

1 SENATE BILL 296

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Brenda McKenna and Jeff Steinborn

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; AMENDING THE NEW MEXICO MINING
12 ACT, THE AIR QUALITY CONTROL ACT, THE HAZARDOUS WASTE ACT, THE
13 WATER QUALITY ACT AND THE SOLID WASTE ACT TO INCREASE CIVIL
14 PENALTIES FOR VIOLATIONS, NONCOMPLIANCE AND FAILURE TO CORRECT
15 FOR NONCOMPLIANCE TO ACCOUNT FOR INFLATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 69-36-17 NMSA 1978 (being Laws 1993,
19 Chapter 315, Section 17) is amended to read:

20 "69-36-17. CIVIL PENALTIES.--

21 A. Civil penalties may be assessed by the director
22 or the commission for violations of the New Mexico Mining Act,
23 including a violation of a [~~regulation~~] rule of the commission,
24 an order of the director, a permit condition and the order
25 resulting from a hearing.

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1 B. Civil penalties assessed by the director or the
2 commission shall be imposed pursuant to [~~regulations~~] rules
3 adopted by the commission. [~~Any~~] A penalty assessed shall not
4 exceed [~~ten thousand dollars (\$10,000)~~] twenty thousand dollars
5 (\$20,000) per day of noncompliance for each violation.

6 C. Circumstances to be considered by the commission
7 or the director in determining the amount of the penalty to be
8 assessed shall be the seriousness of the violation, efforts to
9 comply with the requirements of the New Mexico Mining Act,
10 recent history of violations and other relevant factors as
11 determined by the commission and [~~regulations~~] rules adopted by
12 the commission.

13 D. [~~Any~~] A penalty imposed by the director may be
14 appealed to the commission, and [~~any~~] an order of the
15 commission concerning a penalty may be appealed de novo to the
16 district court within thirty days from issuance of the order
17 imposing the penalty."

18 SECTION 2. Section 74-2-12 NMSA 1978 (being Laws 1992,
19 Chapter 20, Section 14, as amended) is amended to read:

20 "74-2-12. ENFORCEMENT--COMPLIANCE ORDERS--FIELD
21 CITATIONS.--

22 A. When, on the basis of any information, the
23 secretary or the director determines that a person has violated
24 or is violating a requirement or prohibition of the Air Quality
25 Control Act, a [~~regulation~~] rule promulgated pursuant to that

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1 act or a condition of a permit issued under that act, the
2 secretary or the director may:

3 (1) issue a compliance order within one year
4 after the violation becomes known by the department or the
5 local agency stating with reasonable specificity the nature of
6 the violation and requiring compliance immediately or within a
7 specified time period or assessing a civil penalty for a past
8 or current violation, or both; or

9 (2) commence a civil action in district court
10 for appropriate relief, including a temporary or permanent
11 injunction.

12 B. An order issued pursuant to Subsection A of this
13 section may include a suspension or revocation of the permit or
14 portion thereof issued by the secretary or the director that is
15 alleged to have been violated. ~~[Any]~~ A penalty assessed in the
16 order shall not exceed ~~[fifteen thousand dollars (\$15,000)]~~
17 thirty thousand dollars (\$30,000) per day of noncompliance for
18 each violation.

19 C. An order issued pursuant to Subsection A of this
20 section shall become final unless, no later than thirty days
21 after the order is served, the person named therein submits a
22 written request to the secretary or the director for a public
23 hearing. Upon such request, the secretary or the director
24 shall promptly conduct a public hearing. The secretary or the
25 director shall appoint an independent hearing officer to

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1 preside over the public hearing. The hearing officer shall
2 make and preserve a complete record of the proceedings and
3 forward the hearing officer's recommendation based thereon to
4 the secretary or the director, who shall make the final
5 decision.

6 D. The environmental improvement board or the local
7 board may implement a field citation program through
8 ~~[regulations]~~ rules establishing appropriate minor violations
9 for which field citations assessing civil penalties not to
10 exceed one thousand dollars (\$1,000) per day of violation may
11 be issued by officers or employees of the department or the
12 local agency as designated by the secretary or the director.

