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HOUSE BILL 308

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

INTRODUCED BY

GARY K. KING

AN ACT

RELATING TO ENVIRONMENTAL IMPROVEMENT; AMENDING SECTIONS OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE A PERMITTING PROCESS FOR ON-SITE LIQUID WASTE SYSTEMS; ENACTING PENALTIES.

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

Section 1. Section 74-1-1 NMSA 1978 (being Laws 1971, Chapter 277, Section 1, as amended) is amended to read:

"74-1-1. SHORT TITLE. -- ~~[Sections 12-12-1 through 12-12-14 NMSA 1953]~~ Chapter 74, Article 1 NMSA 1978 may be cited as the "Environmental Improvement Act". "

Section 2. Section 74-1-2 NMSA 1978 (being Laws 1971, Chapter 277, Section 2) is amended to read:

"74-1-2. PURPOSE OF ENVIRONMENTAL IMPROVEMENT ACT. -- The purpose of the Environmental Improvement Act is to create ~~an agency which]~~ a department that will be responsible for

Underscored material = new  
[bracketed material] = delete

1 environmental management and consumer protection in this state  
2 in order to [~~insure~~] ensure an environment that in the greatest  
3 possible measure will confer optimum health, safety, comfort and  
4 economic and social well-being on its inhabitants; will protect  
5 this generation as well as those yet unborn from health threats  
6 posed by the environment; and will maximize the economic and  
7 cultural benefits of a healthy people. "

8 Section 3. Section 74-1-3 NMSA 1978 (being Laws 1971,  
9 Chapter 277, Section 3, as amended) is amended to read:

10 "74-1-3. DEFINITIONS. --As used in the Environmental  
11 Improvement Act:

12 A. "board" means the environmental improvement  
13 board;

14 [A.—"agency"] B. "department" or "environmental  
15 improvement [agency] department" means the department of  
16 environment;

17 [B.—"board" means the environmental improvement  
18 board; and]

19 C. "on-site liquid waste system" means a liquid  
20 waste system, or part thereof, serving a dwelling, establishment  
21 or group, and using a liquid waste treatment unit designed to  
22 receive liquid waste followed by either a soil treatment or  
23 other type of disposal system. "On-site liquid waste system"  
24 includes holding tanks and privies; and

25 [C.—] D. "person" means the state or any agency,

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1 institution or political subdivision thereof, any public or  
2 private corporation, individual, partnership, association or  
3 other entity and includes any officer or governing or managing  
4 body of any political subdivision or public or private  
5 corporation;

6 E. "secretary" means the secretary of environment "

7 Section 4. Section 74-1-4 NMSA 1978 (being Laws 1971,  
8 Chapter 277, Section 5, as amended) is amended to read:

9 "74-1-4. ENVIRONMENTAL IMPROVEMENT BOARD--CREATION--  
10 ORGANIZATION.--

11 A. There is created the "environmental improvement  
12 board". The board shall consist of five members appointed by the  
13 governor, by and with the advice and consent of the senate. The  
14 members of the board shall be appointed for overlapping terms,  
15 with no term exceeding five years. No more than three members  
16 shall be appointed from any political party. At least a  
17 majority of the membership of the board shall be individuals who  
18 represent the public interest and do not derive any significant  
19 portion of their income from persons subject to or who appear  
20 before the board on issues related to the federal Clean Air Act  
21 [~~42 U.S.C. Sections 7401 et seq.~~] or the Air Quality Control  
22 Act. Any vacancy occurring in the membership of the board shall  
23 be filled by appointment by the governor for the unexpired term.

24 B. The members of the board shall be reimbursed as  
25 provided in the Per Diem and Mileage Act.

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1 C. The board shall elect from its membership a  
2 chairman, vice chairman and secretary and shall establish the  
3 tenure of these offices. The board shall convene upon the call  
4 of the chairman or a majority of its members."

5 Section 5. Section 74-1-5 NMSA 1978 (being Laws 1971,  
6 Chapter 277, Section 6, as amended) is amended to read:

7 "74-1-5. ENVIRONMENTAL IMPROVEMENT BOARD-- DUTIES.-- The  
8 board shall promulgate all regulations applying to persons and  
9 entities outside of the [agency] department."

