
10 combination of water contaminants to a surface water from a
11 point source, including surface runoff collected or channeled
12 by human effort, discharges through pipes, sewers or other
13 conveyances owned by the state, a municipality or another
14 person that do not lead to a treatment works and discharges
15 through pipes, sewers or other conveyances leading into
16 privately owned treatment works, but does not include the
17 addition of water contaminants from an indirect discharger;
18 or

- 19 (2) the addition of dredged or fill material
20 into a surface water from excavation of a surface water or
21 from filling in a surface water in a manner that replaces the
22 surface water with dry land or changes the bottom elevation
23 of the surface water but does not include incidental
24 fallback;

25 CC. "treatment works" means a plant or other works SJC/SB 21
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1 used for the purpose of treating, stabilizing or holding
2 wastes;

3 DD. "wastes" means sewage, industrial wastes or
4 other liquid, gaseous or solid substances that may pollute
5 the waters of the state;

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

11 FF. "water contaminant" means a substance that
12 could alter, if discharged or spilled, the physical,
13 chemical, biological or radiological qualities of water.
14 "Water contaminant" does not mean source, special nuclear or
15 byproduct material as defined by the federal Atomic Energy
16 Act of 1954; and

17 GG. "water pollution" means introducing or
18 permitting the introduction into water, either directly or
19 indirectly, of one or more water contaminants in a quantity
20 and duration as may with reasonable probability injure human
21 health, animal or plant life or property or to unreasonably
22 interfere with the public welfare or the use of property."

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

25 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The

1 commission:

2 A. may accept and supervise the administration of
3 loans and grants from the federal government and from other
4 sources, public or private, which loans and grants shall not
5 be expended for purposes other than those provided;

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

8 C. shall not adopt or promulgate a standard or
9 rule that exceeds a grant of rulemaking authority listed in
10 the statutory section of the Water Quality Act authorizing
11 the standard or rule;

12 D. shall adopt water quality standards for surface
13 and ground waters of the state based on credible scientific
14 data and other evidence appropriate under the Water Quality
15 Act. The standards shall include narrative standards and, as
16 appropriate, the designated uses of the waters and the water
17 quality criteria necessary to protect such uses. The
18 standards shall at a minimum protect the public health or
19 welfare, enhance the quality of water and serve the purposes
20 of the Water Quality Act. In making standards, the
21 commission shall give weight it deems appropriate to all
22 facts and circumstances, including the use and value of the
23 water for water supplies, propagation of fish and wildlife,
24 recreational purposes and agricultural, industrial and other
25 purposes;

1 E. shall adopt rules to prevent or abate water
2 pollution in the state or in any specific geographic area,
3 aquifer or watershed of the state or in any part thereof, or
4 for any class of waters, and to govern the disposal of
5 septage and sludge and the use of sludge for various
6 beneficial purposes. The rules governing the disposal of
7 septage and sludge may include the use of tracking and
8 permitting systems or other reasonable means necessary to
9 assure that septage and sludge are designated for disposal
10 in, and arrive at, disposal facilities, other than facilities
11 on the premises where the septage and sludge is generated,
12 for which a permit or other authorization has been issued
13 pursuant to the federal act or the Water Quality Act. Rules
14 may specify a standard of performance for new sources that
15 reflects the greatest reduction in the concentration of water
16 contaminants that the commission determines to be achievable
17 through application of the best available demonstrated
18 control technology, processes, operating methods or other
19 alternatives, including where practicable a standard
20 permitting no discharge of pollutants;

21 F. in making rules, shall give weight it deems
22 appropriate to all relevant facts and circumstances,
23 including:

24 (1) the character and degree of injury to or
25 interference with health, welfare, environment and property;

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

4 (3) the technical practicability and
5 economic reasonableness of reducing or eliminating water
6 contaminants from the sources involved and previous
7 experience with equipment and methods available to control
8 the water contaminants involved;

9 (4) the successive uses, including domestic,
10 commercial, industrial, pastoral, agricultural, wildlife and
11 recreational uses;

12 (5) feasibility of a user or a subsequent
13 user treating the water before a subsequent use;

14 (6) property rights and accustomed uses; and

15 (7) federal water quality requirements;

16 G. shall assign responsibility for administering
17 its rules to constituent agencies to assure adequate coverage
18 and prevent duplication of effort. To this end, the
19 commission may make such classification of waters and sources
20 of water contaminants as will facilitate the assignment of
21 administrative responsibilities to constituent agencies. The
22 commission shall also hear and decide disputes between
23 constituent agencies as to jurisdiction concerning matters
24 within the purpose of the Water Quality Act. In assigning
25 responsibilities to constituent agencies, the commission

1 shall give priority to the primary interests of the
2 constituent agencies. The department shall provide technical
3 services, including certification of permits pursuant to the
4 federal act, and shall maintain a repository of the
5 scientific data required by the Water Quality Act;

6 H. may enter into or authorize constituent
7 agencies to enter into agreements with the federal government
8 or other state governments for purposes consistent with the
9 Water Quality Act and receive and allocate to constituent
10 agencies funds made available to the commission;

11 I. may grant an individual variance from a rule of
12 the commission whenever it is found that compliance with the
13 rule will impose an unreasonable burden upon any lawful
14 business, occupation or activity. The commission may only
15 grant a variance conditioned upon a person effecting a
16 particular abatement of water pollution within a reasonable
17 period of time. A variance shall be granted for the period
18 of time specified by the commission. The commission shall
19 adopt rules specifying the procedure under which variances
20 may be sought, which rules shall provide for the holding of a
21 public hearing before a variance may be granted;

22 J. may adopt rules to require the filing with the
23 commission or a constituent agency of proposed plans and
24 specifications for the construction and operation of new
25 sewer systems, treatment works or sewerage systems or

1 extensions, modifications of or additions to new or existing
2 sewer systems, treatment works or sewerage systems. Filing
3 with and approval by the federal housing administration of
4 plans for an extension to an existing or construction of a
5 new sewerage system intended to serve a subdivision solely
6 residential in nature shall be deemed compliance with all
7 provisions of this subsection;

8 K. may adopt rules requiring notice to the
9 commission or a constituent agency of intent to introduce or
10 allow the introduction of water contaminants into waters of
11 the state;

12 L. shall specify in rules the measures to be taken
13 to prevent water pollution and to monitor water quality. The
14 commission may adopt rules for particular industries. The
15 commission shall adopt rules for the dairy industry and the
16 copper industry. The commission shall consider, in addition
17 to the factors listed in Subsection F of this section, the
18 best available scientific information. The rules may include
19 variations in requirements based on site-specific factors,
20 such as depth and distance to ground water and geological and
21 hydrological conditions. The constituent agency shall
22 establish an advisory committee composed of persons with
23 knowledge and expertise particular to the industry category
24 and other interested stakeholders to advise the constituent
25 agency on appropriate rules to be proposed for adoption by

1 the commission. The rules shall be developed and adopted in
2 accordance with a schedule approved by the commission. The
3 schedule shall incorporate an opportunity for public input
4 and stakeholder negotiations;