13 E. A person to whom a field citation is issued
14 pursuant to Subsection D of this section may, within a
15 reasonable time as prescribed by ~~[regulation]~~ rule by the
16 environmental improvement board or the local board, elect to
17 pay the penalty assessment or to request a hearing by the
18 issuing agency on the field citation. If a request for hearing
19 is not made within the time specified in the ~~[regulation]~~ rule,
20 the penalty assessment in the field citation shall be final.

21 F. Payment of a civil penalty required by a field
22 citation issued pursuant to Subsection D of this section shall
23 not be a defense to further enforcement by the department or
24 the local agency to correct a violation or to assess the
25 maximum statutory penalty pursuant to other authorities in the

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1 Air Quality Control Act if the violation continues.

2 G. In determining the amount of a penalty to be
3 assessed pursuant to this section, the secretary, the director
4 or the person issuing a field citation shall take into account
5 the seriousness of the violation, any good-faith efforts to
6 comply with the applicable requirements and other relevant
7 factors.

8 H. In connection with a proceeding under this
9 section, the secretary or the director may issue subpoenas for
10 the attendance and testimony of witnesses and the production of
11 relevant papers, books and documents and may adopt rules for
12 discovery procedures.

13 I. If a person fails to comply with an
14 administrative order, the secretary or director may initiate an
15 action to suspend or revoke the permit, or portion thereof,
16 alleged to have been violated or to commence a civil action in
17 district court to enforce the order, or to suspend or revoke
18 the permit, or both.

19 J. If a person fails to pay an assessment of a
20 civil penalty, the secretary or director may commence a civil
21 action in district court to collect the civil penalties
22 assessed in the order.

23 K. Penalties collected pursuant to this section
24 shall be deposited in the:

25 (1) municipal or county general fund, as

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1 applicable, if the administrative order or field citation was
2 directed to a source located within a local authority; or

3 (2) state general fund if the administrative
4 order or field citation was directed to any other source."

5 SECTION 3. Section 74-2-12.1 NMSA 1978 (being Laws 1992,
6 Chapter 20, Section 15, as amended) is amended to read:

7 "74-2-12.1. CIVIL PENALTY--REPRESENTATION OF DEPARTMENT
8 OR LOCAL AUTHORITY--LIMITATION OF ACTIONS.--

9 A. A person who violates a provision of the Air
10 Quality Control Act or a [~~regulation~~] rule, permit condition or
11 emergency order adopted or issued pursuant to that act may be
12 assessed a civil penalty not to exceed [~~fifteen thousand~~
13 ~~dollars (\$15,000)~~] thirty thousand dollars (\$30,000) for each
14 day during any portion of which a violation occurs.

15 B. A person who fails to comply with an
16 administrative order issued pursuant to Section 74-2-12 NMSA
17 1978 may be assessed, pursuant to a court order, a civil
18 penalty of not more than [~~twenty-five thousand dollars~~
19 ~~(\$25,000)~~] fifty thousand dollars (\$50,000) for each day of
20 noncompliance with the order.

21 C. In an action to enforce the provisions of the
22 Air Quality Control Act or an ordinance, [~~regulation~~] rule,
23 permit condition or order, adopted, imposed or issued pursuant
24 to that act:

25 (1) the department shall be represented by the

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1 attorney general;

2 (2) a local authority that is a municipality
3 shall be represented by the attorney of the municipality; and

4 (3) a local authority that is a county shall
5 be represented by the district attorney within whose judicial
6 district the county lies.

7 D. No action for civil penalty shall be commenced
8 more than five years from the date the violation was known by
9 the department or the local agency."

10 SECTION 4. Section 74-4-10 NMSA 1978 (being Laws 1981
11 (1st S.S.), Chapter 8, Section 9, as amended) is amended to
12 read:

13 "74-4-10. ENFORCEMENT--COMPLIANCE ORDERS--CIVIL
14 PENALTIES.--

15 A. Whenever on the basis of any information the
16 secretary determines that ~~[any]~~ a person has violated, is
17 violating or threatens to violate ~~[any]~~ a requirement of the
18 Hazardous Waste Act, ~~[any]~~ a rule adopted and promulgated
19 pursuant to that act or ~~[any]~~ a condition of a permit issued
20 pursuant to that act, the secretary may:

