

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 35

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

John A. Heaton

FOR THE RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WATER QUALITY ACT TO
ELIMINATE DE NOVO HEARINGS TO THE WATER QUALITY CONTROL
COMMISSION AND PROVIDE FOR REVIEW BY THE COMMISSION BASED ON
THE RECORD OF A PUBLIC HEARING.

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 reuse of septage or sludge.

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

underscored material = new
[bracketed material] = delete

1 permits.

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

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

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

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

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

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

underscored material = new
[bracketed material] = delete

1 the point of discharge; or

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

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

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

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

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

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

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

20 F. The commission shall by regulation develop
21 procedures that ensure that the public, affected governmental
22 agencies and any other state whose water may be affected shall
23 receive notice of each application for issuance, renewal or
24 modification of a permit. Public notice shall include:

25 (1) for issuance or modification of a permit:

underscored material = new
[bracketed material] = delete

1 (a) notice by mail to adjacent and
2 nearby landowners; local, state and federal governments; land
3 grant organizations; ditch associations; and Indian nations,
4 tribes or pueblos;

5 (b) posting at a place conspicuous to
6 the public and near the discharge or proposed discharge site;
7 and

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

14 (2) for issuance of renewals of permits:

15 (a) notice by mail to the interested
16 public, municipalities, counties, land grant organizations,
17 ditch associations and Indian nations, tribes or pueblos; and

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

23 G. No ruling shall be made on any application for a
24 permit without opportunity for a public hearing at which all
25 interested persons shall be given a reasonable chance to submit

underscored material = new
[bracketed material] = delete

1 evidence, data, views or arguments orally or in writing and to
2 examine witnesses testifying at the hearing. The hearing shall
3 be recorded. Any person submitting evidence, data, views or
4 arguments shall be subject to examination at the hearing.

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

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

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

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

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

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

underscored material = new
[bracketed material] = delete

1 control devices;

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

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

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

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

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

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

underscored material = new
[bracketed material] = delete

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

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

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

9 [M-] N. If the constituent agency denies,
10 terminates or modifies a permit or grants a permit subject to
11 condition, the constituent agency shall notify the applicant or
12 permittee by certified mail of the action taken and the
13 reasons. Notice shall also be given by mail to persons who
14 participated in the permitting action.

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

25 (1) be made in writing to the commission

underscored material = new
[bracketed material] = delete

1 within thirty days from the date notice is given of the
2 constituent agency's action;

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

5 (3) be provided to all other persons
6 submitting evidence, data, views or arguments in the proceeding
7 before the constituent agency.

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

underscored material = new
[bracketed material] = delete

1 ~~hearing. Based upon the evidence presented at the hearing, the~~
2 ~~commission shall sustain, modify or reverse the action of the~~
3 ~~constituent agency.~~

4 ~~P. If the petitioner requests, the hearing shall be~~
5 ~~recorded at the cost of the petitioner. Unless the petitioner~~
6 ~~requests that the hearing be recorded, the decision of the~~
7 ~~commission shall be final] review.~~

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

23 R. Prior to the date set for review, if a party
24 shows to the satisfaction of the commission that there was no
25 reasonable opportunity to submit comment or evidence on an

1 issue being challenged, the commission shall order that
2 additional comment or evidence be taken by the constituent
3 agency. Based on the additional evidence, the constituent
4 agency may revise the decision and shall promptly file with the
5 commission the additional evidence received and action taken.
6 The commission shall consider the additional evidence within
7 ninety days after receipt of the additional evidence and shall
8 notify the petitioner and the applicant or permittee, if other
9 than the petitioner, of the date, time and place of the review.

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

13 - 10 -
14
15
16
17
18
19
20
21
22
23
24
25