

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 21 & 22

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

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 AND DISTRIBUTION OF CERTAIN PENALTIES; 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

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1 DISCHARGES INTO WATERS OF THE UNITED STATES; REQUIRING THE
2 WATER QUALITY CONTROL COMMISSION TO ADOPT RULES TO IMPLEMENT
3 THE DISCHARGE PROGRAM; PROVIDING POWERS AND DUTIES OF THE
4 DEPARTMENT OF ENVIRONMENT; PROVIDING FOR ENFORCEMENT OF THE
5 PROGRAM; PROVIDING PENALTIES; PROVIDING FOR APPEALS TO THE
6 WATER QUALITY CONTROL COMMISSION AND THE COURT OF APPEALS;
7 PROVIDING FOR PUBLICLY ACCESSIBLE RECORDS; DECLARING AN
8 EMERGENCY.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "74-6-2. DEFINITIONS.--As used in the Water Quality Act:

14 ~~A. "gray water" means untreated household~~
15 ~~wastewater that has not come in contact with toilet waste and~~
16 ~~includes wastewater from bathtubs, showers, washbasins, clothes~~
17 ~~washing machines and laundry tubs, but does not include~~
18 ~~wastewater from kitchen sinks or dishwashers or laundry water~~
19 ~~from the washing of material soiled with human excreta, such as~~
20 ~~diapers;~~

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

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

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

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

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

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

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

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1 ~~subsurface water;~~

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

8 A. "barrier" means a technical, including any log
9 reduction credits assigned, operational or managerial measure
10 to control microbial or chemical constituents;

11 ~~[J.]~~ B. "commission" means the water quality
12 control commission;

13 ~~[K.]~~ C. "constituent agency" means, as the context
14 may require, any or all of the following agencies of the state:

- 15 (1) the department ~~[of environment];~~
- 16 (2) the state engineer and the interstate
- 17 stream commission;
- 18 (3) the department of game and fish;
- 19 (4) the oil conservation commission;
- 20 (5) the state parks division of the energy,
- 21 minerals and natural resources department;
- 22 (6) the New Mexico department of agriculture;
- 23 (7) the soil and water conservation
- 24 commission; and
- 25 (8) the bureau of geology and mineral

1 resources at the New Mexico institute of mining and technology;

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

3 ~~(1) any source, the construction of which is~~
 4 ~~commenced after the publication of proposed regulations~~
 5 ~~prescribing a standard of performance applicable to the source;~~
 6 ~~or~~

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

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

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

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

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

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

25 ~~(2) that amounts to more than ten thousand~~

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1 ~~dollars (\$10,000) damage or mitigation costs to flora,~~
2 ~~including agriculture crops; fish or other aquatic life;~~
3 ~~waterfowl or other birds; livestock or wildlife or damage to~~
4 ~~their habitats; ground water or surface water; or the lands of~~
5 ~~the state;~~

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

8 R. ~~"standards of performance" means any standard,~~
9 ~~effluent limitation or effluent standard adopted pursuant to~~
10 ~~the federal act or the Water Quality Act; and~~

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

14 D. "compensatory mitigation" means the process of
15 restoring, establishing, enhancing or preserving wetlands,
16 streams or other aquatic resources to offset unavoidable
17 adverse impacts that remain after appropriate and practicable
18 avoidance and minimization measures have been achieved;

19 E. "department" means the department of
20 environment;

21 F. "facility" means all contiguous land and
22 structures, other appurtenances and improvements on the land,
23 including any building, installation, equipment, pipe or
24 pipeline, including a pipe into a sewer or a publicly owned
25 treatment works, a well, a pit, a pond, a lagoon, an

1 impoundment, a ditch, a landfill, a storage container, a motor
2 vehicle, a rolling stock, an aircraft, a vessel or a
3 watercraft, or any site or area where a water contaminant has
4 been, is currently or is proposed to be managed, treated,
5 deposited, stored, disposed of or placed or has otherwise come
6 to be located;

7 G. "federal act" means the Federal Water Pollution
8 Control Act and its subsequent amendment and successor
9 provisions;

10 H. "general permit" means a permit that applies to
11 one or more categories or subcategories of discharges, sludge
12 use or disposal practices or facilities within a geographic
13 area, including the state or a region, basin or watershed in
14 the state;

15 I. "general permit coverage" means authorization to
16 discharge pursuant to a general permit and any additional
17 permit conditions required by a constituent agency;