5 M. may adopt rules establishing pretreatment
6 standards that prohibit or control the introduction into
7 publicly owned sewerage systems of water contaminants that
8 are not susceptible to treatment by the treatment works or
9 that would interfere with the operation of the treatment
10 works;

11 N. shall not require a permit respecting the use
12 of water in irrigated agriculture, except in the case of the
13 employment of a specific practice in connection with the
14 irrigation that documentation or actual case history has
15 shown to be hazardous to public health or the environment or
16 for the use of produced water;

17 O. shall not require a permit for applying less
18 than two hundred fifty gallons per day of private residential
19 gray water originating from a residence for the resident's
20 household gardening, composting or landscape irrigation if:

21 (1) a constructed gray water distribution
22 system provides for overflow into the sewer system or on-site
23 wastewater treatment and disposal system;

24 (2) a gray water storage tank is covered to
25 restrict access and to eliminate habitat for mosquitos or

1 other vectors;

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

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

6 (5) gray water pressure piping is clearly
7 identified as a nonpotable water conduit;

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

10 (7) gray water is applied in a manner that
11 minimizes the potential for contact with people or domestic
12 pets;

13 (8) ponding is prohibited, application of
14 gray water is managed to minimize standing water on the
15 surface and to ensure that the hydraulic capacity of the soil
16 is not exceeded;

17 (9) gray water is not sprayed;

18 (10) gray water is not discharged to a
19 watercourse; and

20 (11) gray water use within municipalities or
21 counties complies with all applicable municipal or county
22 ordinances enacted pursuant to Chapter 3, Article 53
23 NMSA 1978;

24 P. shall coordinate application procedures and
25 funding cycles for loans and grants from the federal

1 government and from other sources, public or private, with
2 the local government division of the department of finance
3 and administration pursuant to the New Mexico Community
4 Assistance Act;

5 Q. shall adopt rules to be administered by the
6 department for the discharge, handling, transport, storage,
7 recycling or treatment for the disposition of treated
8 produced water, including disposition in road construction
9 maintenance, roadway ice or dust control or other
10 construction, or in the application of treated produced water
11 to land, for activities unrelated to the exploration,
12 drilling, production, treatment or refinement of oil or gas;

13 R. shall adopt rules to be administered by the
14 department for surface water discharges, including:

15 (1) for discharges from point sources, the
16 rules shall not require a permit for a point source discharge
17 for which a permit is issued under Section 402 of the federal
18 Clean Water Act or the New Mexico Pollutant Discharge
19 Elimination System Act; provided that in adopting rules
20 related to this paragraph, in addition to the factors to be
21 considered under Subsection F of this section, the commission
22 may:

23 (a) identify exemptions from a
24 discharge permit requirement when water contaminants in
25 discharges are subject to effective and enforceable water

1 quality requirements in a state or federally issued permit,
2 unless there is a hazard to public health or the environment
3 that may result or an applicable state water quality standard
4 will not be achieved; and

5 (b) consider requirements for permits
6 and general permits that are consistent with the requirements
7 of similar permits issued under Section 402 of the federal
8 Clean Water Act; and

9 (2) for discharges of dredged or fill
10 material, the rules shall not require a permit for discharges
11 of dredged or filled materials for which a permit or
12 authorization is issued under Section 404 of the federal
13 Clean Water Act; provided that the rules shall include
14 avoidance and minimization to the maximum extent practicable
15 of adverse impacts to wetlands, streams and other aquatic
16 resources and may require compensatory mitigation for
17 unavoidable adverse impacts that remain after appropriate and
18 practicable avoidance and minimization measures have been
19 achieved; and provided further that in adopting rules related
20 to this paragraph, in addition to the factors to be
21 considered under Subsection F of this section, the commission
22 may:

23 (a) identify exemptions from a
24 discharge permit requirement when a discharge is subject to
25 effective and enforceable water quality requirements in a

1 state or federally issued permit, unless there is a hazard to
2 public health or the environment that may result or an
3 applicable state water quality standard will not be achieved;
4 and

5 (b) consider the requirements for
6 permits and general permits that are consistent with the
7 requirements of similar permits issued under Section 404 of
8 the federal Clean Water Act;

9 S. may adopt rules to be administered by the
10 department for the state to respond to, investigate and
11 remediate water pollution and contamination in soil and soil
12 vapor for the protection of human health and the environment;
13 and

14 T. shall adopt rules to be administered by the
15 department to govern the transfer and use of treated domestic
16 wastewater for potable reuse. The rules may specify a
17 standard of performance, including log reduction for pathogen
18 removal, critical control points, barriers and the greatest
19 reduction in the concentration of water contaminants and
20 pathogens that the commission determines to be achievable
21 through application of the best available demonstrated
22 control technology, processes, operating methods or other
23 alternatives, including, where practicable, a standard
24 permitting no risk to human health. The rules governing the
25 potable reuse of domestic wastewater may include the use of

1 existing permitting systems or create new permitting rules
2 that include the means necessary to assure that potable reuse
3 projects are conducted in a manner that is directly
4 protective of human health."

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

7 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO
8 COMMISSION.--

9 A. By rule, the commission may require a person to
10 obtain from a constituent agency designated by the commission
11 a permit or general permit coverage for the discharge of a
12 water contaminant or for the disposal or reuse of septage or
13 sludge.

14 B. The commission shall adopt rules establishing
15 procedures for certifying federal water quality permits.

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

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

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

12 E. The constituent agency shall deny an
13 application for a permit or request for general permit
14 coverage or deny the certification of a federal water quality
15 permit if:

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

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

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

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

3 (4) the surface water discharge would cause
4 or contribute to water contaminant levels in excess of a
5 downstream state or tribal water quality standard; or

6 (5) the applicant has, within the ten years
7 immediately preceding the date of submission of the permit
8 application or request for general permit coverage:

9 (a) knowingly misrepresented a material
10 fact in an application for a permit or request for general
11 permit coverage;

12 (b) refused or failed to disclose
13 information required pursuant to the Water Quality Act;

14 (c) been convicted of a felony or other
15 crime involving moral turpitude;

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

19 (e) exhibited a history of willful
20 disregard for environmental laws of a state or the United
21 States; or

22 (f) had an environmental permit revoked
23 or permanently suspended for cause under environmental laws
24 of a state or the United States.

25 F. For ground water discharge permits, the

1 commission shall by rule develop procedures that ensure that
2 the public and affected governmental agencies, Indian
3 nations, tribes and pueblos and other states shall receive
4 notice of each application and draft of a new permit, a
5 modification of a permit or a renewal of a permit. Public
6 notice shall include:

7 (1) for issuance of new permits or permit
8 modifications:

9 (a) notice to adjacent and nearby
10 landowners using postal or electronic mail;

11 (b) notice to affected local, state and
12 federal government agencies, land grant organizations, ditch
13 associations and Indian nations, tribes and pueblos using
14 postal or electronic mail;

15 (c) posting the notice at a place
16 conspicuous to the public and near the discharge or proposed
17 discharge site;

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

24 (e) consideration of the languages
25 spoken by and the communication methods accessible to the

1 intended recipients of the public notice; and

2 (2) for permit renewals:

3 (a) notice by postal or electronic mail
4 to the interested public;

5 (b) notice to affected local, state and
6 federal government agencies, land grant organizations, ditch
7 associations and Indian nations, tribes and pueblos;

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

13 (d) consideration of the languages
14 spoken by and the communication methods accessible to the
15 intended recipients of the public notice.

