

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 654

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE WATER
QUALITY ACT TO PROVIDE FOR PUBLIC HEARINGS AND APPEALS ON WATER
QUALITY PERMITS.

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

Section 1. Section 74-6-5 NMSA 1978 (being Laws 1973,
Chapter 326, Section 4, as amended) is amended to read:

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

A. By [~~regulation~~] rule the commission may require
persons to obtain from a constituent agency designated by the
commission a permit for the discharge of any water contaminant
or for the disposal or re-use of septage or sludge.

B. The commission shall adopt [~~regulations~~] rules
establishing procedures for certifying federal water quality
permits.

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

. 142288. 2

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

19 F. The commission shall by ~~[regulation]~~ rule
20 develop procedures that ensure that the public, affected
21 governmental agencies and any other state whose water may be
22 affected shall receive notice of each application for issuance
23 or modification of a permit. No ruling shall be made on any
24 application for a permit without opportunity for a public
25 hearing at which all interested persons shall be given a

underscored material = new
[bracketed material] = delete

1 reasonable chance to submit data, views or arguments on the
2 application or draft permit orally or in writing [~~and to~~
3 ~~examine witnesses testifying at the hearing~~].

4 G. The commission may adopt [~~regulations~~] rules for
5 the operation and maintenance of the permitted facility,
6 including requirements, as may be necessary or desirable, that
7 relate to continuity of operation, personnel training and
8 financial responsibility, including financial responsibility
9 for corrective action.

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

15 I. By [~~regulation~~] rule, the commission may impose
16 reasonable conditions upon permits requiring permittees to:

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

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

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

underscored material = new
[bracketed material] = delete

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

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

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

14 K. The issuance of a permit does not relieve any
15 person from the responsibility of complying with the provisions
16 of the Water Quality Act, any applicable [~~regulations~~] rules or
17 water quality standards of the commission or any applicable
18 federal laws, regulations or standards.

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

- 22 (1) violation of any condition of the permit;
- 23 (2) obtaining the permit by misrepresentation
24 or failure to disclose fully all relevant facts;
- 25 (3) violation of any provisions of the Water

underscored material = new
[bracketed material] = delete

1 Quality Act or any applicable [~~regulations~~] rules, standard of
2 performance or water quality standards;

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

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

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

12 N. A person who participated in a permitting action
13 before a constituent agency or a person affected by a
14 certification of a federal permit and who is adversely affected
15 by such permitting action or certification may file a petition
16 for review before the commission. The petition shall be made
17 in writing to the commission within thirty days from the date
18 notice is given of the constituent agency's action, and shall
19 include a statement of the issues to be raised and the relief
20 sought. Unless a timely petition for review is made, the
21 decision of the constituent agency shall be final and not
22 subject to judicial review.

23 0. If a timely petition for review is made, the
24 commission shall [~~hold a hearing~~] consider the petition within
25 ninety days after receipt of the petition. The commission

. 142288. 2

underscored material = new
[bracketed material] = delete

1 shall notify the petitioner and the applicant or permittee if
2 other than the petitioner by certified mail of the date, time
3 and place of the ~~[hearing]~~ review. ~~If the petitioner is not~~
4 ~~the applicant or permittee, the applicant or permittee shall~~
5 ~~be a party to the proceeding.~~ If the commission deems the
6 action that is the subject of the petition to be affected with
7 substantial public interest, it shall ensure that the public
8 receives notice of the date, time and place of the ~~[hearing~~
9 ~~and is given a reasonable chance to submit data, views or~~
10 ~~arguments orally or in writing and to examine witnesses~~
11 ~~testifying at the hearing.~~ A person submitting data, views or
12 ~~arguments orally or in writing shall be subject to examination~~
13 ~~at the hearing.~~ In the hearing, the burden of proof shall be
14 upon the petitioner. The commission may designate a hearing
15 officer to take evidence in the hearing] review.

16 P. The commission shall review the record compiled
17 before the constituent agency, including the transcript of any
18 public hearing held on the application or draft permit, and
19 shall allow any party to submit arguments. The commission may
20 designate a hearing officer to review the record and the
21 arguments of the parties and recommend a decision to the
22 commission. The commission shall consider and weigh only the
23 evidence contained in the record before the constituent agency
24 and the recommended decision of the hearing officer, if any,
25 and shall not be bound by the factual findings or legal

underscored material = new
[bracketed material] = delete

1 conclusions of the constituent agency. Based ~~[upon the~~
2 ~~evidence presented at the hearing]~~ on the review of the
3 evidence, the arguments of the parties and recommendations of
4 the hearing officer, the commission shall sustain, modify or
5 reverse the action of the constituent agency.

6 ~~[P. If the petitioner requests, the hearing shall~~
7 ~~be recorded at the cost of the petitioner. Unless the~~
8 ~~petitioner requests that the hearing be recorded, the decision~~
9 ~~of the commission shall be final.]~~

10 Q. Prior to the date set for review, if a party
11 shows to the satisfaction of the commission that there was no
12 opportunity to submit comment or evidence on an issue being
13 challenged, the commission shall order that additional comment
14 or evidence be taken by the department of environment. Based
15 on the additional evidence, the department of environment may
16 revise the decision and shall promptly file with the
17 commission the additional evidence received and action taken.

18 R. The commission shall notify the petitioner and
19 all other parties to the proceeding and the reasons for
20 decisions. "

21 Section 2. Section 74-6-7 NMSA 1978 (being Laws 1967,
22 Chapter 190, Section 6, as amended) is amended to read:

23 "74-6-7. ADMINISTRATIVE ACTION-- JUDICIAL REVIEW. --

24 A. Except as otherwise provided in the Water
25 Quality Act, a person who is adversely affected ~~[by a~~

. 142288. 2

underscored material = new
[bracketed material] = delete

1 ~~regulation adopted by the commission or~~ by a compliance order
2 approved by the commission or who participated in a permitting
3 action or appeal of a certification before the commission and
4 who is adversely affected by such action may appeal to the
5 district court [of appeals] for further relief pursuant to the
6 provisions of Section 39-3-1.1 NMSA 1978. All such appeals
7 shall be upon the record made before the commission and shall
8 be taken to the district court [of appeals] within thirty days
9 after the [~~regulation~~] compliance order, permitting action or
10 certification that is being appealed occurred. [~~If an appeal~~
11 ~~of a regulation is made, then the date of the commission's~~
12 ~~action shall be the date of the filing of the regulation under~~
13 ~~the State Rules Act.~~]

14 B. A person who is or may be adversely affected by
15 a regulation adopted by the commission may appeal the
16 regulation by filing a notice of appeal with the court of
17 appeals within thirty days of the filing of the regulation by
18 the commission pursuant to the State Rules Act.

19 C. Upon appeal, the court of appeals shall set
20 aside the [~~commission's action~~] regulation only if it is found
21 to be:

- 22 (1) arbitrary, capricious or an abuse of
23 discretion;
24 (2) not supported by substantial evidence in
25 the record; or

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(3) otherwise not in accordance with law.

[~~C-~~] D. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outcome of the judicial review. The stay of the action may be granted by the commission, the district court or [~~by~~] the court of appeals if the commission denies a stay or fails to act upon an application for a stay within [~~ninety~~] thirty days after receipt of the application. "