18 J. "gray water" means untreated household
19 wastewater that has not come in contact with toilet waste and
20 includes wastewater from bathtubs, showers, washbasins, clothes
21 washing machines and laundry tubs, but does not include
22 wastewater from kitchen sinks or dishwashers or laundry water
23 from the washing of material soiled with human excreta, such as
24 diapers;

25 K. "new source" means:

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

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

7 L. "pathogen" means a microorganism capable of
8 causing illness in humans;

9 M. "person" means an individual or other entity,
10 including partnerships, corporations, associations, responsible
11 business or association agents or officers, the state or a
12 political subdivision of the state or an agency, a department
13 or an instrumentality of the United States and any of its
14 officers, agents or employees;

15 N. "produced water" means a fluid that is an
16 incidental byproduct from drilling for or the production of oil
17 and gas;

18 O. "responsible party" means:

19 (1) the owner and operator of a facility;

20 (2) a person who, at the time of disposal of
21 any water contaminant, owned or operated a facility at or from
22 which such water contaminants were disposed;

23 (3) a person who, by contract, agreement or
24 otherwise, arranged for disposal or treatment, or arranged with
25 a transporter for transport for disposal or treatment, of water

1 contaminants owned or possessed by the person, or by any other
2 party or entity, at a facility owned or operated by another
3 party or entity and containing such water contaminants; and

4 (4) a person who accepts or accepted any water
5 contaminants for transport to disposal or treatment facilities
6 or sites selected by the person, from which there is a release,
7 or a threatened release that causes the incurrence of response
8 costs, of a water contaminant;

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

12 Q. "sewer system" means pipelines, conduits,
13 pumping stations, force mains or other structures, devices,
14 appurtenances or facilities used for collecting or conducting
15 wastes to an ultimate point for treatment or disposal;

16 R. "sewerage system" means a system for disposing
17 of wastes, either by surface or underground methods, and
18 includes sewer systems, treatment works, disposal wells and
19 other systems;

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

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1 T. "source" means a building, a structure, a
2 facility or an installation from which there is or may be a
3 discharge of water contaminants directly or indirectly into
4 water;

5 U. "standards of performance" means a standard, an
6 effluent limitation or an effluent standard adopted pursuant to
7 the federal act or the Water Quality Act;

8 V. "substantial adverse environmental impact" means
9 that an act or omission of the violator causes harm or damage:

10 (1) to human beings; or

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

17 W. "treatment works" means a plant or other works
18 used for the purpose of treating, stabilizing or holding
19 wastes;

20 X. "wastes" means sewage, industrial wastes or
21 other liquid, gaseous or solid substances that may pollute the
22 waters of the state;

23 Y. "water" means all water, including water
24 situated wholly or partly within or bordering upon the state,
25 whether surface or subsurface, public or private, except

1 private waters that do not combine with other surface or
2 subsurface water;

3 Z. "water contaminant" means a substance that could
4 alter, if discharged or spilled, the physical, chemical,
5 biological or radiological qualities of water. "Water
6 contaminant" does not mean source, special nuclear or byproduct
7 material as defined by the federal Atomic Energy Act of 1954;
8 and

9 AA. "water pollution" means introducing or
10 permitting the introduction into water, either directly or
11 indirectly, of one or more water contaminants in a quantity and
12 duration as may with reasonable probability injure human
13 health, animal or plant life or property or to unreasonably
14 interfere with the public welfare or the use of property."

15 SECTION 2. Section 74-6-4 NMSA 1978 (being Laws 1967,
16 Chapter 190, Section 4, as amended) is amended to read:

17 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
18 commission:

19 A. may accept and supervise the administration of
20 loans and grants from the federal government and from other
21 sources, public or private, which loans and grants shall not be
22 expended for ~~[other than the]~~ purposes ~~[for which]~~ other than
23 those provided;

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

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

5 D. shall adopt water quality standards for surface
6 and ground waters of the state based on credible scientific
7 data and other evidence appropriate under the Water Quality
8 Act. The standards shall include narrative standards and, as
9 appropriate, the designated uses of the waters and the water
10 quality criteria necessary to protect such uses. The standards
11 shall at a minimum protect the public health or welfare,
12 enhance the quality of water and serve the purposes of the
13 Water Quality Act. In making standards, the commission shall
14 give weight it deems appropriate to all facts and
15 circumstances, including the use and value of the water for
16 water supplies, propagation of fish and wildlife, recreational
17 purposes and agricultural, industrial and other purposes;

