

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 21 & 22

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE ENVIRONMENT; ALPHABETIZING AND ADDING DEFINITIONS TO THE WATER QUALITY ACT; PROVIDING FOR CERTAIN WATER QUALITY CONTROL COMMISSION RULES RELATING TO THE REGULATION OF WATER POLLUTION; CREATING THE NEGLECTED AND CONTAMINATED SITES FUND; PROVIDING FOR GENERAL PERMIT COVERAGE FOR MULTIPLE DISCHARGERS; REVISING THE WATER QUALITY MANAGEMENT FUND Sfl1→~~AND DISTRIBUTION OF CERTAIN PENALTIES~~←Sfl1 ;

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ALLOWING FOR THE DENIAL OF PERMITS THAT WOULD CONTRIBUTE TO WATER CONTAMINANT LEVELS IN EXCESS OF DOWNSTREAM STATE OR TRIBAL WATER QUALITY STANDARDS; AMENDING NOTICE REQUIREMENTS FOR WATER QUALITY ACT PERMITS; PROVIDING FOR CERTAIN USES OF PERMIT FEES; AMENDING THE PURPOSES OF THE WATER QUALITY MANAGEMENT FUND; CREATING CERTAIN EXCEPTIONS FOR SURFACE WATER DISCHARGES; ADDRESSING POTENTIAL LIABILITY; ENACTING THE NEW MEXICO POLLUTANT DISCHARGE ELIMINATION SYSTEM ACT; REQUIRING PERMITS FOR DISCHARGES INTO WATERS OF THE UNITED STATES; REQUIRING THE WATER QUALITY CONTROL COMMISSION TO ADOPT RULES TO IMPLEMENT THE DISCHARGE PROGRAM; PROVIDING POWERS AND DUTIES OF THE DEPARTMENT OF ENVIRONMENT; PROVIDING FOR ENFORCEMENT OF THE PROGRAM; PROVIDING PENALTIES; PROVIDING FOR APPEALS TO THE WATER QUALITY CONTROL COMMISSION AND THE COURT OF APPEALS; PROVIDING FOR PUBLICLY ACCESSIBLE RECORDS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:

~~[A. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include~~

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~~wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;~~

~~B. "water contaminant" means any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or byproduct material as defined by the federal Atomic Energy Act of 1954;~~

~~C. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;~~

~~D. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance that may pollute any waters of the state;~~

~~E. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;~~

~~F. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;~~

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~~G. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;~~

~~H. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;~~

~~I. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;]~~

Sf12→A. "abatement costs" means costs incurred in accordance with an abatement plan prepared and approved in accordance with rules adopted by the commission;

B. "aquatic resources" means wetlands, streams, lakes, rivers and other bodies of water, riparian habitats and the organisms that live in them and the ecological functions, services and values they provide;←Sf12

Sf12→A.←Sf12 Sf12→C.←Sf12 "barrier" means a technical, including any log reduction credits assigned, operational or managerial measure to control microbial or

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chemical constituents;

[J.] Sf12→**B.**←Sf12 Sf12→**D.**←Sf12 "commission" means the water quality control commission;

[K.] Sf12→**C.**←Sf12 Sf12→**E.**←Sf12 "constituent agency" means, as the context may require, any or all of the following agencies of the state:

- (1) the department [~~of environment~~];
- (2) the state engineer and the interstate stream commission;
- (3) the department of game and fish;
- (4) the oil conservation commission;
- (5) the state parks division of the energy, minerals and natural resources department;
- (6) the New Mexico department of agriculture;
- (7) the soil and water conservation commission; and
- (8) the bureau of geology and mineral resources at the New Mexico institute of mining and technology;

[L. ~~"new source" means:~~

- ~~(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or~~
- ~~(2) any existing source when modified to treat substantial additional volumes or when there is a substantial~~

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~~change in the character of water contaminants treated;~~

~~M. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;~~

~~N. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;~~

~~O. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;~~

~~P. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:~~

~~(1) to human beings; or~~

~~(2) that amounts to more than ten thousand dollars (\$10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; ground water or surface water; or the lands of the state;~~

~~Q. "federal act" means the Federal Water Pollution Control Act, its subsequent amendment and successor provisions;~~

~~R. "standards of performance" means any standard,~~

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~~effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act; and~~

~~S. "produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas]~~

Sf12→~~D.~~←Sf12 Sf12→~~F.~~←Sf12 "compensatory mitigation" means the process of restoring, establishing, enhancing or preserving wetlands, streams or other aquatic resources to offset unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved;

Sf12→~~E.~~←Sf12 Sf12→~~G.~~←Sf12 "department" means the department of environment;

Sf12→~~H.~~ "dredged material" means material that is excavated or dredged from a surface water;←Sf12

Sf12→~~F.~~←Sf12 Sf12→~~I.~~←Sf12 "facility" means all contiguous land and structures, other appurtenances and improvements on the land, including any building, installation, equipment, pipe or pipeline, including a pipe into a sewer or a publicly owned treatment works, a well, a pit, a pond, a lagoon, an impoundment, a ditch, a landfill, a storage container, a motor vehicle, a rolling stock, an aircraft, a vessel or a watercraft, or any site or area where a water contaminant has been, is currently or is proposed to be managed, treated, deposited, stored, disposed of or placed or

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has otherwise come to be located;

Sf12→~~G.~~←Sf12 Sf12→J.←Sf12 "federal act" means the Federal Water Pollution Control Act and its subsequent amendment and successor provisions;

Sf12→K. "fill material" means material that is placed in a surface water where the material has the effect of replacing any portion of a surface water with dry land or changing the bottom elevation of a surface water; "fill material" does not include trash, garbage or incidental fallback resulting from excavation activities when small volumes of material fall back to substantially the same place as the initial removal;←Sf12

Sf12→~~H.~~←Sf12 Sf12→L.←Sf12 "general permit" means a permit that applies to one or more categories or subcategories of discharges, sludge use or disposal practices or facilities within a geographic area, including the state or a region, basin or watershed in the state;

Sf12→~~I.~~←Sf12 Sf12→M.←Sf12 "general permit coverage" means authorization to discharge pursuant to a general permit and any additional permit conditions required by a constituent agency;

Sf12→~~J.~~←Sf12 Sf12→N.←Sf12 "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs,

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but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

Sf12→~~K.~~←Sf12 Sf12→O.←Sf12 "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed rules prescribing a standard of performance applicable to the source; or

(2) an existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

Sf12→~~L.~~←Sf12 Sf12→P.←Sf12 "pathogen" means a microorganism capable of causing illness in humans;

