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SENATE BILL 206

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE WATER QUALITY ACT TO LIMIT RULEMAKING TO SPECIFIC AUTHORITY OF THE ACT.

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;

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1 C. shall not adopt or promulgate a standard or
2 regulation:

3 (1) pursuant to a specific grant of rulemaking
4 authority, that exceeds the subject matter areas listed in the
5 specific statutory section of the Water Quality Act authorizing
6 the standard or regulation; or

7 (2) pursuant to a general grant of rulemaking
8 authority, to supplement a more specific grant of rulemaking
9 authority;

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

23 [~~D.~~] E. shall adopt, promulgate and publish
24 regulations to prevent or abate water pollution in the state or
25 in any specific geographic area, aquifer or watershed of the

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1 state or in any part thereof, or for any class of waters, and
2 to govern the disposal of septage and sludge and the use of
3 sludge for various beneficial purposes. The regulations
4 governing the disposal of septage and sludge may include the
5 use of tracking and permitting systems or other reasonable
6 means necessary to assure that septage and sludge are
7 designated for disposal in, and arrive at, disposal facilities,
8 other than facilities on the premises where the septage and
9 sludge is generated, for which a permit or other authorization
10 has been issued pursuant to the federal act or the Water
11 Quality Act. Regulations shall not specify the method to be
12 used to prevent or abate water pollution but may specify a
13 standard of performance for new sources that reflects the
14 greatest reduction in the concentration of water contaminants
15 that the commission determines to be achievable through
16 application of the best available demonstrated control
17 technology, processes, operating methods or other alternatives,
18 including where practicable a standard permitting no discharge
19 of pollutants. In making regulations, the commission shall
20 give weight it deems appropriate to all relevant facts and
21 circumstances, including:

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

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

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1 (3) technical practicability and economic
2 reasonableness of reducing or eliminating water contaminants
3 from the sources involved and previous experience with
4 equipment and methods available to control the water
5 contaminants involved;

6 (4) successive uses, including but not limited
7 to domestic, commercial, industrial, pastoral, agricultural,
8 wildlife and recreational uses;

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

11 (6) property rights and accustomed uses; and

12 (7) federal water quality requirements;

13 [~~E.~~] F. shall assign responsibility for
14 administering its regulations to constituent agencies so as to
15 assure adequate coverage and prevent duplication of effort. To
16 this end, the commission may make such classification of waters
17 and sources of water contaminants as will facilitate the
18 assignment of administrative responsibilities to constituent
19 agencies. The commission shall also hear and decide disputes
20 between constituent agencies as to jurisdiction concerning any
21 matters within the purpose of the Water Quality Act. In
22 assigning responsibilities to constituent agencies, the
23 commission shall give priority to the primary interests of the
24 constituent agencies. The department of environment shall
25 provide technical services, including certification of permits

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1 pursuant to the federal act, and shall maintain a repository of
2 the scientific data required by this act;

3 ~~[F.]~~ G. may enter into or authorize constituent
4 agencies to enter into agreements with the federal government
5 or other state governments for purposes consistent with the
6 Water Quality Act and receive and allocate to constituent
7 agencies funds made available to the commission;

8 ~~[G.]~~ H. may grant an individual variance from any
9 regulation of the commission whenever it is found that
10 compliance with the regulation will impose an unreasonable
11 burden upon any lawful business, occupation or activity. The
12 commission may only grant a variance conditioned upon a person
13 effecting a particular abatement of water pollution within a
14 reasonable period of time. Any variance shall be granted for
15 the period of time specified by the commission. The commission
16 shall adopt regulations specifying the procedure under which
17 variances may be sought, which regulations shall provide for
18 the holding of a public hearing before any variance may be
19 granted;

20 ~~[H.]~~ I. may adopt regulations to require the filing
21 with it or a constituent agency of proposed plans and
22 specifications for the construction and operation of new sewer
23 systems, treatment works or sewerage systems or extensions,
24 modifications of or additions to new or existing sewer systems,
25 treatment works or sewerage systems. Filing with and approval

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1 by the federal housing administration of plans for an extension
2 to an existing or construction of a new sewerage system
3 intended to serve a subdivision solely residential in nature
4 shall be deemed compliance with all provisions of this
5 subsection;

6 ~~[F.]~~ J. may adopt regulations requiring notice to
7 it or a constituent agency of intent to introduce or allow the
8 introduction of water contaminants into waters of the state;

9 ~~[J.]~~ K. may adopt regulations establishing
10 pretreatment standards that prohibit or control the
11 introduction into publicly owned sewerage systems of water
12 contaminants that are not susceptible to treatment by the
13 treatment works or that would interfere with the operation of
14 the treatment works;

