

HOUSE BILL 207

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

## INTRODUCED BY

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## AN ACT

RELATING TO NATURAL RESOURCES; REQUIRING THE WATER QUALITY  
CONTROL COMMISSION TO PROMULGATE RULES ALLOWING FOR SPECIFIED  
USES OF TREATED PRODUCED WATER.

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

SECTION 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

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

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

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

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1                   C. shall not adopt or promulgate a standard or rule  
2 that exceeds a grant of rulemaking authority listed in the  
3 statutory section of the Water Quality Act authorizing the  
4 standard or rule;

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

18                   E. shall adopt rules to prevent or abate water  
19 pollution in the state or in any specific geographic area,  
20 aquifer or watershed of the state or in any part thereof, or  
21 for any class of waters, and to govern the disposal of septage  
22 and sludge and the use of sludge for various beneficial  
23 purposes. The rules governing the disposal of septage and  
24 sludge may include the use of tracking and permitting systems  
25 or other reasonable means necessary to assure that septage and

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1 sludge are designated for disposal in, and arrive at, disposal  
2 facilities, other than facilities on the premises where the  
3 septage and sludge is generated, for which a permit or other  
4 authorization has been issued pursuant to the federal act or  
5 the Water Quality Act. Rules may specify a standard of  
6 performance for new sources that reflects the greatest  
7 reduction in the concentration of water contaminants that the  
8 commission determines to be achievable through application of  
9 the best available demonstrated control technology, processes,  
10 operating methods or other alternatives, including where  
11 practicable a standard permitting no discharge of pollutants;

12 F. in making rules, shall give weight [it] the  
13 commission deems appropriate to all relevant facts and  
14 circumstances, including:

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

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

19 (3) the technical practicability and economic  
20 reasonableness of reducing or eliminating water contaminants  
21 from the sources involved and previous experience with  
22 equipment and methods available to control the water  
23 contaminants involved;

24 (4) the successive uses of water, including  
25 domestic, commercial, industrial, pastoral, agricultural,

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wildlife and recreational uses;

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

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

G. shall assign responsibility for administering [its] the commission's rules to constituent agencies to [assure] ensure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by the Water Quality Act;

H. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies

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1 funds made available to the commission;

2                   I. may grant an individual variance from a rule of  
3 the commission whenever it is found that compliance with the  
4 rule will impose an unreasonable burden upon any lawful  
5 business, occupation or activity. The commission may only  
6 grant a variance conditioned upon a person effecting a  
7 particular abatement of water pollution within a reasonable  
8 period of time. A variance shall be granted for the period of  
9 time specified by the commission. The commission shall adopt  
10 rules specifying the procedure under which variances may be  
11 sought, which rules shall provide for the holding of a public  
12 hearing before a variance may be granted;

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

24                   K. may adopt rules requiring notice to the  
25 commission or a constituent agency of intent to introduce or

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allow the introduction of water contaminants into waters of the state;

L. shall specify in rules the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt rules for particular industries. The commission shall adopt rules for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection F of this section, the best available scientific information. The rules may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate rules to be proposed for adoption by the commission. The rules shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

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

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1                   N. shall not require a permit respecting the use of  
2 water in irrigated agriculture, except in the case of the  
3 employment of a specific practice in connection with the  
4 irrigation that documentation or actual case history has shown  
5 to be hazardous to public health or the environment, or for the  
6 use of produced water;

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

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

14                   (2) a gray water storage tank is covered to  
15 restrict access and to eliminate habitat for mosquitos or other  
16 vectors;

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

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

21                   (5) gray water pressure piping is clearly  
22 identified as a nonpotable water conduit;

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

25                   (7) gray water is applied in a manner that

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1 minimizes the potential for contact with people or domestic  
2 pets;

3 (8) ponding is prohibited, application of gray  
4 water is managed to minimize standing water on the surface and  
5 to ensure that the hydraulic capacity of the soil is not  
6 exceeded;

7 (9) gray water is not sprayed;