Sf12→~~M.~~←Sf12 Sf12→Q.←Sf12 "person" means an individual or other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, a department or an instrumentality of the United States and any of its officers, agents or employees;

Sf12→R. "point source" means a discernable, confined and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system or vessel or other floating craft from which water contaminants are or may be discharged; "point source" does not include a discharge composed entirely of

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return flows from irrigated agriculture or agricultural storm water runoff;←Sf12

Sf12→~~N.~~←Sf12 Sf12→S.←Sf12 "produced water" means a fluid that is an incidental byproduct from drilling for or the production of oil and gas;

Sf12→~~O.~~←Sf12 Sf12→T.←Sf12 "responsible party" means:

- (1) the owner and operator of a facility;
- (2) a person who, at the time of disposal of any water contaminant, owned or operated a facility at or from which such water contaminants were disposed;
- (3) a person who, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of water contaminants owned or possessed by the person, or by any other party or entity, at a facility owned or operated by another party or entity and containing such water contaminants; and
- (4) a person who accepts or accepted any water contaminants for transport to disposal or treatment facilities or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a water contaminant;

Sf12→~~P.~~←Sf12 Sf12→U.←Sf12 "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or holding tank for maintenance or

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disposal purposes;

Sf12→~~Q.~~←Sf12 Sf12→~~V.~~←Sf12 "sewer system" means pipelines, conduits, pumping stations, force mains or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

Sf12→~~R.~~←Sf12 Sf12→~~W.~~←Sf12 "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

Sf12→~~S.~~←Sf12 Sf12→~~X.~~←Sf12 "sludge" means solid, semi-solid or liquid waste generated from a municipal, a commercial or an industrial wastewater treatment plant, a water supply treatment plant or an air pollution control facility that is associated with the treatment of these wastes.

"Sludge" does not mean treated effluent from a wastewater treatment plant;

Sf12→~~T.~~←Sf12 Sf12→~~Y.~~←Sf12 "source" means a building, a structure, a facility or an installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

Sf12→~~U.~~←Sf12 Sf12→~~Z.~~←Sf12 "standards of performance" means a standard, an effluent limitation or an effluent standard adopted pursuant to the federal act or the Water Quality Act;

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Sf12→~~V.~~←Sf12 Sf12→AA.←Sf12 "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars (\$10,000) in damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock; or wildlife or damage to their habitats, ground water or surface water or the lands of the state;

Sf12→BB. "surface water discharge" means:

(1) the addition of a water contaminant or combination of water contaminants to a surface water from a point source, including surface runoff collected or channeled by human effort, discharges through pipes, sewers or other conveyances owned by the state, a municipality or another person that do not lead to a treatment works and discharges through pipes, sewers or other conveyances leading into privately owned treatment works, but does not include the addition of water contaminants from an indirect discharger; or

(2) the addition of dredged or fill material into a surface water from excavation of a surface water or from filling in a surface water in a manner that replaces the surface water with dry land or changes the bottom elevation of the surface water but does not include incidental

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fallback;←Sf12

Sf12→~~W.~~←Sf12 Sf12→CC.←Sf12 "treatment works"
means a plant or other works used for the purpose of treating,
stabilizing or holding wastes;

Sf12→~~X.~~←Sf12 Sf12→DD.←Sf12 "wastes" means sewage,
industrial wastes or other liquid, gaseous or solid substances
that may pollute the waters of the state;

Sf12→~~Y.~~←Sf12 Sf12→EE.←Sf12 "water" means all
water, including water situated wholly or partly within or
bordering upon the state, whether surface or subsurface, public
or private, except private waters that do not combine with
other surface or subsurface water;

Sf12→~~Z.~~←Sf12 Sf12→FF.←Sf12 "water contaminant"
means a substance that could alter, if discharged or spilled,
the physical, chemical, biological or radiological qualities of
water. "Water contaminant" does not mean source, special
nuclear or byproduct material as defined by the federal Atomic
Energy Act of 1954; and

Sf12→~~AA.~~←Sf12 Sf12→GG.←Sf12 "water pollution"
means introducing or permitting the introduction into water,
either directly or indirectly, of one or more water
contaminants in a quantity and duration as may with reasonable
probability injure human health, animal or plant life or
property or to unreasonably interfere with the public welfare
or the use of property."

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SECTION 2. 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]~~ other than those provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall not adopt or promulgate a standard or ~~[regulation]~~ rule that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or ~~[regulation]~~ rule;

D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and, as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and

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circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

E. shall adopt [~~promulgate and publish regulations~~] rules to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The [~~regulations~~] rules governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. [~~Regulations~~] Rules may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants;

F. in making [~~regulations, the commission~~] rules, shall give weight it deems appropriate to all relevant facts

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and circumstances, including:

- (1) the character and degree of injury to or interference with health, welfare, environment and property;
- (2) the public interest, including the social and economic value of the sources of water contaminants;
- (3) the technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;
- (4) the successive uses, including domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;
- (5) feasibility of a user or a subsequent user treating the water before a subsequent use;
- (6) property rights and accustomed uses; and
- (7) federal water quality requirements;

[F.] G. shall assign responsibility for administering its [~~regulations~~] rules to constituent agencies [~~so as~~] to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as

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to jurisdiction concerning ~~[any]~~ matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department ~~[of environment]~~ shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by the Water Quality Act;

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

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

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[F.] J. may adopt [~~regulations~~] rules to require the filing with [~~it~~] the commission or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

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

[K.] L. shall specify in [~~regulations~~] rules the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt [~~regulations~~] rules for particular industries. The commission shall adopt [~~regulations~~] rules for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection [E] F of this section, the best available scientific information. The [~~regulations~~] rules may include variations in requirements based on site-specific factors, such as depth and distance to ground water and

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geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate [~~regulations~~] rules to be proposed for adoption by the commission. The [~~regulations~~] rules shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

[~~L.~~] M. may adopt [~~regulations~~] rules establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

[~~M.~~] N. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with [~~such~~] the irrigation that documentation or actual case history has shown to be hazardous to public health or the environment or for the use of produced water;

[~~N.~~] O. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape

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irrigation if:

- (1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;
- (2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;
- (3) a gray water system is sited outside of a floodway;
- (4) gray water is vertically separated at least five feet above the ground water table;
- (5) gray water pressure piping is clearly identified as a nonpotable water conduit;
- (6) gray water is used on the site where it is generated and does not run off the property lines;
- (7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;
- (8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;
- (9) gray water is not sprayed;
- (10) gray water is not discharged to a watercourse; and