10 Section 6. Section 74-1-6 NMSA 1978 (being Laws 1971,  
11 Chapter 277, Section 9, as amended) is amended to read:

12 "74-1-6. [AGENCY] DEPARTMENT-- POWERS.-- The [agency]  
13 department shall have power to:

- 14 A. sue and be sued;
- 15 B. make contracts to carry out its delegated duties;
- 16 C. enter into agreements with environmental and  
17 consumer protection agencies of other states and the federal  
18 government pertaining to duties of the [agency] department;
- 19 D. enter into investigation and remediation  
20 agreements with persons potentially responsible for sites within  
21 New Mexico subject to the federal Comprehensive Environmental  
22 Response, Compensation and Liability Act of 1980 and such  
23 agreements shall not duplicate or take any authority from the  
24 oil conservation commission;
- 25 E. serve as agent of the state in matters of

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1 environmental management and consumer protection not expressly  
2 delegated by law to another [agency] department, commission or  
3 political subdivision in which the United States is a party;

4 F. enforce the rules, regulations and orders  
5 promulgated by the board and environmental management and  
6 consumer protection laws for which the [agency] department is  
7 responsible by appropriate action in courts of competent  
8 jurisdiction;

9 G. on the same basis as any other person, recommend  
10 and propose regulations for promulgation by the board;

11 H. on the same basis as any other person, present  
12 data, views or arguments and examine witnesses and otherwise  
13 participate at all hearings conducted by the board or any other  
14 administrative agency with responsibility in the areas of  
15 environmental management or consumer protection, but shall not  
16 be given any special status over any other party; and

17 I. have such other powers as may be necessary and  
18 appropriate for the exercise of the powers and duties delegated  
19 to the [agency] department. "

20 Section 7. Section 74-1-7 NMSA 1978 (being Laws 1971,  
21 Chapter 277, Section 10, as amended) is amended to read:

22 "74-1-7. ENVIRONMENTAL IMPROVEMENT [AGENCY] DEPARTMENT- -  
23 DUTIES. - -

24 A. The [agency] department is responsible for  
25 environmental management and consumer protection programs. In

Underscored material = new  
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1 that respect, the [agency] department shall maintain, develop  
2 and enforce regulations and standards in the following areas:

3 (1) food protection;

4 (2) water supply, including regulations  
5 establishing a reasonable system of fees for the provision of  
6 services by the [agency] department to public water supply  
7 systems, and water pollution as provided in the Water Quality  
8 Act;

9 (3) liquid waste, including exclusive authority  
10 to implement and administer an inspection and permitting program  
11 for on-site liquid waste systems;

12 (4) air quality management as provided in the  
13 Air Quality Control Act;

14 (5) radiation control as provided in the  
15 Radiation Protection Act;

16 (6) noise control;

17 (7) nuisance abatement;

18 (8) vector control;

19 (9) occupational health and safety as provided  
20 in the Occupational Health and Safety Act;

21 (10) sanitation of public swimming pools and  
22 public baths;

23 (11) plumbing, drainage, ventilation and  
24 sanitation of public buildings in the interest of public health;

25 (12) medical radiation, health and safety

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1 certification and standards for radiologic technologists as  
2 provided in the Medical Radiation Health and Safety Act;

3 (13) hazardous wastes and underground storage  
4 tanks as provided in the Hazardous Waste Act; and

5 (14) solid waste as provided in the Solid Waste  
6 Act.

7 B. Nothing in Subsection A of this section imposes  
8 requirements for the approval of subdivision plats in addition  
9 to those required elsewhere by law. Nothing in Subsection A of  
10 this section preempts the authority of any political subdivision  
11 to approve subdivision plats. "

12 Section 8. Section 74-1-8 NMSA 1978 (being Laws 1971,  
13 Chapter 277, Section 11, as amended) is amended to read:

14 "74-1-8. ENVIRONMENTAL IMPROVEMENT BOARD-- DUTIES. --

15 A. The board is responsible for environmental  
16 management and consumer protection. In that respect, the board  
17 shall promulgate regulations and standards in the following  
18 areas:

19 (1) food protection;