16 G. For surface water discharge permits, the
17 commission shall by rule develop procedures that ensure that
18 the public and affected governmental agencies, Indian
19 nations, tribes and pueblos and other states shall receive
20 notice of each draft permit. Public notice shall include the
21 following, except that for a general permit, Paragraphs (1)
22 and (3) of this subsection shall not be required:

23 (1) notice to adjacent and nearby landowners
24 using postal or electronic mail;

25 (2) notice to affected local, state and

1 federal government agencies, land grant organizations, ditch
2 associations and Indian nations, tribes and pueblos using
3 postal or electronic mail;

4 (3) for new surface water discharge permits
5 or permit modifications, posting at a place conspicuous to
6 the public and near the discharge or proposed discharge site;

7 (4) notice to the general public and others
8 whom the commission deems appropriate using one or more
9 reasonable and appropriate methods, such as electronic mail
10 to persons who have requested notification, social media
11 posts, radio announcements or advertisements in a newspaper
12 of general circulation in the location of the discharge or
13 proposed discharge site; and

14 (5) consideration of the languages spoken by
15 and the communication methods accessible to the intended
16 recipients of the public notice.

17 H. No ruling shall be made on a draft permit
18 without opportunity for a public hearing at which all
19 interested persons shall be given a reasonable chance to
20 submit evidence, data, views or arguments orally or in
21 writing and to examine witnesses testifying at the hearing.
22 The hearing shall be recorded. A person submitting evidence,
23 data, views or arguments shall be subject to examination at
24 the hearing.

25 I. The commission may adopt rules for the

1 operation and maintenance of the permitted facility,
2 including requirements, as may be necessary or desirable,
3 that relate to continuity of operation, personnel training
4 and financial responsibility, including financial
5 responsibility for corrective action.

6 J. Permits shall be issued for fixed terms of five
7 years, except that surface water discharge permits may be
8 issued for fixed terms of up to ten years. For new
9 discharges, the term of the permit shall commence on the date
10 the discharge begins, but in no event shall the term of the
11 permit exceed seven years from the date the permit was
12 issued.

13 K. By rule, the commission may impose reasonable
14 conditions upon permits requiring permittees to:

15 (1) install, use and maintain monitoring
16 devices;

17 (2) sample effluents and receiving waters
18 for any known or suspected water contaminants in accordance
19 with methods and at locations and intervals as may be
20 prescribed by the commission;

21 (3) establish and maintain records of the
22 nature and amounts of effluents and the performance of
23 effluent control devices;

24 (4) provide other information relating to
25 the discharge or direct or indirect release of water

1 contaminants; and

2 (5) notify a constituent agency of the
3 introduction of new water contaminants from a new source and
4 of a substantial change in volume or character of water
5 contaminants being introduced from sources in existence at
6 the time of the issuance of the permit.

7 L. The commission shall provide by rule a schedule
8 of fees for permits and approvals of general permit coverage
9 to support the cost of developing and implementing the
10 permitting rules authorized pursuant to Section 74-6-4
11 NMSA 1978, including the review of applications, issuance and
12 enforcement of permits and rules, compliance assistance,
13 monitoring and inspection of facilities and discharges, data
14 stewardship, records management and administrative and legal
15 costs. Fees collected pursuant to this section shall be
16 deposited in the water quality management fund.

17 M. The issuance of a permit or approval of or
18 request for a general permit coverage does not relieve a
19 person from the responsibility of complying with the
20 provisions of the Water Quality Act, any applicable rules or
21 water quality standards of the commission or any applicable
22 federal laws, regulations or standards.

23 N. A permit or general permit coverage may be
24 terminated or modified by the constituent agency that issued
25 the permit or approved the general permit coverage prior to

1 its date of expiration for any of the following causes:

2 (1) violation of a condition of the permit;

3 (2) obtaining the permit or general permit
4 coverage by misrepresentation or failure to disclose fully
5 all relevant facts;

6 (3) violation of the provisions of the Water
7 Quality Act or any applicable rules, standard of performance
8 or water quality standards;

9 (4) violation of applicable state or federal
10 effluent regulations or limitations; or

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

14 O. If the constituent agency denies, terminates or
15 modifies a permit or general permit coverage or grants a
16 permit subject to condition, the constituent agency shall
17 notify the applicant or permittee by certified mail or other
18 method acceptable to the applicant or permittee of the action
19 taken and the reasons. Notice shall also be given by postal
20 or electronic mail to persons who participated in the
21 permitting action.

22 P. 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
25 affected by the permitting action or certification may file a

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

4 The petition shall:

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

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

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

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

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

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

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

1 T. The commission shall notify the petitioner and
2 all other participants in the review proceeding of the action
3 taken by the commission and the reasons for that action.

4 U. The only exemptions from surface water
5 discharge permits for point sources are:

6 (1) return flows composed entirely from
7 irrigated agriculture;

8 (2) stormwater runoff from a mining
9 operation or an oil and gas exploration, production,
10 processing or treatment operation or transmission facility
11 that is composed entirely of flows that are from conveyances
12 or systems of conveyances, including pipes, conduits, ditches
13 and channels, used for collecting and conveying precipitation
14 runoff and that are not contaminated by contact with, or do
15 not come into contact with, any overburden, raw material,
16 intermediate products, finished product, byproduct or waste
17 product located on the site of the operation or facility;
18 provided that oil and gas exploration, production, processing
19 or treatment operations or transmission facilities include
20 activities necessary to prepare a site for drilling and for
21 the movement and placement of drilling equipment, whether or
22 not the field activities or operations may be considered to
23 be construction activities;

24 (3) runoff resulting from the following
25 silviculture activities conducted in accordance with standard

1 industry practice:

2 (a) nursery operations;

3 (b) site preparation;

4 (c) reforestation and subsequent

5 cultural treatment;

6 (d) thinning;

7 (e) prescribed burning;

8 (f) pest and fire control;

9 (g) harvesting operations;

10 (h) surface drainage; and

11 (i) road construction and maintenance;

12 and

13 (4) discharges and water contaminants that
14 are subject to effective and enforceable surface water
15 quality requirements in a state or federally issued permit,
16 unless there is a hazard to public health or the environment
17 that may result or an applicable state water quality standard
18 will not be achieved.