8 (10) gray water is not discharged to a  
9 watercourse; and

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

13 P. shall coordinate application procedures and  
14 funding cycles for loans and grants from the federal  
15 government and from other sources, public or private, with  
16 the local government division of the department of finance  
17 and administration pursuant to the New Mexico Community  
18 Assistance Act;

19 Q. shall adopt rules to be administered by the  
20 department for the discharge, handling, transport, storage,  
21 recycling or treatment for the disposition of treated produced  
22 water ~~[including disposition in road construction maintenance,~~  
~~roadway ice or dust control or other construction, or in the~~  
~~application of treated produced water to land]~~ for activities  
23 unrelated to the exploration, drilling, production, treatment  
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1 or refinement of oil or gas. No later than December 31, 2026,  
2 the commission shall adopt rules that establish permits  
3 allowing for the following uses of treated produced water:

4 (1) pilot projects;

5 (2) industrial use;

6 (3) mixing water used in the production of  
7 hydraulic cement concrete;

8 (4) closed-loop geothermal projects;

9 (5) hydrogen production;

10 (6) commercial use;

11 (7) land applications in areas located more  
12 than one hundred feet from surface waters and more than one  
13 hundred feet above ground water;

14 (8) irrigation of industrial crops;

15 (9) use in road construction or maintenance in  
16 areas located more than one hundred feet from surface waters  
17 and more than one hundred feet above ground water;

18 (10) use in other construction in areas  
19 located more than one hundred feet from surface waters and more  
20 than one hundred feet above ground water;

21 (11) use in roadway ice and dust control in  
22 areas located more than one hundred feet from surface waters  
23 and more than one hundred feet above ground water;

24 (12) discharge into surface or ground water;  
25 and

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(13) restoration or ecological use;

R. shall adopt rules to be administered by the department for surface water discharges [including] as follows:

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

(a) identify exemptions from a discharge permit requirement when water contaminants in discharges are subject to effective and enforceable water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved; and

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

(2) for discharges of dredged or fill material, the rules shall not require a permit for discharges of dredged or [filled] fill materials for which a permit or authorization is issued under Section 404 of the federal Clean

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1 Water Act; provided that the rules shall include avoidance and  
2 minimization to the maximum extent practicable of adverse  
3 impacts to wetlands, streams and other aquatic resources and  
4 may require compensatory mitigation for unavoidable adverse  
5 impacts that remain after appropriate and practicable avoidance  
6 and minimization measures have been achieved; and provided  
7 further that in adopting rules related to this paragraph, in  
8 addition to the factors to be considered under Subsection F of  
9 this section, the commission may:

10 (a) identify exemptions from a discharge  
11 permit requirement when a discharge is subject to effective and  
12 enforceable water quality requirements in a state or federally  
13 issued permit, unless there is a hazard to public health or the  
14 environment that may result or an applicable state water  
15 quality standard will not be achieved; and

16 (b) consider the requirements for  
17 permits and general permits that are consistent with the  
18 requirements of similar permits issued under Section 404 of the  
19 federal Clean Water Act;

20 S. may adopt rules to be administered by the  
21 department for the state to respond to, investigate and  
22 remediate water pollution and contamination in soil and soil  
23 vapor for the protection of human health and the environment;  
24 and

25 T. shall adopt rules to be administered by the

1 department to govern the transfer and use of treated domestic  
2 wastewater for potable reuse. The rules may specify a standard  
3 of performance, including log reduction for pathogen removal,  
4 critical control points, barriers and the greatest reduction in  
5 the concentration of water contaminants and pathogens that the  
6 commission determines to be achievable through application of  
7 the best available demonstrated control technology, processes,  
8 operating methods or other alternatives, including, where  
9 practicable, a standard permitting no risk to human health.  
10 The rules governing the potable reuse of domestic wastewater  
11 may include the use of existing permitting systems or create  
12 new permitting rules that include the means necessary to  
13 [assure] ensure that potable reuse projects are conducted in a  
14 manner that is directly protective of human health."

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