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HOUSE BILL 592

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

INTRODUCED BY

Joe M Stell

AN ACT

RELATING TO WATER; CORRECTING THE PROVISIONS FOR IRRIGATION
AND FLOOD CONTROL FACILITIES IN THE WATER QUALITY CONTROL ACT.

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

Section 1. Section 74-6-10 NMSA 1978 (being Laws 1967,
Chapter 190, Section 9, as amended) is amended to read:

"74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
PENALTIES--ASSURANCE OF DISCONTINUANCE. --

A. Whenever, on the basis of any information, a
constituent agency determines that a person violated or is
violating a requirement or regulation [~~or water quality
standard~~] adopted pursuant to the Water Quality Act or a
condition of a permit issued pursuant to that act, the
constituent agency may:

- (1) issue a compliance order requiring

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1 compliance immediately or within a specified time period or
2 issue a compliance order assessing a civil penalty, or both;
3 or

4 (2) commence a civil action in district court
5 for appropriate relief, including injunctive relief.

6 B. A compliance order issued pursuant to Paragraph
7 (1) of Subsection A of this section may include a suspension
8 or termination of the permit allegedly violated.

9 C. A compliance order shall state with reasonable
10 specificity the nature of the violation. Any penalty assessed
11 in the compliance order shall not exceed:

12 (1) fifteen thousand dollars (\$15,000) per
13 day of noncompliance with the provisions in Section 74-6-5
14 NMSA 1978, including a regulation adopted or a permit issued
15 pursuant to that section; or

16 (2) ten thousand dollars (\$10,000) per day
17 for each violation of a provision of the Water Quality Act
18 other than the provisions in Section 74-6-5 NMSA 1978 or of a
19 regulation or water quality standard adopted pursuant to the
20 Water Quality Act.

21 D. In assessing a penalty authorized by this
22 section, the constituent agency shall take into account the
23 seriousness of the violation, any good faith efforts to comply
24 with the applicable requirements and other relevant factors.

25 E. For purposes of this section, a single

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1 operational event that leads to simultaneous violations of
2 more than one standard shall be treated as a single violation.

3 F. If a person fails to take corrective actions
4 within the time specified in a compliance order, the
5 constituent agency may:

6 (1) assess a civil penalty of not more than
7 twenty-five thousand dollars (\$25,000) for each day of
8 continued noncompliance with the compliance order; and

9 (2) suspend or terminate the permit violated
10 by the person.

11 G. ~~Any~~ A compliance order issued by a
12 constituent agency pursuant to this section shall become final
13 unless, no later than thirty days after the compliance order
14 is served, ~~any~~ a person named in the compliance order
15 submits a written request to the commission for a public
16 hearing. The commission shall conduct a public hearing within
17 ninety days after receipt of a request.

18 H. The commission may appoint an independent
19 hearing officer to preside over ~~any~~ a public hearing held
20 pursuant to Subsection ~~[F]~~ G of this section. The hearing
21 officer shall:

22 (1) make and preserve a complete record of
23 the proceedings; and

24 (2) forward to the commission a report that
25 includes recommendations if recommendations are requested by

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1 the commission.

2 I. The commission shall consider the findings of
3 the independent hearing officer and, based on the evidence
4 presented at the hearing, the commission shall make a final
5 decision regarding the compliance order.

6 J. In connection with any proceeding [~~under~~]
7 provided for in this section, the commission may:

- 8 (1) adopt rules for discovery procedures; and
- 9 (2) issue subpoenas for the attendance and
10 testimony of witnesses and for relevant papers, books and
11 documents.

12 K. Penalties collected pursuant to this section
13 shall be deposited in the general fund.

14 L. As an additional means of enforcing the Water
15 Quality Act or any regulation or standard of the commission,
16 the commission may accept an assurance of discontinuance of
17 any act or practice deemed in violation of the Water Quality
18 Act or any regulation or standard adopted pursuant to that
19 act, from any person engaging in, or who has engaged in, such
20 act or practice, signed and acknowledged by the chairman of
21 the commission and the party affected. Any such assurance
22 shall specify a time limit during which the discontinuance is
23 to be accomplished. "

24 Section 2. Section 74-6-12 NMSA 1978 (being Laws 1967,
25 Chapter 190, Section 11, as amended) is amended to read:

1 "74-6-12. LIMITATIONS. --

2 A. The Water Quality Act does not grant to the
3 commission or to any other entity the power to take away or
4 modify the property rights in water, nor is it the intention
5 of the Water Quality Act to take away or modify such rights.