20 (2) water supply, including regulations  
21 establishing a reasonable system of fees for the provision of  
22 services by the [agency] department to public water supply  
23 systems;

24 (3) liquid waste, including exclusive authority  
25 to implement and administer an inspection and permitting program

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1 for on-site liquid waste systems:

2 (4) air quality management as provided in the  
3 Air Quality Control Act;

4 (5) radiation control as provided in the  
5 Radiation Protection Act;

6 (6) noise control;

7 (7) nuisance abatement;

8 (8) vector control;

9 (9) occupational health and safety as provided  
10 in the Occupational Health and Safety Act;

11 (10) sanitation of public swimming pools and  
12 public baths;

13 (11) plumbing, drainage, ventilation and  
14 sanitation of public buildings in the interest of public health;

15 (12) medical radiation, health and safety  
16 certification and standards for radiologic technologists as  
17 provided in the Medical Radiation Health and Safety Act;

18 (13) hazardous wastes and underground storage  
19 tanks as provided in the Hazardous Waste Act; and

20 (14) solid waste as provided in the Solid Waste  
21 Act.

22 B. Nothing in Subsection A of this section imposes  
23 requirements for the approval of subdivision plats in addition  
24 to those required elsewhere by law. Nothing in Subsection A of  
25 this section preempts the authority of any political subdivision

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1 to approve subdivision plats.

2 C. Fees collected pursuant to Paragraph (2) of  
3 Subsection A of this section shall be deposited in the water  
4 supply fund. "

5 Section 9. Section 74-1-8.1 NMSA 1978 (being Laws 1982,  
6 Chapter 73, Section 23, as amended) is amended to read:

7 "74-1-8.1. LEGAL ADVICE. --

8 A. In the exercise of any of its powers or duties,  
9 the board shall act with independent legal advice. The manner  
10 in which such advice is provided shall be determined by the  
11 board, but from among one of the following:

12 (1) the office of the attorney general;

13 (2) independent counsel hired by the board,  
14 whether full- or part-time; or

15 (3) another state agency whose function is  
16 sufficiently distinct from the department of environment to  
17 assure independent, impartial advice.

18 B. Notwithstanding the provisions of Subsection A of  
19 this section, attorneys from the [agency] department may act for  
20 the board in lawsuits filed against or on behalf of the board,  
21 and the attorney general may, at the request of the board, file  
22 and defend lawsuits on behalf of the board. "

23 Section 10. Section 74-1-10 NMSA 1978 (being Laws 1973,  
24 Chapter 340, Section 8) is amended to read:

25 "74-1-10. PENALTY. --

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1           A. A person who violates any regulation of the board  
2 is guilty of a petty misdemeanor. This section does not apply  
3 to any regulation for which a criminal penalty is otherwise  
4 provided by law.

5           B. Whenever, on the basis of any information, the  
6 secretary determines that a person has violated, is violating or  
7 threatens to violate any provision of Paragraph (3) of  
8 Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation  
9 or permit condition adopted and promulgated thereunder, the  
10 secretary may:

11                   (1) issue a compliance order stating with  
12 reasonable specificity the nature of the violation or threatened  
13 violation, requiring compliance immediately or within a  
14 specified time period and assessing a civil penalty for any past  
15 or current violation, or both; or

16                   (2) commence a civil action in district court  
17 for appropriate relief, including a temporary or permanent  
18 injunction.

19           C. An order issued pursuant to Subsection B of this  
20 section may include suspension or revocation of any permit  
21 issued by the department. Any penalty assessed in the order  
22 shall not exceed one thousand dollars (\$1,000) per day of  
23 noncompliance for each violation. In assessing the penalty, the  
24 secretary shall take into account the seriousness of the  
25 violation and any good-faith efforts to comply with the

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1 applicable requirements.

2 D. If violator fails to take corrective actions  
3 within the time specified in the compliance order, the secretary  
4 shall:

5 (1) assess civil penalties of not more than ten  
6 thousand dollars (\$10,000) for each noncompliance with the  
7 order; and

8 (2) suspend or revoke any permit issued to the  
9 violator pursuant to Paragraph (3) of Subsection A of Section  
10 74-1-8 NMSA 1978.