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(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

[~~0-~~] P. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act;

[~~P-~~] Q. shall adopt [~~regulations~~] rules to be administered by the department [~~of environment~~] for the discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas; [~~and~~

~~Q. may~~] R. shall adopt [~~regulations~~] rules to be administered by the department [~~of environment~~] for surface water discharges, including Sf13→discharges of dredged or fill←Sf13 Sf13→:←Sf13 Sf13→materials. ~~For discharges of dredged or fill material, the rules shall include avoidance and minimization of adverse impacts to wetlands, streams and other aquatic resources and may require compensatory mitigation for~~

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~~unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved;~~ ←Sf13

Sf13→(1) for discharges from point sources, the rules shall not require a permit for a point source discharge for which a permit is issued under Section 402 of the federal Clean Water Act or the New Mexico Pollutant Discharge Elimination System Act; provided that in adopting rules related to this paragraph, in addition to the factors to be considered under Subsection F of this section, the commission may:

(a) identify exemptions from a discharge permit requirement when water contaminants in discharges are subject to effective and enforceable water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved; and

(b) consider requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 402 of the federal Clean Water Act; and

(2) for discharges of dredged or fill material, the rules shall not require a permit for discharges of dredged or filled materials for which a permit or authorization is issued under Section 404 of the federal Clean

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Water Act; provided that the rules shall include avoidance and minimization to the maximum extent practicable of adverse impacts to wetlands, streams and other aquatic resources and may require compensatory mitigation for unavoidable adverse impacts that remain after appropriate and practicable avoidance and minimization measures have been achieved; and provided further that in adopting rules related to this paragraph, in addition to the factors to be considered under Subsection F of this section, the commission may:

(a) identify exemptions from a discharge permit requirement when a discharge is subject to effective and enforceable water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved; and

(b) consider the requirements for permits and general permits that are consistent with the requirements of similar permits issued under Section 404 of the federal Clean Water Act; ←Sf13

S. may adopt rules to be administered by the department for the state to respond to, investigate and remediate water pollution and contamination in soil and soil vapor for the protection of human health and the environment;
and

T. shall adopt rules to be administered by the

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department to govern the transfer and use of treated domestic wastewater for potable reuse. The rules may specify a standard of performance, including log reduction for pathogen removal, critical control points, barriers and the greatest reduction in the concentration of water contaminants and pathogens that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a standard permitting no risk to human health. The rules governing the potable reuse of domestic wastewater may include the use of existing permitting systems or create new permitting rules that include the means necessary to assure that potable reuse projects are conducted in a manner that is directly protective of human health."

SECTION 3. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

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

A. By [~~regulation~~] rule, the commission may require [~~persons~~] a person to obtain from a constituent agency designated by the commission a permit or general permit coverage for the discharge of [~~any~~] a water contaminant or for the disposal or reuse of septage or sludge.

B. The commission shall adopt [~~regulations~~] rules establishing procedures for certifying federal water quality permits.

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C. Prior to the issuance of a permit or approval of general permit coverage, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

D. The commission shall by [~~regulation~~] rule set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit. The constituent agency has the burden of showing that each condition is reasonable and necessary to ensure compliance with the Water Quality Act and applicable [~~regulations~~] rules, considering site-specific conditions. After [~~regulations~~] rules have been adopted for a particular industry, permits for facilities in that industry shall be subject to conditions contained in the [~~regulations~~] rules. Additional conditions on a final permit may be imposed if the applicant is provided with an opportunity to review and provide comments in writing on the draft permit conditions and to receive a written explanation of the reasons for the conditions from the constituent agency.

E. The constituent agency shall deny [~~any~~] an application for a permit or request for general permit coverage or deny the certification of a federal water quality permit if:

- (1) the effluent would not meet applicable

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state or federal effluent regulations, standards of performance or limitations;

(2) ~~[any]~~ a provision of the Water Quality Act would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of ~~[any]~~ a state or federal standard. Determination of the discharge's effect on ground water shall be measured at ~~[any]~~ a place of withdrawal of water for present or reasonably foreseeable future use.

Determination of the discharge's effect on surface waters shall be measured at the point of discharge; ~~[or]~~

(4) the surface water discharge would cause or contribute to water contaminant levels in excess of a downstream state or tribal water quality standard; or

~~[(4)]~~ (5) the applicant has, within the ten years immediately preceding the date of submission of the permit application or request for general permit coverage:

(a) knowingly misrepresented a material fact in an application for a permit or request for general permit coverage;

(b) refused or failed to disclose ~~[any]~~ information required ~~[under]~~ pursuant to the Water Quality Act;

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

(d) been convicted of a felony in ~~[any]~~

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court for [any] a crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of [any] a state or the United States; or

(f) had an environmental permit revoked or permanently suspended for cause under [any] environmental laws of [any] a state or the United States.

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

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

~~(a) notice by mail to adjacent and nearby landowners; local, state and federal governments, land grant organizations, ditch associations and Indian nations, tribes or pueblos;~~

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

~~(c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge; provided, however, that the advertisement shall not be displayed in the~~

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~~classified or legal advertisement sections; and~~

~~(2) for issuance of renewals of permits:~~

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

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

F. For ground water discharge permits, the commission shall by rule develop procedures that ensure that the public and affected governmental agencies, Indian nations, tribes and pueblos and other states shall receive notice of each application and draft of a new permit, a modification of a permit or a renewal of a permit. Public notice shall include:

(1) for issuance of new permits or permit modifications:

(a) notice to adjacent and nearby landowners using postal or electronic mail;

(b) notice to affected local, state and federal government agencies, land grant organizations, ditch associations and Indian nations, tribes and pueblos using postal or electronic mail;

(c) posting the notice at a place

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conspicuous to the public and near the discharge or proposed discharge site;

(d) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge site; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections; and

(e) consideration of the languages spoken by and the communication methods accessible to the intended recipients of the public notice; and

(2) for permit renewals:

(a) notice by postal or electronic mail to the interested public;

(b) notice to affected local, state and federal government agencies, land grant organizations, ditch associations and Indian nations, tribes and pueblos;

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

(d) consideration of the languages spoken by and the communication methods accessible to the intended recipients of the public notice.