21 (1) issue a compliance order stating with
22 reasonable specificity the nature of the violation or
23 threatened violation and requiring compliance immediately or
24 within a specified time period or assessing a civil penalty for
25 any past or current violation, or both; or

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

4 B. ~~[Any]~~ An order issued pursuant to Subsection A
5 of this section may include a suspension or revocation of ~~[any]~~
6 a permit issued by the secretary. ~~[Any]~~ A penalty assessed in
7 the order shall not exceed ~~[ten thousand dollars (\$10,000)]~~
8 twenty thousand dollars (\$20,000) per day of noncompliance for
9 each violation. In assessing the penalty, the secretary shall
10 take into account the seriousness of the violation and any
11 good-faith efforts to comply with the applicable requirements.
12 For violations related to storage tanks, "per violation" means
13 per tank.

14 C. If a violator fails to take corrective actions
15 within the time specified in a compliance order, the secretary
16 may:

17 (1) assess a civil penalty of not more than
18 ~~[twenty-five thousand dollars (\$25,000)]~~ fifty thousand dollars
19 (\$50,000) for each day of continued noncompliance with the
20 order; and

21 (2) suspend or revoke ~~[any]~~ a permit issued to
22 the violator pursuant to the Hazardous Waste Act.

23 D. Whenever on the basis of any information the
24 secretary determines that the immediate termination of a
25 research, development and demonstration permit is necessary to

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1 protect human health or the environment, the secretary may
2 order an immediate termination of all research, development and
3 demonstration operations permitted pursuant to the Hazardous
4 Waste Act at the facility.

5 E. Whenever on the basis of any information the
6 secretary determines that there is or has been a release of
7 hazardous waste into the environment from a facility authorized
8 to operate under Section 74-4-9 NMSA 1978, the secretary may
9 issue an order requiring corrective action, including
10 corrective action beyond a facility's boundaries or other
11 response measure as ~~[he]~~ the secretary deems necessary to
12 protect human health or the environment or may commence an
13 action in district court in the district in which the facility
14 is located for appropriate relief, including a temporary or
15 permanent injunction.

16 F. ~~[Any]~~ An order issued under Subsection E of this
17 section may include a suspension or revocation of authorization
18 to operate under Section 74-4-9 NMSA 1978 and shall state with
19 reasonable specificity the nature of the required corrective
20 action or other response measure and shall specify a time for
21 compliance. If ~~[any]~~ a person named in an order fails to
22 comply with the order, the secretary may assess, and the person
23 shall be liable to the state for, a civil penalty in an amount
24 not to exceed ~~[ten thousand dollars (\$10,000)]~~ twenty thousand
25 dollars (\$20,000) for each day of noncompliance with the order.

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1 G. ~~[Any]~~ An order issued pursuant to this section,
2 any other enforcement proceeding initiated pursuant to this
3 section or ~~[any]~~ a claim for personal or property injury
4 arising from ~~[any]~~ conduct for which evidence of financial
5 responsibility must be provided may be issued to or taken
6 against the insurer or guarantor of an owner or operator of a
7 treatment, storage or disposal facility or storage tank if:

8 (1) the owner or operator is in bankruptcy,
9 reorganization or arrangement pursuant to the federal
10 Bankruptcy Code; or

11 (2) jurisdiction in ~~[any]~~ a state or federal
12 court cannot with reasonable diligence be obtained over an
13 owner or operator likely to be solvent at the time of judgment.

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

24 I. In connection with ~~[any]~~ a proceeding under this
25 section, the secretary may issue subpoenas for the attendance

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1 and testimony of witnesses and the production of relevant
2 papers, books and documents and may promulgate rules for
3 discovery procedures.

4 J. Penalties collected pursuant to an
5 administrative order shall be deposited in the state treasury
6 to be credited to the hazardous waste emergency fund."

7 SECTION 5. Section 74-4-10.1 NMSA 1978 (being Laws 1989,
8 Chapter 322, Section 13) is amended to read:

9 "74-4-10.1. HAZARDOUS WASTE MONITORING, ANALYSIS AND
10 TESTING.--

11 A. If the director determines, upon receipt of any
12 information, that [~~+~~] the presence of any hazardous waste at
13 a facility or site at which hazardous waste is or has been
14 stored, treated or disposed of or [~~+~~] the release of any such
15 waste from [~~such~~] the facility or site may present a
16 substantial hazard to human health or the environment, [~~he~~] the
17 director may issue an order requiring the owner or operator of
18 [~~such~~] the facility to conduct such monitoring, testing,
19 analysis and reporting with respect to [~~such~~] the facility or
20 site as the director deems reasonable to ascertain the nature
21 and extent of [~~such~~] the hazard.