6 B. The Water Quality Act does not apply to any
7 activity or condition subject to the authority of the
8 environmental improvement board pursuant to the Hazardous
9 Waste Act, the Ground Water Protection Act or the Solid Waste
10 Act except to abate water pollution or to control the disposal
11 or use of septage and sludge.

12 C. The Water Quality Act does not authorize the
13 commission to adopt any regulation with respect to any
14 condition or quality of water if the water pollution and its
15 effects are confined entirely within the boundaries of
16 property within which the water pollution occurs when the
17 water does not combine with other waters.

18 D. The Water Quality Act does not grant to the
19 commission any jurisdiction or authority affecting the
20 relation between employers and employees with respect to or
21 arising out of any condition of water quality.

22 E. The Water Quality Act does not supersede or
23 limit the applicability of any law relating to industrial
24 health, safety or sanitation.

25 F. Except as required by federal law, in the

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1 adoption of regulations and water quality standards and in an
2 action for enforcement of the Water Quality Act and
3 regulations adopted pursuant to that act, reasonable
4 degradation of water quality resulting from beneficial use
5 shall be allowed. Such degradation shall not result in
6 impairment of water quality to the extent that water quality
7 standards are exceeded.

8 G. The Water Quality Act does not apply to any
9 activity or condition subject to the authority of the oil
10 conservation commission pursuant to provisions of the Oil and
11 Gas Act, Section 70-2-12 NMSA 1978 and other laws conferring
12 power on the oil conservation commission to prevent or abate
13 water pollution.

14 H. When decreases in dissolved oxygen
15 concentration or increases in temperature, dissolved solids,
16 sediment or turbidity in a water of the state is attributable
17 to natural causes or to the reasonable operation of irrigation
18 and flood control facilities that are not subject to federal
19 or state water pollution control permitting, numerical
20 standards for temperature, dissolved solids content, dissolved
21 oxygen, sediment or turbidity adopted under the Water Quality
22 Act do not apply. "Reasonable operation", as used in this
23 subsection, shall be defined by regulation [of] on a case by
24 case basis by the commission. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 25, 1999

7
8 Mr. Speaker:

9
10 Your AGRICULTURE AND WATER RESOURCES COMMITTEE,
11 to whom has been referred

12
13 HOUSE BILL 592

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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. Strike Section 1 in its entirety.
- 18
- 19 2. Renumber the subsequent section accordingly.
- 20
- 21 3. On page 6, line 14, strike "decreases" and insert in
22 lieu thereof "changes".
- 23
- 24 4. On page 6, line 15, strike "concentration or increases
25 in" and insert in lieu thereof a comma.
5. On page 6, lines 23 and 24, remove the brackets and
line through "of" and strike "on a case by case basis by".,

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HAGC/HB 592

Page 8

and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

Joe M Stell, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Begaye, Blanton, Wright

Absent: None

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 March 5, 1999

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7 Mr. Speaker:

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9 Your JUDICIARY COMMITTEE, to whom has been referred
10 HOUSE BILL 592, as amended

11
12 has had it under consideration and reports same with
13 recommendation that it DO PASS.

14
15 Respectfully submitted,

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18 _____
19 R. David Pederson, Chairman

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22 Adopted _____

23 Not Adopted _____

24 (Chief Clerk)

(Chief Clerk)

25 Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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HJC/HB 592

Page 10

The roll call vote was 6 For 4 Against

Yes: 6

No: Garcia, Rios, Stewart, Pederson

Excused: Luna, Sanchez

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 592

Page 11

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 11, 1999

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Mr. President:

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Your CONSERVATION COMMITTEE, to whom has been referred

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13

HOUSE BILL 592, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Fernando R. Macias, Chairman

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Adopted _____ Not

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 592

Page 12

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 5 For 2 Against

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Yes: 5

11

No: Feldman, Macias

12

Excused: Eisenstadt, Sanchez, Vernon

13

Absent: None

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