18 E. shall adopt [~~promulgate and publish regulations~~]
19 rules to prevent or abate water pollution in the state or in
20 any specific geographic area, aquifer or watershed of the state
21 or in any part thereof, or for any class of waters, and to
22 govern the disposal of septage and sludge and the use of sludge
23 for various beneficial purposes. The [~~regulations~~] rules
24 governing the disposal of septage and sludge may include the
25 use of tracking and permitting systems or other reasonable

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1 means necessary to assure that septage and sludge are
2 designated for disposal in, and arrive at, disposal facilities,
3 other than facilities on the premises where the septage and
4 sludge is generated, for which a permit or other authorization
5 has been issued pursuant to the federal act or the Water
6 Quality Act. [~~Regulations~~] Rules may specify a standard of
7 performance for new sources that reflects the greatest
8 reduction in the concentration of water contaminants that the
9 commission determines to be achievable through application of
10 the best available demonstrated control technology, processes,
11 operating methods or other alternatives, including where
12 practicable a standard permitting no discharge of pollutants;

13 F. in making [~~regulations, the commission~~] rules,
14 shall give weight it deems appropriate to all relevant facts
15 and circumstances, including:

16 (1) the character and degree of injury to or
17 interference with health, welfare, environment and property;

18 (2) the public interest, including the social
19 and economic value of the sources of water contaminants;

20 (3) the technical practicability and economic
21 reasonableness of reducing or eliminating water contaminants
22 from the sources involved and previous experience with
23 equipment and methods available to control the water
24 contaminants involved;

25 (4) the successive uses, including domestic,

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1 commercial, industrial, pastoral, agricultural, wildlife and
2 recreational uses;

3 (5) feasibility of a user or a subsequent user
4 treating the water before a subsequent use;

5 (6) property rights and accustomed uses; and

6 (7) federal water quality requirements;

7 [~~F.~~] G. shall assign responsibility for
8 administering its [~~regulations~~] rules to constituent agencies
9 [~~so as~~] to assure adequate coverage and prevent duplication of
10 effort. To this end, the commission may make such
11 classification of waters and sources of water contaminants as
12 will facilitate the assignment of administrative
13 responsibilities to constituent agencies. The commission shall
14 also hear and decide disputes between constituent agencies as
15 to jurisdiction concerning [~~any~~] matters within the purpose of
16 the Water Quality Act. In assigning responsibilities to
17 constituent agencies, the commission shall give priority to the
18 primary interests of the constituent agencies. The department
19 [~~of environment~~] shall provide technical services, including
20 certification of permits pursuant to the federal act, and shall
21 maintain a repository of the scientific data required by the
22 Water Quality Act;

23 [~~G.~~] H. may enter into or authorize constituent
24 agencies to enter into agreements with the federal government
25 or other state governments for purposes consistent with the

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1 Water Quality Act and receive and allocate to constituent
2 agencies funds made available to the commission;

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

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

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

5 ~~[K.]~~ L. shall specify in ~~[regulations]~~ rules the
6 measures to be taken to prevent water pollution and to monitor
7 water quality. The commission may adopt ~~[regulations]~~ rules
8 for particular industries. The commission shall adopt
9 ~~[regulations]~~ rules for the dairy industry and the copper
10 industry. The commission shall consider, in addition to the
11 factors listed in Subsection ~~[E]~~ F of this section, the best
12 available scientific information. The ~~[regulations]~~ rules may
13 include variations in requirements based on site-specific
14 factors, such as depth and distance to ground water and
15 geological and hydrological conditions. The constituent agency
16 shall establish an advisory committee composed of persons with
17 knowledge and expertise particular to the industry category and
18 other interested stakeholders to advise the constituent agency
19 on appropriate ~~[regulations]~~ rules to be proposed for adoption
20 by the commission. The ~~[regulations]~~ rules shall be developed
21 and adopted in accordance with a schedule approved by the
22 commission. The schedule shall incorporate an opportunity for
23 public input and stakeholder negotiations;

24 ~~[L.]~~ M. may adopt ~~[regulations]~~ rules establishing
25 pretreatment standards that prohibit or control the