19 V. The only exemptions from surface water
20 discharge permits for discharges of dredged or fill material
21 are:

22 (1) normal farming, silviculture and
23 ranching activities such as plowing, seeding, cultivating,
24 minor drainage, harvesting for the production of food, fiber
25 and forest products or upland soil and water conservation

1 practices;

2 (2) maintenance, including emergency
3 reconstruction of recently damaged parts, of currently
4 serviceable structures such as dikes, dams, levees, groins,
5 riprap, breakwaters, causeways and bridge abutments or
6 approaches and transportation structures;

7 (3) construction or maintenance of farm or
8 stock ponds, acequias or irrigation ditches or the
9 maintenance of drainage ditches;

10 (4) construction of temporary sedimentation
11 basins on a construction site that does not include placement
12 of fill material into the surface waters;

13 (5) construction or maintenance of farm
14 roads, forest roads or temporary roads for moving mining
15 equipment, where such roads are constructed and maintained,
16 in accordance with best management practices, to assure that:

17 (a) flow and circulation patterns and
18 chemical and biological characteristics of the surface waters
19 are not impaired;

20 (b) the reach of the surface waters is
21 not reduced; and

22 (c) any adverse effect on the aquatic
23 environment will be otherwise minimized; and

24 (6) discharges that are subject to effective
25 and enforceable surface water quality requirements in a

1 state-issued or federally issued permit, unless there is a
2 hazard to public health or the environment that may result or
3 an applicable state water quality standard will not be
4 achieved.

5 W. The exemptions provided in Subsection V of this
6 section shall not apply if the discharge resulting from the
7 activities contains any toxic pollutant as set forth in rule
8 by the commission or if a new activity brings a surface water
9 of the state into farm production where the area of the
10 surface water has not previously been used for farming."

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

13 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--
14 There is created as a nonreverting fund in the state treasury
15 the "water quality management fund" to be administered by the
16 department. The fund consists of appropriations, gifts,
17 grants, donations and money received by the department. All
18 fees collected pursuant to Section 74-6-4 NMSA 1978 and for
19 the operation and maintenance of a permitted facility
20 pursuant to Subsection I of Section 74-6-5 NMSA 1978 shall be
21 deposited in the fund. Money in the fund is appropriated to
22 the department for the purpose of administering the rules
23 adopted by the commission pursuant to Sections 74-6-4 and
24 74-6-5 NMSA 1978. Disbursements from the fund shall be made
25 upon warrants drawn by the secretary of finance and

1 administration pursuant to vouchers signed by the secretary
2 of environment."

3 SECTION 5. Section 74-6-9 NMSA 1978 (being Laws 1967,
4 Chapter 190, Section 8, as amended) is amended to read:

5 "74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each
6 constituent agency may:

7 A. receive and expend funds appropriated, donated
8 or allocated to the constituent agency for purposes
9 consistent with the Water Quality Act;

10 B. develop facts and make studies and
11 investigations and require the production of documents
12 necessary to carry out the responsibilities assigned to the
13 constituent agency. The result of any investigation shall be
14 reduced to writing and a copy furnished to the commission and
15 to the owner or occupant of the premises investigated;

16 C. report to the commission and to other
17 constituent agencies water pollution conditions that are
18 believed to require action where the circumstances are such
19 that the responsibility appears to be outside the
20 responsibility assigned to the agency making the report;

21 D. respond to, investigate and remediate water
22 pollution and contamination in soil and soil vapor; provided
23 that in its investigation, the department shall identify
24 responsible parties and shall prepare a written report of the
25 investigation; and provided further that prior to remediation

1 of water pollution and soil contamination in soil and soil
2 vapor, the department shall:

3 (1) prepare a work plan consistent with
4 rules adopted by the commission;

5 (2) issue public notice of the work plan;
6 and

7 (3) provide opportunities for public comment
8 and participation in accordance with rules adopted by the
9 commission;

10 E. make every reasonable effort to obtain
11 voluntary cooperation in the prevention or abatement of water
12 pollution;

13 F. upon presentation of proper credentials, enter
14 at reasonable times upon or through any premises in which a
15 water contaminant source is located or in which are located
16 any records required to be maintained by regulations of the
17 federal government or the commission; provided that entry
18 into any private residence without the permission of the
19 owner shall be only by order of the district court for the
20 county in which the residence is located and that, in
21 connection with any entry provided for in this subsection,
22 the constituent agency may:

23 (1) have access to and reproduce for its use
24 any copy of the records;

25 (2) inspect any treatment works, monitoring

1 equipment or methods required to be installed by regulations
2 of the federal government or the commission; and

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

5 G. on the same basis as any other person,
6 recommend and propose regulations and standards for
7 promulgation by the commission; and

8 H. on the same basis as any other person, present
9 data, views or arguments and examine witnesses and otherwise
10 participate at all hearings conducted by the commission or
11 any other administrative agency with responsibility in the
12 areas of environmental management, public health or consumer
13 protection, but shall not be given any special status over
14 any other party; provided that the participation by a
15 constituent agency in a hearing shall not require the recusal
16 or disqualification of the commissioner representing that
17 constituent agency."

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

20 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
21 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

22 A. Whenever, on the basis of any information, a
23 constituent agency determines that a person violated or is
24 violating a requirement, regulation or water quality standard
25 adopted pursuant to the Water Quality Act or a condition of a

1 permit issued pursuant to that act, the constituent agency
2 may:

3 (1) issue a compliance order requiring
4 compliance immediately or within a specified time period or
5 issue a compliance order assessing a civil penalty, or both;
6 or

7 (2) commence a civil action in district
8 court for appropriate relief, including injunctive relief.

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

12 C. A compliance order shall state with reasonable
13 specificity the nature of the violation. Any penalty
14 assessed in the compliance order shall not exceed:

15 (1) fifteen thousand dollars (\$15,000) per
16 day of noncompliance with the provisions in Section 74-6-5
17 NMSA 1978, including a regulation adopted or a permit issued
18 pursuant to that section; or

19 (2) ten thousand dollars (\$10,000) per day
20 for each violation of a provision of the Water Quality Act
21 other than the provisions in Section 74-6-5 NMSA 1978 or of a
22 regulation or water quality standard adopted pursuant to the
23 Water Quality Act.

24 D. In assessing a penalty authorized by this
25 section, the constituent agency shall take into account the

1 seriousness of the violation, any good faith efforts to
2 comply with the applicable requirements and other relevant
3 factors.

4 E. For purposes of this section, a single
5 operational event that leads to simultaneous violations of
6 more than one standard shall be treated as a single
7 violation.

8 F. If a person fails to take corrective actions
9 within the time specified in a compliance order, the
10 constituent agency may:

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

14 (2) suspend or terminate the permit violated
15 by the person.

16 G. A compliance order issued by a constituent
17 agency pursuant to this section shall become final unless, no
18 later than thirty days after the compliance order is served,
19 a person named in the compliance order submits a written
20 request to the commission for a public hearing. The
21 commission shall conduct a public hearing within ninety days
22 after receipt of a request.

23 H. The commission may appoint an independent
24 hearing officer to preside over a public hearing held
25 pursuant to Subsection G of this section. The hearing

1 officer shall:

2 (1) make and preserve a complete record of
3 the proceedings; and

4 (2) forward to the commission a report that
5 includes recommendations if recommendations are requested by
6 the commission.

7 I. The commission shall consider the findings of
8 the independent hearing officer, and based on the evidence
9 presented at the hearing, the commission shall make a final
10 decision regarding the compliance order.

11 J. In connection with any proceeding provided for
12 in this section, the commission may:

13 (1) adopt rules for discovery procedures;
14 and

15 (2) issue subpoenas for the attendance and
16 testimony of witnesses and for relevant papers, books and
17 documents.