G. For surface water Sfl3→discharge←Sfl3 permits,

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the commission shall by rule develop procedures that ensure that the public and affected governmental agencies, Indian nations, tribes and pueblos and other states shall receive notice of each draft permit. Public notice shall include the following, except that for a general permit, Paragraphs (1) and (3) of this subsection shall not be required:

(1) notice to adjacent and nearby landowners using postal or electronic mail;

(2) notice to affected local, state and federal government agencies, land grant organizations, ditch associations and Indian nations, tribes and pueblos using postal or electronic mail;

(3) for new surface water Sfl3→discharge←Sfl3 permits or permit modifications, posting at a place conspicuous to the public and near the discharge or proposed discharge site;

(4) notice to the general public and others whom the commission deems appropriate using one or more reasonable and appropriate methods, such as electronic mail to persons who have requested notification, social media posts, radio announcements or advertisements in a newspaper of general circulation in the location of the discharge or proposed discharge site; and

(5) consideration of the languages spoken by and the communication methods accessible to the intended

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recipients of the public notice.

[G.] H. No ruling shall be made on [~~any application for~~] a draft permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. [~~Any~~] A person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

[H.] I. The commission may adopt [~~regulations~~] rules for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

[I.] J. Permits shall be issued for fixed terms [~~not to exceed~~] of five years, except that surface water Sfl3→discharge←Sfl3 permits may be issued for fixed terms of up to ten years. For new discharges, the term of the permit shall commence on the date the discharge begins, but in no event shall the term of the permit exceed seven years from the date the permit was issued.

[J.] K. By [~~regulation~~] rule, the commission may impose reasonable conditions upon permits requiring permittees to:

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- (1) install, use and maintain [~~effluent~~] monitoring devices;
- (2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;
- (3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;
- (4) provide [~~any~~] other information relating to the discharge or direct or indirect release of water contaminants; and
- (5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

[K.] L. The commission shall provide by [~~regulation~~] rule a schedule of fees for permits [~~not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees~~] and approvals of general permit coverage to support the cost of developing and implementing the permitting rules authorized pursuant to Section 74-6-4 NMSA 1978, including the review of applications, issuance and enforcement of permits and rules, compliance assistance,

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monitoring and inspection of facilities and discharges, data stewardship, records management and administrative and legal costs. Sfl1→~~Unless otherwise required by law, money~~←Sfl1
Sfl1→**Fees**←Sfl1 collected pursuant to this section shall be deposited in the water quality management fund.

[~~E.~~] M. The issuance of a permit or approval of Sfl3→**or request for**←Sfl3 a general permit coverage does not relieve [~~any~~] a person from the responsibility of complying with the provisions of the Water Quality Act, any applicable [~~regulations~~] rules or water quality standards of the commission or any applicable federal laws, regulations or standards.

[~~M.~~] N. A permit or general permit coverage may be terminated or modified by the constituent agency that issued the permit or approved the general permit coverage prior to its date of expiration for any of the following causes:

- (1) violation of [~~any~~] a condition of the permit;
- (2) obtaining the permit or general permit coverage by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of [~~any~~] the provisions of the Water Quality Act or any applicable [~~regulations~~] rules, standard of performance or water quality standards;
- (4) violation of [~~any~~] applicable state or

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federal effluent regulations or limitations; or

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

~~[N.]~~ O. If the constituent agency denies, terminates or modifies a permit or general permit coverage or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail or other method acceptable to the applicant or permittee of the action taken and the reasons. Notice shall also be given by postal or electronic mail to persons who participated in the permitting action.

~~[O.]~~ P. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by ~~[such]~~ the permitting action or certification may file a petition for review before the commission. Unless a timely petition for review is made, the decision of the constituent agency shall be final and not subject to judicial review. The petition shall:

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

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

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(3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the constituent agency.

[P-] Q. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the review. If the petitioner is not the applicant or permittee, the applicant or permittee shall be a party to the proceeding. The commission shall ensure that the public receives notice of the date, time and place of the review.

[Q-] R. The commission shall review the record compiled before the constituent agency, including the transcript of ~~any~~ a public hearing held on the application or draft permit, and shall allow any party to submit arguments. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission. The commission shall consider and weigh only the evidence contained in the record before the constituent agency and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the constituent agency. Based on the review of the evidence, the arguments of the parties and recommendations of the hearing officer, the commission shall

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sustain, modify or reverse the action of the constituent agency. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

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

[S.] T. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action.

Sf13 → ~~U. Except as provided in Subsection V of this section, the only exemptions for surface water permits are:~~

~~(1) normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products or upland soil and water conservation practices;~~

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~~(2) construction or maintenance of farm or stock ponds, acequias or irrigation ditches or the maintenance of drainage ditches;~~

~~(3) construction or maintenance of farm roads or forest roads or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the surface waters are not impaired, that the reach of the surface waters is not reduced and that any adverse effect on the aquatic environment will be otherwise minimized;~~

~~(4) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures, such as dikes, dams, levees, groins, riprap, breakwaters, causeways and bridge abutments or approaches, and transportation structures;~~

~~(5) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the surface waters;~~

~~(6) return flows composed entirely from irrigated agriculture;~~

~~(7) stormwater runoff from a mining operation or an oil and gas exploration, production, processing or treatment operation or transmission facility that is composed~~

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~~entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste product located on the site of the operation or facility. Oil and gas exploration, production, processing or treatment operations or transmission facilities include activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not the field activities or operations may be considered to be construction activities;~~

~~(8) runoff resulting from the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage or road construction and maintenance; and~~

~~(9) discharges of dredged or fill material into waters of the United States that are regulated under Section 404 of the federal Clean Water Act.~~

~~V. The exemptions provided in Subsection U of this section shall not apply if the discharge resulting from the activities contains any toxic pollutant as set forth in rule by~~

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~~the commission or if a new activity brings a surface water of the state into farm production where the area of the surface water has not previously been used for farming."~~←Sf13

Sf13→U. The only exemptions from surface water discharge permits for point sources are:

(1) return flows composed entirely from irrigated agriculture;

(2) stormwater runoff from a mining operation or an oil and gas exploration, production, processing or treatment operation or transmission facility that is composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste product located on the site of the operation or facility; provided that oil and gas exploration, production, processing or treatment operations or transmission facilities include activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not the field activities or operations may be considered to be construction activities;

(3) runoff resulting from the following silviculture activities conducted in accordance with standard industry practice:

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- (a) nursery operations;
- (b) site preparation;
- (c) reforestation and subsequent cultural treatment;
- (d) thinning;
- (e) prescribed burning;
- (f) pest and fire control;
- (g) harvesting operations;
- (h) surface drainage; and
- (i) road construction and maintenance;

and

(4) discharges and water contaminants that are subject to effective and enforceable surface water quality requirements in a state or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved.