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1 introduction into publicly owned sewerage systems of water
2 contaminants that are not susceptible to treatment by the
3 treatment works or that would interfere with the operation of
4 the treatment works;

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

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

16 (1) a constructed gray water distribution
17 system provides for overflow into the sewer system or on-site
18 wastewater treatment and disposal system;

19 (2) a gray water storage tank is covered to
20 restrict access and to eliminate habitat for mosquitos or other
21 vectors;

22 (3) a gray water system is sited outside of a
23 floodway;

24 (4) gray water is vertically separated at
25 least five feet above the ground water table;

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1 (5) gray water pressure piping is clearly
2 identified as a nonpotable water conduit;

3 (6) gray water is used on the site where it is
4 generated and does not run off the property lines;

5 (7) gray water is applied in a manner that
6 minimizes the potential for contact with people or domestic
7 pets;

8 (8) ponding is prohibited, application of gray
9 water is managed to minimize standing water on the surface and
10 to ensure that the hydraulic capacity of the soil is not
11 exceeded;

12 (9) gray water is not sprayed;

13 (10) gray water is not discharged to a
14 watercourse; and

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

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

24 ~~[P.]~~ Q. shall adopt ~~[regulations]~~ rules to be
25 administered by the department ~~[of environment]~~ for the

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1 discharge, handling, transport, storage, recycling or treatment
 2 for the disposition of treated produced water, including
 3 disposition in road construction maintenance, roadway ice or
 4 dust control or other construction, or in the application of
 5 treated produced water to land, for activities unrelated to the
 6 exploration, drilling, production, treatment or refinement of
 7 oil or gas; [~~and~~

8 ~~Q. may~~ R. shall adopt [~~regulations~~] rules to be
 9 administered by the department [~~of environment~~] for surface
 10 water discharges, including discharges of dredged or fill
 11 materials. For discharges of dredged or fill material, the
 12 rules shall include avoidance and minimization of adverse
 13 impacts to wetlands, streams and other aquatic resources and
 14 may require compensatory mitigation for unavoidable adverse
 15 impacts that remain after appropriate and practicable avoidance
 16 and minimization measures have been achieved;

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

22 T. shall adopt rules to be administered by the
 23 department to govern the transfer and use of treated domestic
 24 wastewater for potable reuse. The rules may specify a standard
 25 of performance, including log reduction for pathogen removal,

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1 critical control points, barriers and the greatest reduction in
2 the concentration of water contaminants and pathogens that the
3 commission determines to be achievable through application of
4 the best available demonstrated control technology, processes,
5 operating methods or other alternatives, including, where
6 practicable, a standard permitting no risk to human health.
7 The rules governing the potable reuse of domestic wastewater
8 may include the use of existing permitting systems or create
9 new permitting rules that include the means necessary to assure
10 that potable reuse projects are conducted in a manner that is
11 directly protective of human health."

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

14 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

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

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

23 C. Prior to the issuance of a permit or approval of
24 general permit coverage, the constituent agency may require the
25 submission of plans, specifications and other relevant

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1 information that it deems necessary.

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

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

22 (1) the effluent would not meet applicable
 23 state or federal effluent regulations, standards of performance
 24 or limitations;

25 (2) [~~any~~] a provision of the Water Quality Act

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1 would be violated;

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

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

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

12 ~~[(4)]~~ (5) the applicant has, within the ten
13 years immediately preceding the date of submission of the
14 permit application or request for general permit coverage:

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

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

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

22 (d) been convicted of a felony in ~~[any]~~
23 court for ~~[any]~~ a crime defined by state or federal law as
24 being a restraint of trade, price-fixing, bribery or fraud;

25 (e) exhibited a history of willful

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1 disregard for environmental laws of [~~any~~] a state or the United
2 States; or

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

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

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

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

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

19 (c) ~~a display advertisement in English~~
20 ~~and Spanish in a newspaper of general circulation in the~~
21 ~~location of the discharge or proposed discharge; provided,~~
22 ~~however, that the advertisement shall not be displayed in the~~
23 ~~classified or legal advertisement sections; and~~

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

25 (a) ~~notice by mail to the interested~~

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1 ~~public, municipalities, counties, land grant organizations,~~
2 ~~ditch associations and Indian nations, tribes or pueblos; and~~
3 ~~(b) a display advertisement in English~~
4 ~~and Spanish in a newspaper of general circulation in the~~
5 ~~location of the discharge; provided, however, that the~~
6 ~~advertisement shall not be displayed in the classified or legal~~
7 ~~advertisement sections.]~~