18 K. Penalties collected pursuant to this section
19 shall be deposited in the general fund.

20 L. As an additional means of enforcing the Water
21 Quality Act or any regulation or standard of the commission,
22 the commission may accept an assurance of discontinuance of
23 any act or practice deemed in violation of the Water Quality
24 Act, or any regulation or standard adopted pursuant to that
25 act, from any person engaging in, or who has engaged in, such

1 act or practice, signed and acknowledged by the chair of the
2 commission and the party affected. Any such assurance shall
3 specify a time limit during which the discontinuance is to be
4 accomplished."

5 SECTION 7. Section 74-6-12 NMSA 1978 (being Laws 1967,
6 Chapter 190, Section 11, as amended) is amended to read:

7 "74-6-12. LIMITATIONS.--

8 A. The Water Quality Act does not grant to the
9 commission or to any other entity the power to take away or
10 modify the property rights in water, nor is it the intention
11 of the Water Quality Act to take away or modify such rights.

12 B. The Water Quality Act does not apply to an
13 activity or condition subject to the authority of the
14 environmental improvement board pursuant to the Hazardous
15 Waste Act, the Ground Water Protection Act or the Solid Waste
16 Act except to abate water pollution or to control the
17 disposal or use of septage and sludge.

18 C. The Water Quality Act does not authorize the
19 commission to adopt a rule with respect to a condition or
20 quality of water if the water pollution and its effects are
21 confined entirely within the boundaries of property within
22 which the water pollution occurs when the water does not
23 combine with other waters.

24 D. The Water Quality Act does not grant to the
25 commission any jurisdiction or authority affecting the

1 relation between employers and employees with respect to or
2 arising out of a condition or quality of water.

3 E. The Water Quality Act does not supersede or
4 limit the applicability of a law relating to industrial
5 health, safety or sanitation.

6 F. Except as required by federal law or for
7 surface water discharges permitted pursuant to the Water
8 Quality Act, in the adoption of rules and water quality
9 standards and in an action for enforcement of the Water
10 Quality Act and rules adopted pursuant to that act,
11 reasonable degradation of water quality resulting from
12 beneficial use shall be allowed. The degradation shall not
13 result in impairment of water quality to the extent that
14 water quality standards are exceeded.

15 G. Except for a surface water discharge for which
16 a permit is required under rules adopted pursuant to
17 Subsection R of Section 74-6-4 NMSA 1978, the Water Quality
18 Act does not apply to an activity or condition subject to the
19 authority of the oil conservation commission pursuant to
20 provisions of the Oil and Gas Act and other laws conferring
21 power on the oil conservation commission to prevent or abate
22 water pollution.

23 H. When changes in dissolved oxygen, temperature,
24 dissolved solids, sediment or turbidity in a water of the
25 state is attributable to natural causes or to the reasonable

1 operation of irrigation and flood control facilities that are
2 not subject to federal or state water pollution control
3 permitting, numerical standards for temperature, dissolved
4 solids content, dissolved oxygen, sediment or turbidity
5 adopted under the Water Quality Act do not apply. "Reasonable
6 operation", as used in this subsection, shall be defined by
7 rule of the commission."

8 SECTION 8. A new section of the Water Quality Act is
9 enacted to read:

10 "NEGLECTED AND CONTAMINATED SITES FUND--CREATED.--

11 A. The "neglected and contaminated sites fund" is
12 created as a nonreverting fund in the state treasury. The
13 fund consists of appropriations, gifts, grants, donations and
14 money received by the department. Unless otherwise required
15 by law, money received or recovered by the state by or on
16 behalf of the department arising from claims for enforcement
17 actions, response actions or response costs relating to the
18 contamination liability, including any fees, settlement
19 funds, recovered litigation costs and any interest derived
20 therefrom, shall be deposited in the fund.

21 B. The department shall administer the fund.
22 Money in the fund is appropriated to the department for the
23 state to respond to, investigate and remediate water
24 pollution and contamination in soil and soil vapor.

25 C. Money in the fund shall be disbursed on

1 warrants signed by the secretary of finance and
2 administration pursuant to vouchers signed by the secretary
3 of environment or the secretary's designee."

4 SECTION 9. A new section of the Water Quality Act is
5 enacted to read:

6 "LIABILITY--SCOPE--DEFENSES--CONTRIBUTION.--

7 A. Liability for the prevention or abatement of
8 water pollution exists if there has been an actual or
9 threatened release of a water contaminant that causes the
10 requirement for response or remediation, or the incurrence of
11 response or remediation costs. Responsible parties may be
12 liable for the release of a water contaminant that occurred
13 prior to and since the effective date of this 2025 act.

14 B. Liability shall include:

15 (1) all costs of removal or remedial action
16 incurred by the state;

17 (2) any other necessary costs of response
18 incurred by any other person;

19 (3) damages for injury to, destruction of or
20 loss of natural resources, including the reasonable costs of
21 assessing such injury, destruction or loss, resulting from a
22 release of water contaminants; and

23 (4) the cost of any health assessment or
24 health effects study carried out pursuant to rules
25 promulgated by the commission.

1 C. Liability defenses of the responsible party
2 shall include, if established by a preponderance of the
3 evidence:

4 (1) an act of God;

5 (2) an act of war;

6 (3) an act or omission of a third party if:

7 (a) the defendant exercised due care
8 with respect to the water contaminant concerned, taking into
9 consideration the characteristics of such contamination, in
10 light of all relevant facts and circumstances;

11 (b) the defendant took precautions
12 against foreseeable acts or omissions of any such third party
13 and the consequences that could foreseeably result from such
14 acts or omissions;

15 (c) the third party was not an employee
16 or agent of the defendant at the time of the release; and

17 (d) the third party was not one whose
18 act or omission occurred in connection with a contractual
19 relationship, existing directly or indirectly, with the
20 defendant;

21 (4) an act authorized by and in compliance
22 with a permit issued pursuant to the Water Quality Act;

23 (5) a party that holds only a security
24 interest in property where there has been water pollution;

25 (6) a party who is an innocent purchaser or

1 a bona fide prospective purchaser as defined in 42 U.S.C.
2 9601;

3 (7) a party who owned or operates property
4 where water pollution has migrated onto the property from a
5 property not owned or operated by that party;

6 (8) a party acting as a fiduciary in
7 accordance with its fiduciary duty for property where there
8 has been water pollution; or

9 (9) any combination of Paragraphs (1)
10 through (8) of this subsection.

11 D. Any person who incurs costs associated with an
12 abatement plan as approved by the department consistent with
13 the rules adopted by the commission may file an action in
14 district court to seek contribution from any other person who
15 is liable or potentially liable with respect to the release
16 of water contaminants pursuant to the Water Quality Act. In
17 resolving contribution claims, the court may allocate
18 response costs among liable parties using such equitable
19 factors as the court determines are appropriate. Nothing in
20 this subsection shall diminish the right of any person to
21 bring an action for contribution under any other law.

22 E. The department may bring an action in district
23 court against any responsible party to recover response or
24 remediation costs. The department may settle the liability
25 of any responsible party for response or remediation costs

1 through an administratively or judicially approved
2 settlement.