V. The only exemptions from surface water discharge permits for discharges of dredged or fill material are:

(1) normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products or upland soil and water conservation practices;

(2) maintenance, including emergency

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reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways and bridge abutments or approaches and transportation structures;

(3) construction or maintenance of farm or stock ponds, acequias or irrigation ditches or the maintenance of drainage ditches;

(4) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the surface waters;

(5) construction or maintenance of farm roads, forest roads or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that:

(a) flow and circulation patterns and chemical and biological characteristics of the surface waters are not impaired;

(b) the reach of the surface waters is not reduced; and

(c) any adverse effect on the aquatic environment will be otherwise minimized; and

(6) discharges that are subject to effective and enforceable surface water quality requirements in a state-issued or federally issued permit, unless there is a hazard to public health or the environment that may result or an

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applicable state water quality standard will not be achieved.

W. The exemptions provided in Subsection V of this section shall not apply if the discharge resulting from the activities contains any toxic pollutant as set forth in rule by the commission or if a new activity brings a surface water of the state into farm production where the area of the surface water has not previously been used for farming."←Sf13

SECTION 4. Section 74-6-5.2 NMSA 1978 (being Laws 1993, Chapter 100, Section 4) is amended to read:

"74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There is created as a nonreverting fund in the state treasury the "water quality management fund" to be administered by the department [~~of environment. All fees~~]. The fund consists of appropriations, gifts, grants, donations and money received by the department. Sf11→~~Unless otherwise required by law, money~~←Sf11 Sf11→All fees←Sf11 collected pursuant to [~~the regulations adopted by the commission under Subsection H of Section 74-6-5 NMSA 1978~~] Section 74-6-4 NMSA 1978 and for the operation and maintenance of a permitted facility pursuant to Subsection Sf11→H←Sf11 Sf11→I←Sf11 of Section 74-6-5 NMSA 1978 shall be deposited in the fund. Money in the fund is appropriated to the department [~~of environment~~] for the purpose of administering the [~~regulations~~] rules adopted by the commission pursuant to [~~Section~~] Sections 74-6-4 and 74-6-5 NMSA 1978. Disbursements from the fund shall be made upon

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warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment."

SECTION 5. Section 74-6-9 NMSA 1978 (being Laws 1967, Chapter 190, Section 8, as amended) is amended to read:

"74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act;

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy furnished to the commission and to the owner or occupant of the premises investigated;

C. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

Sf14→~~D. respond to, investigate and remediate water pollution and contamination in soil and soil vapor;~~←Sf14

Sf14→D. respond to, investigate and remediate water pollution and contamination in soil and soil vapor; provided that in its investigation, the department shall identify

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responsible parties and shall prepare a written report of the investigation; and provided further that prior to remediation of water pollution and soil contamination in soil and soil vapor, the department shall:

(1) prepare a work plan consistent with rules adopted by the commission;

(2) issue public notice of the work plan; and

(3) provide opportunities for public comment and participation in accordance with rules adopted by the commission; ←Sf14

[D.] E. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;

[E.] F. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

(1) have access to and reproduce for [their] its use any copy of the records;

(2) inspect any treatment works, monitoring

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equipment or methods required to be installed by regulations of the federal government or the commission; and

(3) sample any effluents, water contaminant or receiving waters;

[F-] G. on the same basis as any other person, recommend and propose regulations and standards for promulgation by the commission; and

[G-] H. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the commission or any other administrative agency with responsibility in the areas of environmental management, public health or consumer protection, but shall not be given any special status over any other party; provided that the participation by a constituent agency in a hearing shall not require the recusal or disqualification of the commissioner representing that constituent agency."

SECTION 6. 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, regulation or water quality standard adopted pursuant to the Water Quality Act or a condition of a

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permit issued pursuant to that act, the constituent agency may:

(1) issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty, or both; or

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

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

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

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

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

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

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E. For purposes of this section, a single operational event that leads to simultaneous violations of more than one standard shall be treated as a single violation.

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

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

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

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

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

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

(2) forward to the commission a report that

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includes recommendations if recommendations are requested by the commission.

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

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

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

K. Sfl1→~~[Penalties]~~ Unless otherwise required by law, money←Sfl1 Sfl1→Penalties←Sfl1 collected pursuant to this section Sfl1→for surface waters←Sfl1 shall be deposited in the Sfl1→[general]←Sfl1 Sfl1→general←Sfl1 Sfl1→water quality management fund. Unless otherwise required by law, money collected pursuant to this section for ground waters, other than the provisions in Section 74-6-5 NMSA 1978, shall be deposited in the neglected and contaminated sites←Sfl1 fund.

L. As an additional means of enforcing the Water Quality Act or any regulation or standard of the commission, the commission may accept an assurance of discontinuance of any act or practice deemed in violation of the Water Quality Act, or any regulation or standard adopted pursuant to that act,

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from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the [~~chairman~~] chair of the commission and the party affected. Any such assurance shall specify a time limit during which the discontinuance is to be accomplished."

SECTION 7. Section 74-6-12 NMSA 1978 (being Laws 1967, Chapter 190, Section 11, as amended) is amended to read:

"74-6-12. LIMITATIONS.--

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

B. The Water Quality Act does not apply to [~~any~~] an activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, the Ground Water Protection Act or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt [~~any regulation~~] a rule with respect to [~~any~~] a condition or quality of water if the water pollution and its effects are confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the

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commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of ~~[any]~~ a condition ~~[of water]~~ or quality of water.

E. The Water Quality Act does not supersede or limit the applicability of ~~[any]~~ a law relating to industrial health, safety or sanitation.

F. Except as required by federal law or for surface water discharges permitted pursuant to the Water Quality Act, in the adoption of ~~[regulations]~~ rules and water quality standards and in an action for enforcement of the Water Quality Act and ~~[regulations]~~ rules adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. ~~[Such]~~ The degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. Except for Sfl3 ~~→the discharge of a water~~ ~~contaminant to a surface water~~ ~~←Sfl3~~ Sfl3 ~~→a surface water~~ discharge for which a permit is required under rules adopted pursuant to Subsection R of Section 74-6-4 NMSA 1978 ~~←Sfl3~~ , the Water Quality Act does not apply to ~~[any]~~ an activity or condition subject to the authority of the oil conservation commission pursuant to provisions of the Oil and Gas Act ~~[Section 70-2-12 NMSA 1978]~~ and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

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H. When changes in dissolved oxygen, temperature, dissolved solids, sediment or turbidity in a water of the state is attributable to natural causes or to the reasonable operation of irrigation and flood control facilities that are not subject to federal or state water pollution control permitting, numerical standards for temperature, dissolved solids content, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply. "Reasonable operation", as used in this subsection, shall be defined by ~~[regulation]~~ rule of the commission."

