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HOUSE BILL 321

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO THE ENVIRONMENT; RE-AUTHORIZING THE WATER QUALITY CONTROL COMMISSION; AMENDING SECTIONS OF NMSA 1978.

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 by Laws 1993, Chapter 100, Section 3 and also by Laws 1993, Chapter 291, Section 5) 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

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1 establishing procedures for certifying federal water quality
2 permits.

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

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

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

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

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

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

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1 Determination of the discharges' effect on surface waters
2 shall be measured at the point of discharge; or

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

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

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

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

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

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

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

21 F. The commission shall by regulation develop
22 procedures that [will] ensure that the public, affected
23 governmental agencies and any other state whose water may be
24 affected shall receive notice of each application for issuance
25 or modification of a permit. No ruling shall be made on any

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1 application for a permit without opportunity for a public
2 hearing at which all interested persons shall be given a
3 reasonable chance to submit data, views or arguments orally or
4 in writing and to examine witnesses testifying at the hearing.

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

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

16 I. 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

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1 effluent 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
7 of 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. The commission shall provide by regulation a
11 schedule of fees for permits, not exceeding the estimated cost
12 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. The issuance of a permit does not relieve any
16 person from the responsibility of complying with the
17 provisions of the Water Quality Act, any applicable
18 regulations or water quality standards of the commission or
19 any applicable federal laws, regulations or standards.

20 L. A permit may be terminated or modified by the
21 constituent agency that issued the permit prior to its date of
22 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;

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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
8 the permitted discharge.

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

13 N. A person who participated in a permitting
14 action before a constituent agency or a person affected by a
15 certification of a federal permit and who is adversely
16 affected by such permitting action or certification may file a
17 petition for [~~hearing~~] review before the commission. The
18 petition shall be made in writing to the commission within
19 thirty days from the date notice is given of the constituent
20 agency's action. Unless a timely [~~request~~] petition for
21 [~~hearing~~] review is made, the decision of the constituent
22 agency shall be final.

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

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1 the petitioner and the applicant or permittee if other than
2 the petitioner by certified mail of the date, time and place
3 of the hearing. If the commission deems the action that is
4 the subject of the petition to be affected with substantial
5 public interest, it shall ensure that the public receives
6 notice of the date, time and place of the hearing and [~~shall~~
7 be] is given a reasonable chance to submit data, views or
8 arguments orally or in writing and to examine witnesses
9 testifying at the hearing. A person submitting data, views or
10 arguments orally or in writing shall be subject to examination
11 at the hearing. In the hearing, the burden of proof shall be
12 upon the petitioner. The commission may designate a hearing
13 officer to take evidence in the hearing. If there is an
14 opportunity for a hearing before the constituent agency, the
15 commission's review of the constituent agency's decision shall
16 be based upon the record before the constituent agency.
17 Additional evidence may be presented if that evidence could
18 not be presented at the constituent agency hearing and the
19 additional evidence is material and is not cumulative. If new
20 evidence is presented, the commission shall remand the matter
21 to the constituent agency on the additional evidence. Based
22 upon the [evidence presented at the hearing] record before the
23 commission, including additional evidence presented to the
24 constituent agency, the commission shall sustain, modify or
25 reverse the action of the constituent agency.

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P. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final."

Section 2. Section 74-6-17 NMSA 1978 (being Laws 1987, Chapter 333, Section 15, as amended) is amended to read:

"74-6-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL. -- The water quality control commission is terminated on July 1, [1999] 2005 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, [2000] 2006. Effective July 1, [2000] 2006, Sections 74-6-3 and 74-6-4 [~~(being Laws 1967, Chapter 190, Sections 3 and 4, as amended)~~] NMSA 1978 are repealed. "

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 19, 1999
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8 Mr. Speaker:
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10 Your ENERGY AND NATURAL RESOURCES COMMITTEE, to
11 whom has been referred
12

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

17 1. On page 7, line 13, strike the rest of the line after
18 the period, strike lines 14 through 23 and strike line 24 up to
19 the comma and insert in lieu thereof "Based upon the evidence
20 presented at the hearing".,

21
22 and thence referred to the JUDICIARY COMMITTEE.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HENRC/HB 321, aa

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5 Respectfully submitted,

8 _____
9 James Roger Madalena, Chairman

11 Adopted _____

Not Adopted _____

12 (Chief Clerk)

(Chief Clerk)

14 Date _____

16 The roll call vote was 10 For 0 Against

17 Yes: 10

18 Excused: None

19 Absent: None

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