11 E. An order issued pursuant to this section shall  
12 become final unless, no later than thirty days after the order  
13 is served, the person named in the order submits a written  
14 request to the secretary for a hearing. Upon such a request,  
15 the secretary shall conduct a hearing. The secretary shall  
16 appoint an independent hearing officer to preside over the  
17 hearing. The hearing officer shall make and preserve a complete  
18 record of the proceedings and forward his recommendation based  
19 on the record to the secretary, who shall make the final  
20 decision.

21 F. In connection with any proceeding pursuant to  
22 this section, the secretary may issue subpoenas for the  
23 attendance and testimony of witnesses and the production of  
24 relevant papers, books and documents and may adopt and  
25 promulgate rules for discovery procedures.

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**State of New Mexico**  
**House of Representatives**

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

February 5, 1997

Mr. Speaker:

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

HOUSE BILL 308

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 5, line 22, after the period strike "ENVIRONMENTAL IMPROVEMENT" and insert in lieu thereof "ENVIRONMENT".

and thence referred to the JUDICIARY COMMITTEE.

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Respectfully submitted,

\_\_\_\_\_  
James Roger Madalena, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Macko, Stewart

Absent: None

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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 308, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 12, between lines 5 and 6, insert the  
following new section to read:

"Section 11. A new section of Chapter 74, Article 1  
NMSA 1978 is enacted to read:

" [NEW MATERIAL] COUNTY OR MUNICIPAL AUTHORITY  
REGARDING ON-SITE LIQUID WASTE SYSTEM -- Nothing in Chapter  
74, Article 1 NMSA 1978 limits or is intended to limit the  
authority of any county or municipality to adopt and enforce  
requirements related to on-site liquid waste systems that  
are at least as stringent as those in that article;  
provided, however, that the county or municipality has, on

FORTY- THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 308, AA

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1  
2 staff or under contract, either a registered professional  
3 engineer with education or experience in sanitary  
4 engineering or a class II wastewater operator certified by  
5 the state of New Mexico. "".

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 308, AA

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The roll call vote was 8 For 0 Against

Yes: 8

Excused: Carpenter, Luna, Mallory, Rios, Sanchez

Absent: None

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[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997

HB 308/a

3  
4 March 17, 1997

5  
6 Mr. President:

7  
8 Your CONSERVATION COMMITTEE, to whom has been referred

9 HOUSE BILL 308, as amended

10  
11 has had it under consideration and reports same with  
12 recommendation that it DO PASS, amended as follows:

13  
14 1. On page 10, lines 22 and 23, strike "per day of  
15 noncompliance".

16  
17 2. On page 11, lines 5 and 6, strike "ten thousand dollars  
18 (\$10,000)" and insert in lieu thereof "one thousand dollars  
19 (\$1,000)",

20 and further recommends that it now be referred to the JUDICIARY  
21 COMMITTEE.

22  
23 Respectfully submitted,

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

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Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Eisenstadt, Griego, Lyons

Absent: None

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[bracketed material] = delete

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997

HB 308/a

3  
4 March 19, 1997

5  
6 Mr. President:

7  
8 Your JUDICIARY COMMITTEE, to whom has been referred

9 HOUSE BILL 308, as amended

10  
11 has had it under consideration and reports same with  
12 recommendation that it DO PASS, amended as follows:

13  
14 1. On page 2, line 24, after "privies" insert "but does not  
15 include systems or facilities designed to receive or treat mine or  
16 mill tailings or wastes".

17 2. On page 2, line 24, after the semicolon strike "and".

18  
19 3. On page 3, between lines 5 and 6, insert the following  
20 subsection:

21  
22 "E. "residential on-site liquid waste system" means an  
23 on-site liquid waste system serving up to four dwelling units;  
24 and".

25 4. Reletter the succeeding subsection accordingly.

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

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5. On page 10, line 21, after "order" insert ", except for residential on-site liquid waste systems,".

6. On page 10, line 23, after the period insert "Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one hundred dollars (\$100) for each violation.".

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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**FORTY-THIRD LEGISLATURE  
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Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Tsosie, Vernon, Macias

Absent: None

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