SECTION 8. A new section of the Water Quality Act is enacted to read:

"[NEW MATERIAL] NEGLECTED AND CONTAMINATED SITES FUND--
CREATED.--

A. The "neglected and contaminated sites fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and money received by the department. Unless otherwise required by law, money received or recovered by the state by or on behalf of the department arising from claims for enforcement actions, response actions or response costs relating to the contamination liability, including any fees, ~~Sfll~~ **penalties**, ~~Sfll~~ settlement funds, recovered litigation costs and any interest derived therefrom, shall be deposited in the fund.

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B. The department shall administer the fund. Money in the fund is appropriated to the department for the state to respond to, investigate and remediate water pollution and contamination in soil and soil vapor.

C. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary's designee."

SECTION 9. A new section of the Water Quality Act is enacted to read:

"[NEW MATERIAL] LIABILITY--SCOPE--DEFENSES--CONTRIBUTION.--

A. Liability for the prevention or abatement of water pollution exists if there has been an actual or threatened release of a water contaminant that causes the requirement for response or remediation, or the incurrence of response or remediation costs. Responsible parties may be liable for the release of a water contaminant that occurred prior to and since the effective date of this 2025 act.

B. Liability shall include:

- (1) all costs of removal or remedial action incurred by the state;
- (2) any other necessary costs of response incurred by any other person;
- (3) damages for injury to, destruction of or

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loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss, resulting from a release of water contaminants; and

(4) the cost of any health assessment or health effects study carried out pursuant to rules promulgated by the commission.

C. Liability defenses of the responsible party shall include, if established by a preponderance of the evidence:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third party if:

(a) the defendant exercised due care with respect to the water contaminant concerned, taking into consideration the characteristics of such contamination, in light of all relevant facts and circumstances;

(b) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions;

(c) the third party was not an employee or agent of the defendant at the time of the release; and

(d) the third party was not one whose act or omission occurred in connection with a contractual relationship, existing directly or indirectly, with the

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defendant; Sf14→~~or~~←Sf14

Sf14→~~(4) any combination of Paragraphs (1) through (3) of this subsection.~~←Sf14

Sf14→(4) an act authorized by and in compliance with a permit issued pursuant to the Water Quality Act;

(5) a party that holds only a security interest in property where there has been water pollution;

(6) a party who is an innocent purchaser or a bona fide prospective purchaser as defined in 42 U.S.C. 9601;

(7) a party who owned or operates property where water pollution has migrated onto the property from a property not owned or operated by that party;

(8) a party acting as a fiduciary in accordance with its fiduciary duty for property where there has been water pollution; or

(9) any combination of Paragraphs (1) through (8) of this subsection.←Sf14

Sf14→~~D. Any person may seek contribution from any other person who is liable or potentially liable pursuant to the Water Quality Act. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a~~

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~~civil action pursuant to the Water Quality Act.~~ ←Sf14

Sf14→D. Any person who incurs costs associated with an abatement plan as approved by the department consistent with the rules adopted by the commission may file an action in district court to seek contribution from any other person who is liable or potentially liable with respect to the release of water contaminants pursuant to the Water Quality Act. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution under any other law.

E. The department may bring an action in district court against any responsible party to recover response or remediation costs. The department may settle the liability of any responsible party for response or remediation costs through an administratively or judicially approved settlement. ←Sf14

Sf14→E. ←Sf14 Sf14→F. ←Sf14 A person who has resolved liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement."

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SECTION 10. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 10 through 20 of this 2025 act may be cited as the "New Mexico Pollutant Discharge Elimination System Act".

SECTION 11. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the New Mexico Pollutant Discharge Elimination System Act:

A. "commission" means the water quality control commission;

B. "confidential business information" means business information that a person claims as confidential at the time of submission and that, if made public, would divulge trade secrets or falls under other laws that give or may give a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information;

C. "department" means the department of environment;

D. "discharge" means the addition of a pollutant or combination of pollutants to waters of the United States from a point source, including surface runoff collected or channeled by human effort, discharges through pipes, sewers or other conveyances owned by the state, a municipality or another person that do not lead to a treatment works and discharges through pipes, sewers or other conveyances leading into privately owned treatment works. "Discharge" does not include

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an addition of pollutants by an indirect discharger;

E. "federal act" means the Federal Water Pollution Control Act and its subsequent amendments and successor provisions;

F. "national pollutant discharge elimination system" means the program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits and imposing and enforcing pretreatment requirements pursuant to Sections 307, 318, 402 and 405 of the federal act;

G. "permit" means an authorization issued by the department in accordance with program requirements and includes an individual or general permit;

H. "person" means an individual, an association, a partnership, a corporation, a municipality, a state or federal agency or an agent, officer or employee thereof;

I. "point source" means a discernible, confined and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system or vessel or other floating craft from which pollutants are or may be discharged, but does not include a discharge composed entirely of return flows from irrigated agriculture or agricultural storm water runoff;

J. "pollutant" means:

(1) dredged spoil, solid waste, incinerator

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residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated pursuant to the federal Atomic Energy Act of 1954, as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water; but

(2) "pollutant" does not include:

(a) sewage from vessels;

(b) water, gas or other material that is injected into a well to facilitate production of oil or gas; and

(c) water derived in association with oil or gas production and disposed of in a well, if: 1) the well is used either to facilitate production or for disposal purposes and is approved by authority of the state in which the well is located; and 2) the state determines that the injection or disposal will not result in the degradation of ground or surface water resources;

K. "program" means the program authorized by the New Mexico Pollutant Discharge Elimination System Act and approved by the United States environmental protection agency;

L. "regional administrator" means the regional administrator of region six of the United States environmental protection agency; and

M. "waters of the United States" means those waters

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regulated pursuant to the national pollutant discharge elimination system program and defined in federal regulations.

SECTION 12. [NEW MATERIAL] PERMIT REQUIRED.--

A. A person shall not discharge a pollutant from a point source to waters of the United States without a permit issued by the department pursuant to the New Mexico Pollutant Discharge Elimination System Act and the program.

B. The issuance of a permit does not convey any property rights or exclusive privileges.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of any other laws, rules, regulations or ordinances.