3 F. A person who has resolved liability to the
4 state in an administrative or judicially approved settlement
5 shall not be liable for claims for contribution regarding
6 matters addressed in the settlement. Such settlement does
7 not discharge any of the other potentially liable persons
8 unless its terms so provide, but it reduces the potential
9 liability of the others by the amount of the settlement."

10 SECTION 10. SHORT TITLE.--Sections 10 through 20 of
11 this 2025 act may be cited as the "New Mexico Pollutant
12 Discharge Elimination System Act".

13 SECTION 11. DEFINITIONS.--As used in the New Mexico
14 Pollutant Discharge Elimination System Act:

15 A. "commission" means the water quality control
16 commission;

17 B. "confidential business information" means
18 business information that a person claims as confidential at
19 the time of submission and that, if made public, would
20 divulge trade secrets or falls under other laws that give or
21 may give a business the right to preserve the confidentiality
22 of business information and to limit its use or disclosure by
23 others in order that the business may obtain or retain
24 business advantages it derives from its rights in the
25 information;

1 C. "department" means the department of
2 environment;

3 D. "discharge" means the addition of a pollutant
4 or combination of pollutants to waters of the United States
5 from a point source, including surface runoff collected or
6 channeled by human effort, discharges through pipes, sewers
7 or other conveyances owned by the state, a municipality or
8 another person that do not lead to a treatment works and
9 discharges through pipes, sewers or other conveyances leading
10 into privately owned treatment works. "Discharge" does not
11 include an addition of pollutants by an indirect discharger;

12 E. "federal act" means the Federal Water Pollution
13 Control Act and its subsequent amendments and successor
14 provisions;

15 F. "national pollutant discharge elimination
16 system" means the program for issuing, modifying, revoking
17 and reissuing, terminating, monitoring and enforcing permits
18 and imposing and enforcing pretreatment requirements pursuant
19 to Sections 307, 318, 402 and 405 of the federal act;

20 G. "permit" means an authorization issued by the
21 department in accordance with program requirements and
22 includes an individual or general permit;

23 H. "person" means an individual, an association, a
24 partnership, a corporation, a municipality, a state or
25 federal agency or an agent, officer or employee thereof;

1 I. "point source" means a discernible, confined
2 and discrete conveyance, including a pipe, ditch, channel,
3 tunnel, conduit, well, discrete fissure, container, rolling
4 stock, concentrated animal feeding operation, landfill
5 leachate collection system or vessel or other floating craft
6 from which pollutants are or may be discharged, but does not
7 include a discharge composed entirely of return flows from
8 irrigated agriculture or agricultural storm water runoff;

9 J. "pollutant" means:

10 (1) dredged spoil, solid waste, incinerator
11 residue, filter backwash, sewage, garbage, sewage sludge,
12 munitions, chemical wastes, biological materials, radioactive
13 materials (except those regulated pursuant to the federal
14 Atomic Energy Act of 1954, as amended), heat, wrecked or
15 discarded equipment, rock, sand, cellar dirt and industrial,
16 municipal and agricultural waste discharged into water; but

17 (2) "pollutant" does not include:

18 (a) sewage from vessels;

19 (b) water, gas or other material that
20 is injected into a well to facilitate production of oil or
21 gas; and

22 (c) water derived in association with
23 oil or gas production and disposed of in a well, if: 1) the
24 well is used either to facilitate production or for disposal
25 purposes and is approved by authority of the state in which

1 the well is located; and 2) the state determines that the
2 injection or disposal will not result in the degradation of
3 ground or surface water resources;

4 K. "program" means the program authorized by the
5 New Mexico Pollutant Discharge Elimination System Act and
6 approved by the United States environmental protection
7 agency;

8 L. "regional administrator" means the regional
9 administrator of region six of the United States
10 environmental protection agency; and

11 M. "waters of the United States" means those
12 waters regulated pursuant to the national pollutant discharge
13 elimination system program and defined in federal
14 regulations.

15 SECTION 12. PERMIT REQUIRED.--

16 A. A person shall not discharge a pollutant from a
17 point source to waters of the United States without a permit
18 issued by the department pursuant to the New Mexico Pollutant
19 Discharge Elimination System Act and the program.

20 B. The issuance of a permit does not convey any
21 property rights or exclusive privileges.

22 C. The issuance of a permit does not authorize any
23 injury to persons or property or invasion of other private
24 rights or any infringement of any other laws, rules,
25 regulations or ordinances.

1 D. No permit shall be issued when the regional
2 administrator has objected in writing pursuant to the federal
3 act.

4 E. Only the following discharges are exempt from
5 Subsection A of this section:

6 (1) a discharge composed entirely of return
7 flows from irrigated agriculture;

8 (2) a discharge of storm water runoff from a
9 mining operation or an oil and gas exploration, production,
10 processing or treatment operation or transmission facility
11 that is composed entirely of flows that are from conveyances
12 or systems of conveyances, including pipes, conduits, ditches
13 and channels, used for collecting and conveying precipitation
14 runoff and that are not contaminated by contact with, or do
15 not come into contact with, any overburden, raw material,
16 intermediate products, finished product, byproduct or waste
17 products located on the site of the operation or facility.
18 Oil and gas exploration, production, processing or treatment
19 operations or transmission facilities include activities
20 necessary to prepare a site for drilling and for the movement
21 and placement of drilling equipment, whether or not the field
22 activities or operations may be considered to be construction
23 activities; or

24 (3) a discharge of runoff resulting from the
25 following silviculture activities conducted in accordance

1 with standard industry practice:

- 2 (a) nursery operations;
- 3 (b) site preparation;
- 4 (c) reforestation and subsequent
5 cultural treatment;
- 6 (d) thinning;
- 7 (e) prescribed burning;
- 8 (f) pest and fire control;
- 9 (g) harvesting operations;
- 10 (h) surface drainage; and
- 11 (i) road construction and maintenance.

12 F. No ruling shall be made on any application for
13 a draft permit without opportunity for a public hearing at
14 which all interested persons shall be given a reasonable
15 chance to submit evidence, data, views or arguments orally or
16 in writing and to examine witnesses testifying at the
17 hearing. The hearing shall be recorded. A person submitting
18 evidence, data, views or arguments shall be subject to
19 examination at the hearing.

20 SECTION 13. COMMISSION--DUTIES.--The commission shall:

21 A. adopt, promulgate and publish rules to
22 implement and administer the program, including the
23 standards, requirements and processes to issue, renew,
24 modify, deny and terminate permits, including rules that are
25 necessary and appropriate to obtain and sustain authorization

1 from the regional administrator. In adopting the rules, the
2 commission may incorporate by reference, including
3 prospectively, those sections or parts of federal regulations
4 that the commission deems necessary and appropriate;

5 B. adopt, promulgate and publish rules for
6 notification procedures that ensure that the public and
7 affected Indian nations, tribes and pueblos, governmental
8 agencies and downstream states receive notice of each draft
9 permit;

10 C. adopt a schedule of fees to support the cost of
11 implementing the program, including the preparation and
12 adoption of rules, the review of applications, issuance and
13 enforcement of permits and rules, compliance assistance,
14 monitoring and inspection of facilities and discharges, data
15 stewardship, records management, administrative and legal
16 costs and other costs the commission deems appropriate.
17 Unless otherwise required by law, money collected pursuant to
18 this section shall be deposited in the water quality
19 management fund; and

20 D. hear and decide petitions for review of
21 department actions to require, issue, renew, modify, deny or
22 terminate a permit or issue a compliance order.