15 ~~[K.]~~ L. shall not require a permit respecting the
16 use of water in irrigated agriculture, except in the case of
17 the employment of a specific practice in connection with such
18 irrigation that documentation or actual case history has shown
19 to be hazardous to public health or the environment;

20 ~~[L.]~~ M. shall not require a permit for applying
21 less than two hundred fifty gallons per day of private
22 residential gray water originating from a residence for the
23 resident's household gardening, composting or landscape
24 irrigation if:

- 25 (1) a constructed gray water distribution

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1 system provides for overflow into the sewer system or on-site
2 wastewater treatment and disposal system;

3 (2) a gray water storage tank is covered to
4 restrict access and to eliminate habitat for mosquitos or other
5 vectors;

6 (3) a gray water system is sited outside of a
7 floodway;

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

10 (5) gray water pressure piping is clearly
11 identified as a nonpotable water conduit;

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

14 (7) gray water is applied in a manner that
15 minimizes the potential for contact with people or domestic
16 pets;

17 (8) ponding is prohibited, application of gray
18 water is managed to minimize standing water on the surface and
19 to ensure that the hydraulic capacity of the soil is not
20 exceeded;

21 (9) gray water is not sprayed;

22 (10) gray water is not discharged to a
23 watercourse; and

24 (11) gray water use within municipalities or
25 counties complies with all applicable municipal or county

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1 ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
2 and

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

9 Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973,
10 Chapter 326, Section 4, as amended) is amended to read:

11 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

12 A. By regulation, the commission may require
13 persons to obtain from a constituent agency designated by the
14 commission a permit for the discharge of any water contaminant
15 or for the disposal or reuse of septage or sludge.

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

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

23 D. The commission shall by regulation set the dates
24 upon which applications for permits shall be filed and
25 designate the time periods within which the constituent agency

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1 shall, after the filing of an administratively complete
2 application for a permit, either grant the permit, grant the
3 permit subject to conditions or deny the permit. A permit
4 subject to conditions shall not contain a condition that is not
5 specifically authorized by statute or rule. A general grant of
6 authority in statute does not constitute a basis for imposing a
7 permit condition unless a rule is made pursuant to that general
8 grant of authority that specifically authorizes the condition.

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

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

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

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

25 (4) the applicant has, within the ten years

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1 immediately preceding the date of submission of the permit
2 application:

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

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

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

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

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

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

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

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

24 (a) notice by mail to adjacent and
25 nearby landowners; local, state and federal governments; land

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1 grant organizations; ditch associations; and Indian nations,
2 tribes or pueblos;

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

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

11 (2) for issuance of renewals of permits:

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

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

20 G. No ruling shall be made on any application for a
21 permit without opportunity for a public hearing at which all
22 interested persons shall be given a reasonable chance to submit
23 evidence, data, views or arguments orally or in writing and to
24 examine witnesses testifying at the hearing. The hearing shall
25 be recorded. Any person submitting evidence, data, views or

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1 arguments shall be subject to examination at the hearing.

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

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

13 J. By regulation, the commission may impose
14 reasonable conditions upon permits requiring permittees to:

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

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

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

24 (4) provide any other information relating to
25 the discharge or direct or indirect release of water

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1 contaminants; and

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

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

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

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

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

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

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

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

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

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

12 O. 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. Unless a timely petition for
17 review is made, the decision of the constituent agency shall be
18 final and not subject to judicial review. The petition shall:

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

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

24 (3) be provided to all other persons
25 submitting evidence, data, views or arguments in the proceeding

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1 before the constituent agency.

2 P. If a timely petition for review is made, the
3 commission shall consider the petition within ninety days after
4 receipt of the petition. The commission shall notify the
5 petitioner and the applicant or permittee, if other than the
6 petitioner, by certified mail of the date, time and place of
7 the review. If the petitioner is not the applicant or
8 permittee, the applicant or permittee shall be a party to the
9 proceeding. The commission shall ensure that the public
10 receives notice of the date, time and place of the review.

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

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1 and keep a record of the review.

2 R. Prior to the date set for review, if a party
3 shows to the satisfaction of the commission that there was no
4 reasonable opportunity to submit comment or evidence on an
5 issue being challenged, the commission shall order that
6 additional comment or evidence be taken by the constituent
7 agency. Based on the additional evidence, the constituent
8 agency may revise the decision and shall promptly file with the
9 commission the additional evidence received and action taken.
10 The commission shall consider the additional evidence within
11 ninety days after receipt of the additional evidence and shall
12 notify the petitioner and the applicant or permittee, if other
13 than the petitioner, of the date, time and place of the review.

14 S. The commission shall notify the petitioner and
15 all other participants in the review proceeding of the action
16 taken by the commission and the reasons for that action."