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

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

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

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

22 (c) posting the notice at a place
23 conspicuous to the public and near the discharge or proposed
24 discharge site;

25 (d) a display advertisement in English

1 and Spanish in a newspaper of general circulation in the
2 location of the discharge or proposed discharge site; provided,
3 however, that the advertisement shall not be displayed in the
4 classified or legal advertisement sections; and

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

8 (2) for permit renewals:

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

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

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

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

22 G. For surface water permits, the commission shall
23 by rule develop procedures that ensure that the public and
24 affected governmental agencies, Indian nations, tribes and
25 pueblos and other states shall receive notice of each draft

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1 permit. Public notice shall include the following, except that
2 for a general permit, Paragraphs (1) and (3) of this subsection
3 shall not be required:

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

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

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

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

20 (5) consideration of the languages spoken by
21 and the communication methods accessible to the intended
22 recipients of the public notice.

23 ~~[G.]~~ H. No ruling shall be made on ~~[any application~~
24 ~~for]~~ a draft permit without opportunity for a public hearing at
25 which all interested persons shall be given a reasonable chance

1 to submit evidence, data, views or arguments orally or in
2 writing and to examine witnesses testifying at the hearing.
3 The hearing shall be recorded. [~~Any~~] A person submitting
4 evidence, data, views or arguments shall be subject to
5 examination at the hearing.

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

12 [~~F.~~] J. Permits shall be issued for fixed terms
13 [~~not to exceed~~] of five years, except that surface water
14 permits may be issued for fixed terms of up to ten years. For
15 new discharges, the term of the permit shall commence on the
16 date the discharge begins, but in no event shall the term of
17 the permit exceed seven years from the date the permit was
18 issued.

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

22 (1) install, use and maintain [~~effluent~~]
23 monitoring devices;

24 (2) sample effluents and receiving waters for
25 any known or suspected water contaminants in accordance with

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1 methods and at locations and intervals as may be prescribed by
2 the commission;

3 (3) establish and maintain records of the
4 nature and amounts of effluents and the performance of effluent
5 control devices;

6 (4) provide [~~any~~] other information relating
7 to the discharge or direct or indirect release of water
8 contaminants; and

9 (5) notify a constituent agency of the
10 introduction of new water contaminants from a new source and of
11 a substantial change in volume or character of water
12 contaminants being introduced from sources in existence at the
13 time of the issuance of the permit.

14 [~~K-~~] L. The commission shall provide by
15 [~~regulation~~] rule a schedule of fees for permits [~~not exceeding~~
16 ~~the estimated cost of investigation and issuance, modification~~
17 ~~and renewal of permits. Fees~~] and approvals of general permit
18 coverage to support the cost of developing and implementing the
19 permitting rules authorized pursuant to Section 74-6-4 NMSA
20 1978, including the review of applications, issuance and
21 enforcement of permits and rules, compliance assistance,
22 monitoring and inspection of facilities and discharges, data
23 stewardship, records management and administrative and legal
24 costs. Unless otherwise required by law, money collected
25 pursuant to this section shall be deposited in the water

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1 quality management fund.

2 ~~[L.]~~ M. The issuance of a permit or approval of a
3 general permit coverage does not relieve ~~[any]~~ a person from
4 the responsibility of complying with the provisions of the
5 Water Quality Act, any applicable ~~[regulations]~~ rules or water
6 quality standards of the commission or any applicable federal
7 laws, regulations or standards.

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

12 (1) violation of ~~[any]~~ a condition of the
13 permit;

14 (2) obtaining the permit or general permit
15 coverage by misrepresentation or failure to disclose fully all
16 relevant facts;

17 (3) violation of ~~[any]~~ the provisions of the
18 Water Quality Act or any applicable ~~[regulations]~~ rules,
19 standard of performance or water quality standards;

20 (4) violation of ~~[any]~~ applicable state or
21 federal effluent regulations or limitations; or

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

25 ~~[N.]~~ O. If the constituent agency denies,

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1 terminates or modifies a permit or general permit coverage or
2 grants a permit subject to condition, the constituent agency
3 shall notify the applicant or permittee by certified mail or
4 other method acceptable to the applicant or permittee of the
5 action taken and the reasons. Notice shall also be given by
6 postal or electronic mail to persons who participated in the
7 permitting action.