22 B. In the case of [~~any~~] a facility or site not in
23 operation at the time a determination is made under Subsection
24 A of this section with respect to the facility or site, if the
25 director finds that the owner of [~~such~~] the facility or site

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1 could not reasonably be expected to have actual knowledge of
2 the presence of hazardous waste at [~~such~~] the facility or site
3 and of its potential for release, the director may issue an
4 order requiring the most recent previous owner or operator of
5 [~~such~~] the facility or site who could reasonably be expected to
6 have actual knowledge to carry out the provisions referred to
7 in Subsection A of this section.

8 C. [~~Any~~] An order under Subsection A or B of this
9 section shall require the person to whom [~~such~~] the order is
10 issued to submit to the director, within thirty days from the
11 issuance of [~~such~~] the order, a proposal for carrying out the
12 required monitoring, testing, analysis and reporting. The
13 director may, after providing [~~such~~] the person with an
14 opportunity to confer with the director respecting [~~such~~] the
15 proposal, require [~~such~~] the person to carry out [~~such~~] the
16 monitoring, testing, analysis and reporting in accordance with
17 [~~such~~] the proposal and [~~such~~] the modifications in [~~such~~] the
18 proposal as the director deems reasonable to ascertain the
19 nature and extent of the hazard.

20 D. [~~(+)~~] If the director determines that [~~no~~] an
21 owner or operator referred to in Subsection A or B of this
22 section is not able to conduct monitoring, testing, analysis or
23 reporting satisfactory to the director, if the director deems
24 any [~~such~~] action carried out by an owner or operator to be
25 unsatisfactory or if the director cannot initially determine

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1 that there is an owner or operator referred to in Subsection A
2 or B of this section who is able to conduct [~~such~~] monitoring,
3 testing, analysis or reporting, the division may:

4 [~~(a)~~] (1) conduct monitoring, testing or
5 analysis, or any combination thereof, [~~which he~~] that the
6 director deems reasonable to ascertain the nature and extent of
7 the hazard associated with the site concerned; or

8 [~~(b)~~] (2) authorize a local authority or other
9 person to carry out [~~any such~~] the action; and

10 [~~(c)~~] (3) in either event [~~the director may~~]
11 require, by order, the owner or operator referred to in
12 Subsection A or B of this section to reimburse the division or
13 other authority or person for the costs of [~~such~~] the activity.
14 Any reimbursement to the division pursuant to this
15 [~~subparagraph~~] paragraph shall be deposited to the credit of
16 the hazardous waste fund.

17 [~~(2)~~] E. No order may be issued under [~~this~~]
18 Subsection D of this section requiring reimbursement of the
19 costs of any action carried out by the division [~~which~~] that
20 confirms the results of an order issued under Subsection A or B
21 of this section.

22 [~~(3)~~] F. For purposes of carrying out [~~this~~
23 ~~subsection~~] the provisions of Subsections D and E of this
24 section, the director or any authority or other person
25 authorized under [~~Paragraph (1) of this~~] Subsection D of this

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1 section may exercise the authorities set forth in Section
2 74-4-4.3 NMSA 1978.

3 ~~[E.]~~ G. The director may commence a civil action
4 against any person who fails or refuses to comply with an order
5 issued under this section. ~~[Such]~~ The action shall be brought
6 in the district court of the county in which the defendant is
7 located, resides or is doing business. ~~[Such]~~ The court shall
8 have jurisdiction to require compliance with ~~[such]~~ the order
9 and to assess a civil penalty not to exceed ~~[five thousand~~
10 ~~dollars (\$5,000)]~~ ten thousand dollars (\$10,000) for each day
11 during which ~~[such]~~ the failure or refusal occurs."

