

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 654

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

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 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
establishing procedures for certifying federal water quality
permits.

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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 set the dates
6 upon which applications for permits shall be filed and
7 designate the time periods within which the constituent agency
8 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

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 develop
20 procedures that ensure that the public, adjacent landowners,
21 affected governmental agencies, Indian nations, tribes or
22 pueblos and any other state whose water may be affected shall
23 receive notice of each application for issuance or modification
24 of a permit and any public hearing on the application. No
25 ruling shall be made on any application for a permit without

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1 opportunity for a public hearing at which all interested
2 persons shall be given a reasonable chance to submit evidence,
3 data, views or arguments on the application or draft permit
4 orally or in writing and to examine witnesses testifying at the
5 hearing. The hearing shall be recorded. Any person submitting
6 evidence, data, views or arguments shall be subject to
7 examination at the hearing.

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

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

19 I. By regulation, the commission may impose
20 reasonable conditions upon permits requiring permittees to:

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

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

1 the commission;

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

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

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

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

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

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

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

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

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

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

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

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

16 N. A person who participated in a permitting action
17 before a constituent agency or a person affected by a
18 certification of a federal permit and who is adversely affected
19 by such permitting action or certification may file a petition
20 for review before the commission. [~~The petition shall be made~~
21 ~~in writing to the commission within thirty days from the date~~
22 ~~notice is given of the constituent agency's action.~~] Unless a
23 timely petition for review is made, the decision of the
24 constituent agency shall be final and not subject to judicial
25 review. The petition shall:

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

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

6 (3) be served on all other persons submitting
 7 evidence, data, views or arguments in the proceeding before the
 8 constituent agency.

9 0. If a timely petition for review is made, the
 10 commission shall ~~[hold a hearing]~~ consider the petition within
 11 ninety days after receipt of the petition. The commission
 12 shall notify the petitioner and the applicant or permittee if
 13 other than the petitioner by certified mail of the date, time
 14 and place of the ~~[hearing. If the commission deems the action~~
 15 ~~that is the subject of the petition to be affected with~~
 16 ~~substantial public interest, it]~~ review. If the petitioner is
 17 not the applicant or permittee, the applicant or permittee
 18 shall be a party to the proceeding. The commission shall
 19 ensure that ~~[the public]~~ a person who submitted evidence,
 20 data, views or arguments before the constituent agency
 21 receives notice of the date, time and place of the ~~[hearing~~
 22 ~~and is given a reasonable chance to submit data, views or~~
 23 ~~arguments orally or in writing and to examine witnesses~~
 24 ~~testifying at the hearing. A person submitting data, views or~~
 25 ~~arguments orally or in writing shall be subject to examination~~

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1 ~~at the hearing. In the hearing, the burden of proof shall be~~
2 ~~upon the petitioner. The commission may designate a hearing~~
3 ~~officer to take evidence in the hearing]~~ review.

4 P. The commission shall review the record compiled
5 before the constituent agency, including the transcript of any
6 public hearing held on the application or draft permit, and
7 shall allow any party to submit arguments. The commission may
8 designate a hearing officer to review the record and the
9 arguments of the parties and recommend a decision to the
10 commission. The commission shall consider and weigh only the
11 evidence contained in the record before the constituent agency
12 and the recommended decision of the hearing officer, if any,
13 and shall not be bound by the factual findings or legal
14 conclusions of the constituent agency. Based [upon the
15 ~~evidence presented at the hearing]~~ on the review of the
16 evidence, the arguments of the parties and recommendations of
17 the hearing officer, the commission shall sustain, modify or
18 reverse the action of the constituent agency. The commission
19 shall keep a record of the review.

20 ~~[P. If the petitioner requests, the hearing shall~~
21 ~~be recorded at the cost of the petitioner. Unless the~~
22 ~~petitioner requests that the hearing be recorded, the decision~~
23 ~~of the commission shall be final.]~~

24 Q. Prior to the date set for review, if the
25 commission determines that proposed additional evidence, data,

1 views or arguments are relevant and that there was good reason
 2 for the failure to present the evidence, data, views or
 3 arguments in the proceeding before the constituent agency, the
 4 commission shall order that additional evidence, data, views
 5 or arguments be taken by the constituent agency. Based on the
 6 additional evidence, data, views or arguments, the constituent
 7 agency may revise the permitting action or certification and
 8 shall promptly file with the commission the additional
 9 evidence, data, views or arguments received and the action
 10 taken.

11 R. The commission shall notify the petitioner and
 12 all other participants in the review proceeding of the action
 13 taken by the commission and the reasons for that action."

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

16 "74-6-7. ADMINISTRATIVE ACTION-- JUDICIAL REVIEW. --

17 A. Except as otherwise provided in the Water
 18 Quality Act, a person who is adversely affected [~~by a~~
 19 ~~regulation adopted by the commission or~~] by a compliance order
 20 approved by the commission or who participated in a permitting
 21 action or appeal of a certification before the commission and
 22 who is adversely affected by such action may appeal to the
 23 district court [of appeals] for further relief pursuant to the
 24 provisions of Section 39-3-1.1 NMSA 1978. All such appeals
 25 shall be upon the record made before the commission and shall

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1 be taken to the district court [~~of appeals~~] within thirty days
2 after the [~~regulation~~] compliance order, permitting action or
3 certification that is being appealed occurred. [~~If an appeal~~
4 ~~of a regulation is made, then the date of the commission's~~
5 ~~action shall be the date of the filing of the regulation under~~
6 ~~the State Rules Act.~~]

7 B. A person who is or may be adversely affected by
8 a regulation adopted by the commission may appeal the
9 regulation by filing a notice of appeal with the court of
10 appeals within thirty days of the filing of the regulation by
11 the commission pursuant to the State Rules Act.

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

- 15 (1) arbitrary, capricious or an abuse of
16 discretion;
17 (2) not supported by substantial evidence in
18 the record; or
19 (3) otherwise not in accordance with law.

20 [~~C.~~] D. After a hearing and a showing of good
21 cause by the appellant, a stay of the action being appealed
22 may be granted pending the outcome of the judicial review.
23 The stay of the action may be granted by the commission, the
24 district court or [~~by~~] the court of appeals if the commission
25 denies a stay within ninety days after receipt of the

1 application. "

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