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

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

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

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

24 [P-] Q. If a timely petition for review is made,
25 the commission shall consider the petition within ninety days

1 after receipt of the petition. The commission shall notify the
2 petitioner and the applicant or permittee, if other than the
3 petitioner, by certified mail of the date, time and place of
4 the review. If the petitioner is not the applicant or
5 permittee, the applicant or permittee shall be a party to the
6 proceeding. The commission shall ensure that the public
7 receives notice of the date, time and place of the review.

8 ~~[Q-]~~ R. The commission shall review the record
9 compiled before the constituent agency, including the
10 transcript of ~~[any]~~ a public hearing held on the application or
11 draft permit, and shall allow any party to submit arguments.
12 The commission may designate a hearing officer to review the
13 record and the arguments of the parties and recommend a
14 decision to the commission. The commission shall consider and
15 weigh only the evidence contained in the record before the
16 constituent agency and the recommended decision of the hearing
17 officer, if any, and shall not be bound by the factual findings
18 or legal conclusions of the constituent agency. Based on the
19 review of the evidence, the arguments of the parties and
20 recommendations of the hearing officer, the commission shall
21 sustain, modify or reverse the action of the constituent
22 agency. The commission shall enter ultimate findings of fact
23 and conclusions of law and keep a record of the review.

24 ~~[R-]~~ S. Prior to the date set for review, if a
25 party shows to the satisfaction of the commission that there

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1 was no reasonable opportunity to submit comment or evidence on
2 an issue being challenged, the commission shall order that
3 additional comment or evidence be taken by the constituent
4 agency. Based on the additional evidence, the constituent
5 agency may revise the decision and shall promptly file with the
6 commission the additional evidence received and action taken.
7 The commission shall consider the additional evidence within
8 ninety days after receipt of the additional evidence and shall
9 notify the petitioner and the applicant or permittee, if other
10 than the petitioner, of the date, time and place of the review.

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

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

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

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

24 (3) construction or maintenance of farm roads
25 or forest roads or temporary roads for moving mining equipment,

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1 where such roads are constructed and maintained, in accordance
2 with best management practices, to assure that flow and
3 circulation patterns and chemical and biological
4 characteristics of the surface waters are not impaired, that
5 the reach of the surface waters is not reduced and that any
6 adverse effect on the aquatic environment will be otherwise
7 minimized;

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

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

16 (6) return flows composed entirely from
17 irrigated agriculture;

18 (7) stormwater runoff from a mining operation
19 or an oil and gas exploration, production, processing or
20 treatment operation or transmission facility that is composed
21 entirely of flows that are from conveyances or systems of
22 conveyances, including pipes, conduits, ditches and channels,
23 used for collecting and conveying precipitation runoff and that
24 are not contaminated by contact with, or do not come into
25 contact with, any overburden, raw material, intermediate

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1 products, finished product, byproduct or waste product located
2 on the site of the operation or facility. Oil and gas
3 exploration, production, processing or treatment operations or
4 transmission facilities include activities necessary to prepare
5 a site for drilling and for the movement and placement of
6 drilling equipment, whether or not the field activities or
7 operations may be considered to be construction activities;

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

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

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

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

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1 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There
 2 is created as a nonreverting fund in the state treasury the
 3 "water quality management fund" to be administered by the
 4 department [~~of environment. All fees~~]. The fund consists of
 5 appropriations, gifts, grants, donations and money received by
 6 the department. Unless otherwise required by law, money
 7 collected pursuant to [the regulations adopted by the
 8 commission under Subsection H of Section 74-6-5 NMSA 1978]
 9 Section 74-6-4 NMSA 1978 and for the operation and maintenance
 10 of a permitted facility pursuant to Subsection H of Section
 11 74-6-5 NMSA 1978 shall be deposited in the fund. Money in the
 12 fund is appropriated to the department [~~of environment~~] for the
 13 purpose of administering the [~~regulations~~] rules adopted by the
 14 commission pursuant to [~~Section~~] Sections 74-6-4 and 74-6-5
 15 NMSA 1978. Disbursements from the fund shall be made upon
 16 warrants drawn by the secretary of finance and administration
 17 pursuant to vouchers signed by the secretary of environment."