D. No permit shall be issued when the regional administrator has objected in writing pursuant to the federal act.

Sf13→~~E. Only the following exemptions apply to surface water permits:~~←Sf13

Sf13→E. Only the following discharges are exempt from Subsection A of this section:←Sf13

(1) a discharge composed entirely of return flows from irrigated agriculture;

(2) a discharge of storm water runoff from a mining operation or an oil and gas exploration, production, processing or treatment operation or transmission facility that

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is composed entirely of flows that are from conveyances or systems of conveyances, including pipes, conduits, ditches and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of the operation or facility. Oil and gas exploration, production, processing or treatment operations or transmission facilities include activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not the field activities or operations may be considered to be construction activities; or

(3) a discharge of runoff resulting from the following silviculture activities conducted in accordance with standard industry practice:

- (a) nursery operations;
- (b) site preparation;
- (c) reforestation and subsequent cultural treatment;
- (d) thinning;
- (e) prescribed burning;
- (f) pest and fire control;
- (g) harvesting operations;
- (h) surface drainage; and

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(i) road construction and maintenance.

Sf13→F. No ruling shall be made on any application for a draft permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. A person submitting evidence, data, views or arguments shall be subject to examination at the hearing.←Sf13

SECTION 13. [NEW MATERIAL] COMMISSION--DUTIES.--The commission shall:

A. adopt, promulgate and publish rules to implement and administer the program, including the standards, requirements and processes to issue, renew, modify, deny and terminate permits, including rules that are necessary and appropriate to obtain and sustain authorization from the regional administrator. In adopting the rules, the commission may incorporate by reference, including prospectively, those sections or parts of federal regulations that the commission deems necessary and appropriate;

B. adopt, promulgate and publish rules for notification procedures that ensure that the public and affected Indian nations, tribes and pueblos, governmental agencies and downstream states receive notice of each draft permit;

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C. adopt a schedule of fees to support the cost of implementing the program, including the preparation and adoption of rules, the review of applications, issuance and enforcement of permits and rules, compliance assistance, monitoring and inspection of facilities and discharges, data stewardship, records management, administrative and legal costs and other costs the commission deems appropriate. Unless otherwise required by law, money collected pursuant to this section shall be deposited in the water quality management fund; and

D. hear and decide petitions for review of department actions to require, issue, renew, modify, deny or terminate a permit or issue a compliance order.

SECTION 14. [NEW MATERIAL] DEPARTMENT--DUTIES AND POWERS.--

A. For the discharge of a pollutant to waters of the United States, notwithstanding the provisions of Section 70-2-12 NMSA 1978, the department shall administer and enforce rules adopted by the commission pursuant to the New Mexico Pollutant Discharge Elimination System Act.

B. The department shall have all duties and powers necessary and appropriate to implement the program, including the authority to:

- (1) propose rules for adoption by the commission;

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- (2) conduct investigations;
- (3) require monitoring, sampling and reporting;
- (4) require the keeping and production of records, documents and other information;
- (5) review applications;
- (6) require, issue, renew, modify, deny or terminate permits;
- (7) deny a permit or request for permit coverage if the discharge would cause or contribute to a pollutant in excess of a downstream state or tribal water quality standard;
- (8) enter into or through any site or premises subject to rules adopted for the program or in which records relevant to program operation are kept or may be located, at a reasonable time and upon the presentation of proper credentials, in order to investigate whether a discharge may be present, inspect, monitor, copy records, sample, photograph, collect other information or otherwise investigate compliance with the program, including compliance with permit conditions and other program requirements. Entry into a private residence shall be allowed only by consent of the owner of the residence or order of the district court for the county in which venue is proper;
- (9) issue administrative compliance orders and

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file civil and criminal actions in the district court to enforce the New Mexico Pollutant Discharge Elimination System Act, permits and rules, including pretreatment standards and local limits adopted by publicly owned treatment works;

(10) enter into agreements with the regional administrator for the implementation of the program;

(11) enter into agreements with other governmental entities, including Indian nations, tribes and pueblos; and

(12) receive and expend funds appropriated, authorized, granted, donated or allocated to the department for purposes consistent with the New Mexico Pollutant Discharge Elimination System Act.

C. The department shall:

(1) encourage the public to report violations pursuant to the New Mexico Pollutant Discharge Elimination System Act;

(2) develop procedures for receiving and ensuring proper consideration of information submitted by the public about violations and make available information on those reporting procedures;

(3) investigate and provide written responses to all complaints submitted pursuant to the reporting procedures;

(4) publish notice of and provide at least

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thirty days for public comment on any proposed settlement of an enforcement action taken pursuant to the New Mexico Pollutant Discharge Elimination System Act; and

(5) not oppose intervention by any person when permissive intervention may be authorized by statute or rule.

SECTION 15. [NEW MATERIAL] ADMINISTRATIVE AND CIVIL ENFORCEMENT.--

A. Whenever the department or attorney general determines that a person violated or is violating or that a violation may occur of any requirement of the New Mexico Pollutant Discharge Elimination System Act, program, permit or rule, the department or attorney general may:

(1) issue a temporary order directing the person to cease and desist unauthorized activity that is endangering or causing damage to public health or the environment pending further action by the department;

(2) issue an administrative compliance order requiring compliance, modification or termination of the permit and assess a civil penalty, including for administrative compliance costs; and

(3) commence a civil action in district court for appropriate relief, including a temporary restraining order or injunctive relief for a threatened or continuing violation of a program requirement and a civil penalty.

B. An administrative compliance order shall state

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with reasonable specificity the nature of the violation. Civil penalties shall be recoverable for the violation of a provision of the New Mexico Pollutant Discharge Elimination System Act or the program; a program permit condition; a program filing requirement; a duty to allow or carry out inspection, entry or monitoring activities; or a rule or an order issued by the department. A civil penalty shall be assessable in at least the amount of five thousand dollars (\$5,000) per day for each violation, but shall not exceed twenty thousand dollars (\$20,000) per day for each violation.

C. In determining the amount of a civil penalty, the department, attorney general or district court shall consider the seriousness of the violation or violations, as well as the economic benefit, if any, resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator and other matters as justice may require. For the purposes of this section, a single operational upset or event that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

D. An administrative compliance order issued pursuant to Paragraph (2) of Subsection A of this section shall become final unless, no later than thirty days after service, the person issued the compliance order submits a written

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request to the commission for a public hearing.

E. The commission shall conduct a public hearing no later than ninety days after receipt of the written request for a public hearing.

F. Following a public hearing, the commission shall issue a written decision that shall constitute the final action on the compliance order.

G. If a person fails to comply with the final action on the compliance order, the department or attorney general may file a civil action in the district court to require compliance, modify or terminate the permit, collect the assessed civil penalty and assess an additional civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order.