12 SECTION 6. Section 74-4-12 NMSA 1978 (being Laws 1977,
13 Chapter 313, Section 12, as amended) is amended to read:

14 "74-4-12. PENALTY--CIVIL.--~~[Any]~~ A person who violates
15 ~~[any]~~ a provision of the Hazardous Waste Act, ~~[any]~~ a rule made
16 pursuant to that act or ~~[any]~~ a compliance order issued by the
17 ~~[director]~~ secretary pursuant to Section 74-4-10 NMSA 1978 may
18 be assessed a civil penalty not to exceed ~~[ten thousand dollars~~
19 ~~(\$10,000)]~~ twenty thousand dollars (\$20,000) for each day
20 during any portion of which a violation occurs. For violations
21 related to storage tanks, "per violation" means per tank."

22 SECTION 7. Section 74-4-13 NMSA 1978 (being Laws 1983,
23 Chapter 302, Section 3, as amended) is amended to read:

24 "74-4-13. IMMINENT HAZARDS--AUTHORITY OF ~~[DIRECTOR]~~
25 SECRETARY--PENALTIES.--

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1 A. Notwithstanding any other provision of the
2 Hazardous Waste Act, whenever the secretary is in receipt of
3 evidence that the past or current handling, storage, treatment,
4 transportation or disposal of solid waste or hazardous waste or
5 the condition or maintenance of a storage tank may present an
6 imminent and substantial endangerment to health or the
7 environment, ~~[he]~~ the secretary may bring suit in the
8 appropriate district court to immediately restrain any person,
9 including ~~[any]~~ a past or present generator, past or present
10 transporter or past or present owner or operator of a
11 treatment, storage or disposal facility, who has contributed or
12 is contributing to such activity, to take such other action as
13 may be necessary or both. A transporter shall not be deemed to
14 have contributed or to be contributing to such handling,
15 storage, treatment or disposal taking place after such solid
16 waste or hazardous waste has left the possession or control of
17 such transporter if the transportation of such waste was under
18 a sole contractual arrangement arising from a published tariff
19 and acceptance for carriage by common carrier by rail and such
20 transporter has exercised due care in the past or present
21 handling, storage, treatment, transportation and disposal of
22 such waste. The secretary may also take other action,
23 including ~~[but not limited to]~~ issuing such orders as may be
24 necessary to protect health and the environment.

25 B. ~~[Any]~~ A person who willfully violates or fails

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1 or refuses to comply with ~~[any]~~ an order of the secretary under
2 Subsection A of this section may in an action brought in the
3 appropriate district court to enforce such order be fined not
4 more than ~~[five thousand dollars (\$5,000)]~~ ten thousand dollars
5 (\$10,000) for each day in which the violation occurs or the
6 failure to comply continues.

7 C. Upon receipt of information that there is
8 hazardous waste at ~~[any]~~ a site ~~[which]~~ that has presented an
9 imminent and substantial endangerment to human health or the
10 environment, the secretary shall provide immediate notice to
11 the appropriate local government agencies. In addition, the
12 ~~[director]~~ secretary shall require notice of such endangerment
13 to be promptly posted at the site where the waste is located."

14 SECTION 8. Section 74-6-10 NMSA 1978 (being Laws 1967,
15 Chapter 190, Section 9, as amended) is amended to read:

16 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
17 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

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

24 (1) issue a compliance order requiring
25 compliance immediately or within a specified time period or

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1 issue a compliance order assessing a civil penalty, or both; or

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

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

7 C. A compliance order shall state with reasonable
8 specificity the nature of the violation. [~~Any~~] A penalty
9 assessed in the compliance order shall not exceed:

10 (1) [~~fifteen thousand dollars (\$15,000)~~]
11 thirty thousand dollars (\$30,000) per day of noncompliance with
12 the provisions in Section 74-6-5 NMSA 1978, including a
13 [~~regulation~~] rule adopted or a permit issued pursuant to that
14 section; or

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

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

24 E. For purposes of this section, a single
25 operational event that leads to simultaneous violations of more

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1 than one standard shall be treated as a single violation.