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

20 "74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each
 21 constituent agency may:

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

25 B. develop facts and make studies and

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1 investigations and require the production of documents
2 necessary to carry out the responsibilities assigned to the
3 constituent agency. The result of any investigation shall be
4 reduced to writing and a copy furnished to the commission and
5 to the owner or occupant of the premises investigated;

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

11 D. respond to, investigate and remediate water
12 pollution and contamination in soil and soil vapor;

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

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

25 (1) have access to and reproduce for [~~their~~]

1 its use any copy of the records;

2 (2) inspect any treatment works, monitoring
3 equipment or methods required to be installed by regulations of
4 the federal government or the commission; and

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

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

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

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

22 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
23 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

24 A. Whenever, on the basis of any information, a
25 constituent agency determines that a person violated or is

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1 violating a requirement, regulation or water quality standard
2 adopted pursuant to the Water Quality Act or a condition of a
3 permit issued pursuant to that act, the constituent agency may:

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

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

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

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

15 (1) fifteen thousand dollars (\$15,000) per day
16 of noncompliance with the provisions in Section 74-6-5 NMSA
17 1978, including a regulation adopted or a permit issued
18 pursuant to that section; or

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

24 D. In assessing a penalty authorized by this
25 section, the constituent agency shall take into account the

1 seriousness of the violation, any good faith efforts to comply
2 with the applicable requirements and other relevant factors.

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

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

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

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

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

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

25 (1) make and preserve a complete record of the

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1 proceedings; and

2 (2) forward to the commission a report that
3 includes recommendations if recommendations are requested by
4 the commission.

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

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

11 (1) adopt rules for discovery procedures; and

12 (2) issue subpoenas for the attendance and
13 testimony of witnesses and for relevant papers, books and
14 documents.

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

22 L. As an additional means of enforcing the Water
23 Quality Act or any regulation or standard of the commission,
24 the commission may accept an assurance of discontinuance of any
25 act or practice deemed in violation of the Water Quality Act,

1 or any regulation or standard adopted pursuant to that act,
 2 from any person engaging in, or who has engaged in, such act or
 3 practice, signed and acknowledged by the [~~chairman~~] chair of
 4 the commission and the party affected. Any such assurance
 5 shall specify a time limit during which the discontinuance is
 6 to be accomplished."

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

9 "74-6-12. LIMITATIONS.--

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

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

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

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1 D. The Water Quality Act does not grant to the
2 commission any jurisdiction or authority affecting the relation
3 between employers and employees with respect to or arising out
4 of [~~any~~] a condition [~~of water~~] or quality of water.

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

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

17 G. Except for the discharge of a water contaminant
18 to a surface water, the Water Quality Act does not apply to
19 [~~any~~] an activity or condition subject to the authority of the
20 oil conservation commission pursuant to provisions of the Oil
21 and Gas Act [~~Section 70-2-12 NMSA 1978~~] and other laws
22 conferring power on the oil conservation commission to prevent
23 or abate water pollution.

24 H. When changes in dissolved oxygen, temperature,
25 dissolved solids, sediment or turbidity in a water of the state

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

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

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

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

23 B. The department shall administer the fund. Money
24 in the fund is appropriated to the department for the state to
25 respond to, investigate and remediate water pollution and

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1 contamination in soil and soil vapor.

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

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

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

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

17 B. Liability shall include:

18 (1) all costs of removal or remedial action
19 incurred by the state;

20 (2) any other necessary costs of response
21 incurred by any other person;

22 (3) damages for injury to, destruction of or
23 loss of natural resources, including the reasonable costs of
24 assessing such injury, destruction or loss, resulting from a
25 release of water contaminants; and

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

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

7 (1) an act of God;

8 (2) an act of war;

9 (3) an act or omission of a third party if:

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

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

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

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

24 (4) any combination of Paragraphs (1) through
25 (3) of this subsection.

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

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

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

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

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

23 B. "confidential business information" means
24 business information that a person claims as confidential at
25 the time of submission and that, if made public, would divulge

1 trade secrets or falls under other laws that give or may give a
2 business the right to preserve the confidentiality of business
3 information and to limit its use or disclosure by others in
4 order that the business may obtain or retain business
5 advantages it derives from its rights in the information;

6 C. "department" means the department of
7 environment;

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

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

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

25 G. "permit" means an authorization issued by the

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1 department in accordance with program requirements and includes
2 an individual or general permit;

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

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

14 J. "pollutant" means:

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

22 (2) "pollutant" does not include:

23 (a) sewage from vessels;
24 (b) water, gas or other material that is
25 injected into a well to facilitate production of oil or gas;

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1 and

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

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

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

15 M. "waters of the United States" means those waters
16 regulated pursuant to the national pollutant discharge
17 elimination system program and defined in federal regulations.