H. Unless otherwise required by law, money collected pursuant to this section shall be deposited in the Sfl1→~~water quality management~~←Sfl1 Sfl1→**general**←Sfl1 fund.

SECTION 16. [NEW MATERIAL] CRIMINAL ENFORCEMENT.--

A. A person shall not:

(1) discharge a pollutant to waters of the United States without a permit for the discharge issued pursuant to the program;

(2) violate an applicable standard, limitation, permit condition or other requirement of a permit issued pursuant to the New Mexico Pollutant Discharge

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Elimination System Act or a rule adopted pursuant to that act;

(3) make a false statement, a representation, a certification or an omission of material fact in an application, a record, a plan, a form, a notice or a report required by a permit or other document submitted or maintained pursuant to the New Mexico Pollutant Discharge Elimination System Act or a rule or permit adopted or issued pursuant to that act;

(4) falsify, tamper with or render inaccurate a monitoring device, method or record required to be maintained pursuant to the New Mexico Pollutant Discharge Elimination System Act or a rule or permit adopted or issued pursuant to that act;

(5) fail to monitor, sample or report as required by a permit issued pursuant to the New Mexico Pollutant Discharge Elimination System Act or a rule or permit adopted or issued pursuant to that act; or

(6) violate a filing requirement pursuant to the New Mexico Pollutant Discharge Elimination System Act or a rule or permit adopted or issued pursuant to that act.

B. A person who knowingly violates or knowingly causes or allows another person to violate Subsection A of this section is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act.

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C. A person who is convicted of a second or subsequent violation of Subsection A of this section is guilty of a third degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act.

D. A person who knowingly violates Subsection A of this section or knowingly causes another person to violate Subsection A of this section and thereby causes a substantial adverse environmental impact is guilty of a third degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act.

E. A person who knowingly violates Subsection A of this section and knows at the time of the violation that the person is creating a substantial danger of death or serious bodily injury to any other person is guilty of a second degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act.

F. A person who willfully or negligently violates Paragraph (2) or (6) of Subsection A of this section may be assessed a criminal fine of ten thousand dollars (\$10,000) per day for each violation.

G. A person who knowingly violates Paragraph (3) or (4) of Subsection A of this section may be assessed a criminal fine of five thousand dollars (\$5,000) for each violation.

H. A single operational upset or event that leads to simultaneous violations of more than one pollutant parameter

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shall be treated as a single violation.

I. The attorney general has the authority to enforce this section.

SECTION 17. [NEW MATERIAL] APPEALS TO THE COMMISSION.--

A. An interested person who is affected by a permitting action or compliance order may file a petition for review before the commission. The petition shall:

(1) be made in writing to the commission within thirty days from the date notice is given to the applicant or permittee of the department's action;

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

(3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the department.

B. A person who files a timely petition for review may request a stay of the department's action, which the commission may grant in whole or in part after a hearing on the request and a showing of good cause.

C. Unless a timely petition for review is made, the decision of the department shall be final and shall not be subject to judicial review or review by the commission.

D. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition at a commission meeting open to the

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public. The commission shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and location of the public commission meeting at which the petition for review will be considered. If the petitioner is not the applicant or permittee, the applicant or permittee shall be a party to the proceeding. The commission shall ensure that the public receives notice of the date, time and place of the review.

E. The commission shall review the record compiled before the department, including the transcript of any public hearing held on the permitting action or compliance order, and shall allow any party to submit arguments.

F. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission.

G. Based on the review of the evidence, the arguments of the parties, if any, and the recommendations of the hearing officer, if one is designated, the commission shall sustain, modify or reverse the action of the department. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

H. Prior to the date set for review, if a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that

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additional comment or evidence be taken by the department. Based on the additional evidence, the department may revise the decision and shall promptly file with the commission the additional evidence received and action taken. The commission shall consider the additional evidence within ninety days after receipt of the additional evidence and shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the review.

I. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action.

SECTION 18. [NEW MATERIAL] JUDICIAL REVIEW.--

A. A person who is adversely affected by a rule adopted by the commission may appeal to the court of appeals for further relief no later than thirty days after the commission's final action. The date the rule is filed with state records pursuant to the State Rules Act shall be the date of the commission's final action.

B. A person who participated in a permitting or compliance order review before the commission may appeal to the court of appeals for further relief no later than thirty days after the commission's final action.

C. An appeal before the court of appeals shall be upon the record made before the commission.

D. An application for a stay of the action being

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appealed may be filed with the commission no later than thirty days after the commission's final action. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outcome of the judicial review. If the commission denies the application, a stay of the action may be granted by the court of appeals within ninety days after the commission's denial.

E. The court of appeals shall set aside the commission's final action only if the court finds that the action is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

SECTION 19. [NEW MATERIAL] LIMITATIONS.--The New Mexico Pollutant Discharge Elimination System Act does not authorize the commission or department to require a permit that:

A. takes away or modifies a property right in water, except that the discharge of a pollutant to waters of the United States without a permit shall not be a property right in water;

B. affects the relation between employers and employees with respect to or arising out of a condition of water quality; or

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C. supersedes or limits the applicability of a law relating to industrial health, safety or sanitation.

SECTION 20. [NEW MATERIAL] AVAILABILITY OF RECORDS.--

A. Records, including the names and addresses of permit applicants or permittees, applications, permits, inspections and effluent data, including data relating to discharges and ambient water quality, obtained by the commission or department pursuant to the New Mexico Pollutant Discharge Elimination System Act shall be available to the public.

B. Records obtained by the commission or department that are submitted in relation to applications shall include information required on application forms provided by the commission or department, information submitted on the forms themselves and any attachments used to supply information required by the forms. All such records shall be available to the public.

C. For other records, the commission or department shall not disclose the record if a person submitting the record asserts at the time of submission that the record or part of the record, if made public, would divulge confidential business information or trade secrets as defined in the Uniform Trade Secrets Act.

D. Confidential business information or trade secrets may be disclosed:

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(1) to officers, employees or authorized representatives of the commission or department;

(2) to officers, employees or authorized representatives of the United States; or

(3) when relevant, in a proceeding pursuant to the New Mexico Pollutant Discharge Elimination System Act or the federal act.

E. An officer, employee or authorized representative of the commission or department who willfully discloses information that the commission or department has determined is entitled to protection as confidential business information or a trade secret shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one year, or both.

F. In submitting records, a person providing the records shall:

(1) designate the records the person believes are entitled to protection pursuant to this section by stamping the records as "confidential business information"; and

(2) submit the designated records separately from other records submitted pursuant to the New Mexico Pollutant Discharge Elimination System Act.

SECTION 21. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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