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SENATE BILL 1026

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CARLOS R. CISNEROS

AN ACT

RELATING TO WATER QUALITY REGULATIONS; REGULATING THE TRANSPORT
OF SEPTAGE AND SLUDGE.

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 other than the purposes for which provided;

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

C. shall adopt water quality standards for surface
and ground waters of the state subject to the Water Quality Act.

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1 The standards shall include narrative standards and as
2 appropriate, the designated uses of the waters and the water
3 quality criteria necessary to protect such uses. The standards
4 shall at a minimum protect the public health or welfare, enhance
5 the quality of water and serve the purposes of the Water Quality
6 Act. In making standards, the commission shall give weight it
7 deems appropriate to all facts and circumstances, including the
8 use and value of the water for water supplies, propagation of
9 fish and wildlife, recreational purposes and agricultural,
10 industrial and other purposes;

11 D. shall adopt, promulgate and publish regulations
12 to prevent or abate water pollution in the state or in any
13 specific geographic area, aquifer or watershed of the state or
14 in any part thereof, or for any class of waters, and to govern
15 the transport and disposal of septage and sludge and the use of
16 sludge for various beneficial purposes. The regulations
17 governing the transport and disposal of septage and sludge may
18 include the use of tracking and permitting systems or other
19 reasonable means necessary to assure that septage and sludge are
20 designated for disposal in, and arrive at, disposal facilities,
21 other than facilities on the premises where the septage and
22 sludge is generated, for which a permit or other authorization
23 has been issued pursuant to the federal act or the Water Quality
24 Act. Regulations shall not specify the method to be used to
25 prevent or abate water pollution but may specify a standard of

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1 performance for new sources that reflects the greatest reduction
2 in the concentration of water contaminants that the commission
3 determines to be achievable through application of the best
4 available demonstrated control technology, processes, operating
5 methods or other alternatives, including where practicable a
6 standard permitting no discharge of pollutants. In making
7 regulations, the commission shall give weight it deems
8 appropriate to all relevant facts and circumstances, including:

9 (1) character and degree of injury to or
10 interference with health, welfare, environment and property;

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

13 (3) technical practicability and economic
14 reasonableness of reducing or eliminating water contaminants
15 from the sources involved and previous experience with equipment
16 and methods available to control the water contaminants
17 involved;

18 (4) successive uses, including but not limited
19 to domestic, commercial, industrial, pastoral, agricultural,
20 wildlife and recreational uses;

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

23 (6) property rights and accustomed uses; and

24 (7) federal water quality requirements;

25 E. shall assign responsibility for administering its

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

14 F. may enter into or authorize constituent agencies
15 to enter into agreements with the federal government or other
16 state governments for purposes consistent with the Water Quality
17 Act and receive and allocate to constituent agencies funds made
18 available to the commission;

19 G. may grant an individual variance from any
20 regulation of the commission whenever it is found that
21 compliance with the regulation will impose an unreasonable
22 burden upon any lawful business, occupation or activity. The
23 commission may only grant a variance conditioned upon a person
24 effecting a particular abatement of water pollution within a
25 reasonable period of time. Any variance shall be granted for

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1 the period of time specified by the commission. The commission
2 shall adopt regulations specifying the procedure under which
3 variances may be sought, which regulations shall provide for the
4 holding of a public hearing before any variance may be granted;

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

15 I. may adopt regulations requiring notice to it or a
16 constituent agency of intent to introduce or allow the
17 introduction of water contaminants into waters of the state;

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

23 K. shall not require a permit respecting the use of
24 water in irrigated agriculture, except in the case of the
25 employment of a specific practice in connection with such

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1 irrigation that documentation or actual case history has shown
2 to be hazardous to public health or the environment; and

3 L. shall coordinate application procedures and
4 funding cycles for loans and grants from the federal government
5 and from other sources, public or private, with the local
6 government division of the department of finance and
7 administration pursuant to the New Mexico Community Assistance
8 Act. "

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1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
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5 March 4, 1997
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7 Mr. President:
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9 Your CONSERVATION COMMITTEE, to whom has been referred
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11 SENATE BILL 1026
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13 has had it under consideration and reports same with
14 recommendation that it DO PASS.
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16 Respectfully submitted,
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21 Michael S. Sanchez, Chairman
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25 Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 9 For 0 Against

Yes: 9

No: None

Excused: Gri ego

Absent: None

S1026C01

FORTY-THIRD LEGISLATURE

FIRST SESSION

March 5, 1997

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 1026

Amendment sponsored by Senator Carlos R. Cisneros

1. On page 6, between lines 8 and 9, insert the following new section:

"Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended by Laws 1993, Chapter 100, Section 3 and also by Laws 1993, Chapter 291, Section 5) is amended to read:

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

A. By regulation the commission may require persons to obtain from a constituent agency designated by the commission a

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FIRST SESSION

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permit for the discharge of any water contaminant or for the
transport, disposal or re-use of septage or sludge.

B. The commission shall adopt regulations establishing
procedures for certifying federal water quality permits.

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

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

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

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

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

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharges' effect on surface waters shall be measured at the point of discharge; or

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

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

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

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

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

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

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

F. The commission shall by regulation develop procedures
that ~~will~~ ensure that the public, affected governmental agencies
and any other state whose water may be affected shall receive

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notice of each application for issuance or modification of a permit. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

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

I. By regulation, the commission may impose reasonable

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conditions upon permits requiring permittees to:

(1) install, use and maintain effluent monitoring devices;

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

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

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

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial

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change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

J. The commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees collected pursuant to this section shall be deposited in the water quality management fund.

K. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

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

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

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

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

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

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

M. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons.

N. A person who participated in a permitting action

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FIRST SESSION

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before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for hearing before the commission. The petition shall be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action. Unless a timely request for hearing is made, the decision of the constituent agency shall be final.

0. If a timely petition for hearing is made, the commission shall hold a hearing within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee if other than the petitioner by certified mail of the date, time and place of the hearing. If the commission deems the action that is the subject of the petition to be affected with substantial public interest, it shall ensure that the public receives notice of the date, time and place of the hearing and ~~[shall be]~~ is given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A person submitting data, views or arguments orally or in writing shall be subject to

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examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

P. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final."

Carlos R. Cisneros

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FORTY-THIRD LEGISLATURE
FIRST SESSION

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

March 12, 1997

Mr. Speaker:

Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
whom has been referred

SENATE BILL 1026, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

James Roger Madalena, Chairman

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Adopted _____ Not Adopted _____

(Chief Clerk)
(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Getty, Roberts, Salazar, Stewart

Absent: None

M \S1026

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