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

5 (1) assess a civil penalty of not more than
6 [~~twenty-five thousand dollars (\$25,000)~~] fifty thousand dollars
7 (\$50,000) for each day of continued noncompliance with the
8 compliance order; and

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

11 G. [~~Any~~] A compliance order issued by a constituent
12 agency pursuant to this section shall become final unless, no
13 later than thirty days after the compliance order is served,
14 [~~any~~] a person named in the compliance order submits a written
15 request to the commission for a public hearing. The commission
16 shall conduct a public hearing within ninety days after receipt
17 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 the
23 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~~] a 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~~] a rule or standard of the
16 commission, the commission may accept an assurance of
17 discontinuance of [~~any~~] an act or practice deemed in violation
18 of the Water Quality Act, or [~~any regulation~~] a rule or
19 standard adopted pursuant to that act, from [~~any~~] a person
20 engaging in, or who has engaged in, such act or practice,
21 signed and acknowledged by the [~~chairman~~] chair of the
22 commission and the party affected. Any such assurance shall
23 specify a time limit during which the discontinuance is to be
24 accomplished."

25 SECTION 9. Section 74-6-10.1 NMSA 1978 (being Laws 1993,
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1 Chapter 291, Section 14) is amended to read:

2 "74-6-10.1. CIVIL PENALTIES.--

3 A. ~~[Any]~~ A person who does not comply with the
4 provisions of Section 74-6-5 NMSA 1978, including ~~[any~~
5 ~~regulation]~~ a rule adopted pursuant to that section or ~~[any]~~ a
6 permit issued pursuant to that section, shall be assessed civil
7 penalties up to the amount of ~~[fifteen thousand dollars~~
8 ~~(\$15,000)]~~ thirty thousand dollars (\$30,000) per day of
9 noncompliance for each violation.

10 B. ~~[Any]~~ A person who violates ~~[any]~~ a provision of
11 the Water Quality Act other than Section 74-6-5 NMSA 1978 or
12 ~~[any]~~ a person who violates ~~[any regulation]~~ a rule, water
13 quality standard or compliance order adopted pursuant to that
14 act shall be assessed civil penalties up to the amount of ~~[ten~~
15 ~~thousand dollars (\$10,000)]~~ twenty thousand dollars (\$20,000)
16 per day for each violation."

17 SECTION 10. Section 74-6-11 NMSA 1978 (being Laws 1967,
18 Chapter 190, Section 10, as amended) is amended to read:

19 "74-6-11. EMERGENCY--POWERS OF DELEGATED CONSTITUENT
20 AGENCIES--PENALTIES.--

21 A. If a constituent agency determines upon receipt
22 of evidence that a pollution source or combination of sources
23 over which it has been delegated authority by the commission
24 poses an imminent and substantial danger to public health, it
25 may bring suit in the district court for the county in which

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1 such a source is located to:

2 (1) restrain immediately [~~any~~] a person
3 causing or contributing to the alleged condition from further
4 causing or contributing to the condition; or

5 (2) take such other action as deemed necessary
6 and appropriate.

7 B. If it is not practicable to assure prompt
8 protection of public health solely by commencement of a civil
9 action as set forth in Subsection A of this section, the
10 constituent agency may issue such orders as it deems necessary
11 to protect public health. [~~Any~~] An order issued by the
12 constituent agency shall be effective for not more than
13 seventy-two hours unless the constituent agency brings an
14 action in district court within the seventy-two hour period.
15 If the constituent agency brings an action within seventy-two
16 hours of issuance of the order, the order shall be effective
17 for one hundred sixty-eight hours or for a longer period of
18 time authorized by the court.

19 C. [~~Any~~] A person who willfully violates or fails
20 or refuses to comply with an order issued by a constituent
21 agency [~~under~~] pursuant to the provisions of Subsection B of
22 this section shall, upon conviction, be punished by a fine of
23 not more than [~~five thousand dollars (\$5,000)~~] ten thousand
24 dollars (\$10,000) for each day during which the violation,
25 failure or refusal occurs."

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1 SECTION 11. Section 74-9-36 NMSA 1978 (being Laws 1990,
2 Chapter 99, Section 36) is amended to read:

3 "74-9-36. ENFORCEMENT--COMPLIANCE ORDERS.--

4 A. Whenever on the basis of any information the
5 director determines that [~~any~~] a person has violated, is
6 violating or threatens to violate [~~any~~] a requirement of the
7 Solid Waste Act, [~~any regulation~~] a rule promulgated pursuant
8 to that act or [~~any~~] a condition of a permit issued under that
9 act, the director may:

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

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

18 B. [~~Any~~] An order issued pursuant to Subsection A
19 of this section may include a suspension or revocation of [~~any~~]
20 a permit issued by the director. [~~Any~~] A penalty assessed in
21 the order shall not exceed [~~five thousand dollars (\$5,000)~~] ten
22 thousand dollars (\$10,000) per day of noncompliance for each
23 violation. In assessing such penalty, the director shall take
24 into account the seriousness of the violation, any good faith
25 efforts to comply with the applicable requirements and other

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1 relevant factors.