23 SECTION 14. DEPARTMENT--DUTIES AND POWERS.--

24 A. For the discharge of a pollutant to waters of
25 the United States, notwithstanding the provisions of Section

1 70-2-12 NMSA 1978, the department shall administer and
2 enforce rules adopted by the commission pursuant to the
3 New Mexico Pollutant Discharge Elimination System Act.

4 B. The department shall have all duties and powers
5 necessary and appropriate to implement the program, including
6 the authority to:

7 (1) propose rules for adoption by the
8 commission;

9 (2) conduct investigations;

10 (3) require monitoring, sampling and
11 reporting;

12 (4) require the keeping and production of
13 records, documents and other information;

14 (5) review applications;

15 (6) require, issue, renew, modify, deny or
16 terminate permits;

17 (7) deny a permit or request for permit
18 coverage if the discharge would cause or contribute to a
19 pollutant in excess of a downstream state or tribal water
20 quality standard;

21 (8) enter into or through any site or
22 premises subject to rules adopted for the program or in which
23 records relevant to program operation are kept or may be
24 located, at a reasonable time and upon the presentation of
25 proper credentials, in order to investigate whether a

1 discharge may be present, inspect, monitor, copy records,
2 sample, photograph, collect other information or otherwise
3 investigate compliance with the program, including compliance
4 with permit conditions and other program requirements. Entry
5 into a private residence shall be allowed only by consent of
6 the owner of the residence or order of the district court for
7 the county in which venue is proper;

8 (9) issue administrative compliance orders
9 and file civil and criminal actions in the district court to
10 enforce the New Mexico Pollutant Discharge Elimination System
11 Act, permits and rules, including pretreatment standards and
12 local limits adopted by publicly owned treatment works;

13 (10) enter into agreements with the regional
14 administrator for the implementation of the program;

15 (11) enter into agreements with other
16 governmental entities, including Indian nations, tribes and
17 pueblos; and

18 (12) receive and expend funds appropriated,
19 authorized, granted, donated or allocated to the department
20 for purposes consistent with the New Mexico Pollutant
21 Discharge Elimination System Act.

22 C. The department shall:

23 (1) encourage the public to report
24 violations pursuant to the New Mexico Pollutant Discharge
25 Elimination System Act;

1 (2) develop procedures for receiving and
2 ensuring proper consideration of information submitted by the
3 public about violations and make available information on
4 those reporting procedures;

5 (3) investigate and provide written
6 responses to all complaints submitted pursuant to the
7 reporting procedures;

8 (4) publish notice of and provide at least
9 thirty days for public comment on any proposed settlement of
10 an enforcement action taken pursuant to the New Mexico
11 Pollutant Discharge Elimination System Act; and

12 (5) not oppose intervention by any person
13 when permissive intervention may be authorized by statute or
14 rule.

15 SECTION 15. ADMINISTRATIVE AND CIVIL ENFORCEMENT.--

16 A. Whenever the department or attorney general
17 determines that a person violated or is violating or that a
18 violation may occur of any requirement of the New Mexico
19 Pollutant Discharge Elimination System Act, program, permit
20 or rule, the department or attorney general may:

21 (1) issue a temporary order directing the
22 person to cease and desist unauthorized activity that is
23 endangering or causing damage to public health or the
24 environment pending further action by the department;

25 (2) issue an administrative compliance order

1 requiring compliance, modification or termination of the
2 permit and assess a civil penalty, including for
3 administrative compliance costs; and

4 (3) commence a civil action in district
5 court for appropriate relief, including a temporary
6 restraining order or injunctive relief for a threatened or
7 continuing violation of a program requirement and a civil
8 penalty.

9 B. An administrative compliance order shall state
10 with reasonable specificity the nature of the violation.

11 Civil penalties shall be recoverable for the violation of a
12 provision of the New Mexico Pollutant Discharge Elimination
13 System Act or the program; a program permit condition; a
14 program filing requirement; a duty to allow or carry out
15 inspection, entry or monitoring activities; or a rule or an
16 order issued by the department. A civil penalty shall be
17 assessable in at least the amount of five thousand dollars
18 (\$5,000) per day for each violation, but shall not exceed
19 twenty thousand dollars (\$20,000) per day for each violation.

20 C. In determining the amount of a civil penalty,
21 the department, attorney general or district court shall
22 consider the seriousness of the violation or violations, as
23 well as the economic benefit, if any, resulting from the
24 violation, any history of such violations, any good-faith
25 efforts to comply with the applicable requirements, the

1 economic impact of the penalty on the violator and other
2 matters as justice may require. For the purposes of this
3 section, a single operational upset or event that leads to
4 simultaneous violations of more than one pollutant parameter
5 shall be treated as a single violation.

6 D. An administrative compliance order issued
7 pursuant to Paragraph (2) of Subsection A of this section
8 shall become final unless, no later than thirty days after
9 service, the person issued the compliance order submits a
10 written request to the commission for a public hearing.

11 E. The commission shall conduct a public hearing
12 no later than ninety days after receipt of the written
13 request for a public hearing.

14 F. Following a public hearing, the commission
15 shall issue a written decision that shall constitute the
16 final action on the compliance order.

17 G. If a person fails to comply with the final
18 action on the compliance order, the department or attorney
19 general may file a civil action in the district court to
20 require compliance, modify or terminate the permit, collect
21 the assessed civil penalty and assess an additional civil
22 penalty of not more than twenty-five thousand dollars
23 (\$25,000) for each day of continued noncompliance with the
24 compliance order.

25 H. Unless otherwise required by law, money

1 collected pursuant to this section shall be deposited in the
2 general fund.

3 SECTION 16. CRIMINAL ENFORCEMENT.--

4 A. A person shall not:

5 (1) discharge a pollutant to waters of the
6 United States without a permit for the discharge issued
7 pursuant to the program;

8 (2) violate an applicable standard,
9 limitation, permit condition or other requirement of a permit
10 issued pursuant to the New Mexico Pollutant Discharge
11 Elimination System Act or a rule adopted pursuant to that
12 act;

13 (3) make a false statement, a
14 representation, a certification or an omission of material
15 fact in an application, a record, a plan, a form, a notice or
16 a report required by a permit or other document submitted or
17 maintained pursuant to the New Mexico Pollutant Discharge
18 Elimination System Act or a rule or permit adopted or issued
19 pursuant to that act;

20 (4) falsify, tamper with or render
21 inaccurate a monitoring device, method or record required to
22 be maintained pursuant to the New Mexico Pollutant Discharge
23 Elimination System Act or a rule or permit adopted or issued
24 pursuant to that act;

25 (5) fail to monitor, sample or report as

1 required by a permit issued pursuant to the New Mexico
2 Pollutant Discharge Elimination System Act or a rule or
3 permit adopted or issued pursuant to that act; or

4 (6) violate a filing requirement pursuant to
5 the New Mexico Pollutant Discharge Elimination System Act or
6 a rule or permit adopted or issued pursuant to that act.

7 B. A person who knowingly violates or knowingly
8 causes or allows another person to violate Subsection A of
9 this section is guilty of a fourth degree felony and shall be
10 sentenced in accordance with the provisions of the Criminal
11 Sentencing Act.

12 C. A person who is convicted of a second or
13 subsequent violation of Subsection A of this section is
14 guilty of a third degree felony and shall be sentenced in
15 accordance with the provisions of the Criminal Sentencing
16 Act.

17 D. A person who knowingly violates Subsection A of
18 this section or knowingly causes another person to violate
19 Subsection A of this section and thereby causes a substantial
20 adverse environmental impact is guilty of a third degree
21 felony and shall be sentenced in accordance with the
22 provisions of the Criminal Sentencing Act.

23 E. A person who knowingly violates Subsection A of
24 this section and knows at the time of the violation that the
25 person is creating a substantial danger of death or serious

1 bodily injury to any other person is guilty of a second
2 degree felony and shall be sentenced in accordance with the
3 provisions of the Criminal Sentencing Act.

4 F. A person who willfully or negligently violates
5 Paragraph (2) or (6) of Subsection A of this section may be
6 assessed a criminal fine of ten thousand dollars (\$10,000)
7 per day for each violation.

8 G. A person who knowingly violates Paragraph (3)
9 or (4) of Subsection A of this section may be assessed a
10 criminal fine of five thousand dollars (\$5,000) for each
11 violation.

12 H. A single operational upset or event that leads
13 to simultaneous violations of more than one pollutant
14 parameter shall be treated as a single violation.

15 I. The attorney general has the authority to
16 enforce this section.

17 SECTION 17. APPEALS TO THE COMMISSION.--

18 A. An interested person who is affected by a
19 permitting action or compliance order may file a petition for
20 review before the commission. The petition shall:

21 (1) be made in writing to the commission
22 within thirty days from the date notice is given to the
23 applicant or permittee of the department's action;

24 (2) include a statement of the issues to be
25 raised and the relief sought; and

1 (3) be provided to all other persons
2 submitting evidence, data, views or arguments in the
3 proceeding before the department.

4 B. A person who files a timely petition for review
5 may request a stay of the department's action, which the
6 commission may grant in whole or in part after a hearing on
7 the request and a showing of good cause.

8 C. Unless a timely petition for review is made,
9 the decision of the department shall be final and shall not
10 be subject to judicial review or review by the commission.

11 D. If a timely petition for review is made, the
12 commission shall consider the petition within ninety days
13 after receipt of the petition at a commission meeting open to
14 the public. The commission shall notify the petitioner and
15 the applicant or permittee, if other than the petitioner, of
16 the date, time and location of the public commission meeting
17 at which the petition for review will be considered. If the
18 petitioner is not the applicant or permittee, the applicant
19 or permittee shall be a party to the proceeding. The
20 commission shall ensure that the public receives notice of
21 the date, time and place of the review.

22 E. The commission shall review the record compiled
23 before the department, including the transcript of any public
24 hearing held on the permitting action or compliance order,
25 and shall allow any party to submit arguments.

1 F. The commission may designate a hearing officer
2 to review the record and the arguments of the parties and
3 recommend a decision to the commission.

4 G. Based on the review of the evidence, the
5 arguments of the parties, if any, and the recommendations of
6 the hearing officer, if one is designated, the commission
7 shall sustain, modify or reverse the action of the
8 department. The commission shall enter ultimate findings of
9 fact and conclusions of law and keep a record of the review.

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

23 I. The commission shall notify the petitioner and
24 all other participants in the review proceeding of the action
25 taken by the commission and the reasons for that action.

1 SECTION 18. JUDICIAL REVIEW.--

2 A. A person who is adversely affected by a rule
3 adopted by the commission may appeal to the court of appeals
4 for further relief no later than thirty days after the
5 commission's final action. The date the rule is filed with
6 state records pursuant to the State Rules Act shall be the
7 date of the commission's final action.

8 B. A person who participated in a permitting or
9 compliance order review before the commission may appeal to
10 the court of appeals for further relief no later than thirty
11 days after the commission's final action.

12 C. An appeal before the court of appeals shall be
13 upon the record made before the commission.

14 D. An application for a stay of the action being
15 appealed may be filed with the commission no later than
16 thirty days after the commission's final action. After a
17 hearing and a showing of good cause by the appellant, a stay
18 of the action being appealed may be granted pending the
19 outcome of the judicial review. If the commission denies the
20 application, a stay of the action may be granted by the court
21 of appeals within ninety days after the commission's denial.

22 E. The court of appeals shall set aside the
23 commission's final action only if the court finds that the
24 action is:

- 25 (1) arbitrary, capricious or an abuse of

1 discretion;

2 (2) not supported by substantial evidence in
3 the record; or

4 (3) otherwise not in accordance with law.

5 SECTION 19. LIMITATIONS.--The New Mexico Pollutant
6 Discharge Elimination System Act does not authorize the
7 commission or department to require a permit that:

8 A. takes away or modifies a property right in
9 water, except that the discharge of a pollutant to waters of
10 the United States without a permit shall not be a property
11 right in water;

12 B. affects the relation between employers and
13 employees with respect to or arising out of a condition of
14 water quality; or

15 C. supersedes or limits the applicability of a law
16 relating to industrial health, safety or sanitation.

17 SECTION 20. AVAILABILITY OF RECORDS.--

18 A. Records, including the names and addresses of
19 permit applicants or permittees, applications, permits,
20 inspections and effluent data, including data relating to
21 discharges and ambient water quality, obtained by the
22 commission or department pursuant to the New Mexico Pollutant
23 Discharge Elimination System Act shall be available to the
24 public.

25 B. Records obtained by the commission or

1 department that are submitted in relation to applications
2 shall include information required on application forms
3 provided by the commission or department, information
4 submitted on the forms themselves and any attachments used to
5 supply information required by the forms. All such records
6 shall be available to the public.

7 C. For other records, the commission or department
8 shall not disclose the record if a person submitting the
9 record asserts at the time of submission that the record or
10 part of the record, if made public, would divulge
11 confidential business information or trade secrets as defined
12 in the Uniform Trade Secrets Act.

13 D. Confidential business information or trade
14 secrets may be disclosed:

15 (1) to officers, employees or authorized
16 representatives of the commission or department;

17 (2) to officers, employees or authorized
18 representatives of the United States; or

19 (3) when relevant, in a proceeding pursuant
20 to the New Mexico Pollutant Discharge Elimination System Act
21 or the federal act.

22 E. An officer, employee or authorized
23 representative of the commission or department who willfully
24 discloses information that the commission or department has
25 determined is entitled to protection as confidential business

1 information or a trade secret shall be fined not more than
2 one thousand dollars (\$1,000) or imprisoned for not more than
3 one year, or both.

4 F. In submitting records, a person providing the
5 records shall:

6 (1) designate the records the person
7 believes are entitled to protection pursuant to this section
8 by stamping the records as "confidential business
9 information"; and

10 (2) submit the designated records separately
11 from other records submitted pursuant to the New Mexico
12 Pollutant Discharge Elimination System Act. _____

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