2 C. If a violator fails to take corrective action
3 within the time specified in a compliance order, the director
4 may:

5 (1) assess a civil penalty of not more than
6 ~~[ten thousand dollars (\$10,000)]~~ twenty thousand dollars
7 (\$20,000) for each day of continued noncompliance with the
8 order; and

9 (2) suspend or revoke ~~[any]~~ a permit issued to
10 the violator under the Solid Waste Act.

11 D. Whenever on the basis of any information the
12 director determines that there is or has been a release of
13 contaminants into the environment from a solid waste facility,
14 the director may issue an order requiring corrective action,
15 including corrective action beyond a solid waste facility's
16 boundaries or such other response measure as ~~[he]~~ the director
17 deems necessary to protect human health or the environment or
18 may commence an action in district court in the district in
19 which the solid waste facility is located for appropriate
20 relief, including a temporary or permanent injunction.

21 E. ~~[Any]~~ An order issued under Subsection D of this
22 section may include a suspension or revocation of a permit to
23 operate a solid waste facility and shall state with reasonable
24 specificity the nature of the required corrective action or
25 other response measure and shall specify a time for compliance.

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1 If ~~[any]~~ a person named in an order fails to comply with the
2 order, the director may assess and such person shall be liable
3 to the state for a civil penalty in an amount not to exceed
4 ~~[five thousand dollars (\$5,000)]~~ ten thousand dollars (\$10,000)
5 for each day of noncompliance with the order.

6 F. ~~[Any]~~ An order issued pursuant to this section,
7 any other enforcement proceeding initiated under this section
8 or ~~[any]~~ a claim for personal or property injury arising from
9 ~~[any]~~ a conduct for which financial responsibility must be
10 provided may be issued to or taken against the insurer or
11 guarantor of an owner or operator of a solid waste facility if:

12 (1) the owner or operator is in bankruptcy,
13 reorganization or arrangement pursuant to the federal
14 Bankruptcy Code; or

15 (2) jurisdiction in ~~[any]~~ a state or federal
16 court cannot with reasonable diligence be obtained over an
17 owner or operator likely to be solvent at the time of judgment.

18 G. ~~[Any]~~ An order issued pursuant to this section
19 shall become final unless, no later than thirty days after the
20 order is served, the ~~[person or]~~ persons named therein submit a
21 written request to the director for a public hearing. Upon
22 such request, the director shall promptly conduct a public
23 hearing. The director shall appoint an independent hearing
24 officer to preside over the public hearing. That hearing
25 officer shall make and preserve a complete record of the

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1 proceedings and forward [~~his~~] a recommendation based thereon to
2 the director, who shall make the final decision.

3 H. In connection with [~~any~~] a proceeding under this
4 section, the director may issue subpoenas for the attendance
5 and testimony of witnesses and the production of relevant
6 papers, books and documents and may adopt rules for discovery
7 procedures.

8 I. Penalties collected pursuant to an
9 administrative order shall be deposited in the state treasury
10 to be credited to the solid waste facility grant fund."

11 SECTION 12. Section 74-9-38 NMSA 1978 (being Laws 1990,
12 Chapter 99, Section 38) is amended to read:

13 "74-9-38. PENALTY--CIVIL.--[~~Any~~] A person who violates
14 [~~any~~] a provision of Section [~~31 of the Solid Waste Act~~]
15 74-9-31 NMSA 1978 or [~~any regulation~~] a rule adopted pursuant
16 to that act may be assessed a civil penalty not to exceed [~~five~~
17 ~~thousand dollars (\$5,000)] ten thousand dollars (\$10,000) for~~
18 each day during any portion of which a violation occurs. All
19 civil penalties assessed and collected shall be deposited in
20 the solid waste facility grant fund."

21 SECTION 13. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2021.