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

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

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

25 C. The issuance of a permit does not authorize any

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1 injury to persons or property or invasion of other private
2 rights or any infringement of any other laws, rules,
3 regulations or ordinances.

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

7 E. Only the following exemptions apply to surface
8 water permits:

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

11 (2) a discharge of storm water runoff from a
12 mining operation or an oil and gas exploration, production,
13 processing or treatment operation or transmission facility that
14 is composed entirely of flows that are from conveyances or
15 systems of conveyances, including pipes, conduits, ditches and
16 channels, used for collecting and conveying precipitation
17 runoff and that are not contaminated by contact with, or do not
18 come into contact with, any overburden, raw material,
19 intermediate products, finished product, byproduct or waste
20 products located on the site of the operation or facility. Oil
21 and gas exploration, production, processing or treatment
22 operations or transmission facilities include activities
23 necessary to prepare a site for drilling and for the movement
24 and placement of drilling equipment, whether or not the field
25 activities or operations may be considered to be construction

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1 activities; or

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

5 (a) nursery operations;

6 (b) site preparation;

7 (c) reforestation and subsequent
8 cultural treatment;

9 (d) thinning;

10 (e) prescribed burning;

11 (f) pest and fire control;

12 (g) harvesting operations;

13 (h) surface drainage; and

14 (i) road construction and maintenance.

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

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

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

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

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

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

21 A. For the discharge of a pollutant to waters of
22 the United States, notwithstanding the provisions of Section
23 70-2-12 NMSA 1978, the department shall administer and enforce
24 rules adopted by the commission pursuant to the New Mexico
25 Pollutant Discharge Elimination System Act.

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

4 (1) propose rules for adoption by the
5 commission;

6 (2) conduct investigations;

7 (3) require monitoring, sampling and
8 reporting;

9 (4) require the keeping and production of
10 records, documents and other information;

11 (5) review applications;

12 (6) require, issue, renew, modify, deny or
13 terminate permits;

14 (7) deny a permit or request for permit
15 coverage if the discharge would cause or contribute to a
16 pollutant in excess of a downstream state or tribal water
17 quality standard;

18 (8) enter into or through any site or premises
19 subject to rules adopted for the program or in which records
20 relevant to program operation are kept or may be located, at a
21 reasonable time and upon the presentation of proper
22 credentials, in order to investigate whether a discharge may be
23 present, inspect, monitor, copy records, sample, photograph,
24 collect other information or otherwise investigate compliance
25 with the program, including compliance with permit conditions

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1 and other program requirements. Entry into a private residence
2 shall be allowed only by consent of the owner of the residence
3 or order of the district court for the county in which venue is
4 proper;

5 (9) issue administrative compliance orders and
6 file civil and criminal actions in the district court to
7 enforce the New Mexico Pollutant Discharge Elimination System
8 Act, permits and rules, including pretreatment standards and
9 local limits adopted by publicly owned treatment works;

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

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

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

19 C. The department shall:

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

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

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1 reporting procedures;

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

5 (4) publish notice of and provide at least
6 thirty days for public comment on any proposed settlement of an
7 enforcement action taken pursuant to the New Mexico Pollutant
8 Discharge Elimination System Act; and

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

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

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

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

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

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

5 B. An administrative compliance order shall state
6 with reasonable specificity the nature of the violation. Civil
7 penalties shall be recoverable for the violation of a provision
8 of the New Mexico Pollutant Discharge Elimination System Act or
9 the program; a program permit condition; a program filing
10 requirement; a duty to allow or carry out inspection, entry or
11 monitoring activities; or a rule or an order issued by the
12 department. A civil penalty shall be assessable in at least
13 the amount of five thousand dollars (\$5,000) per day for each
14 violation, but shall not exceed twenty thousand dollars
15 (\$20,000) per day for each violation.

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

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1 shall be treated as a single violation.

2 D. An administrative compliance order issued
3 pursuant to Paragraph (2) of Subsection A of this section shall
4 become final unless, no later than thirty days after service,
5 the person issued the compliance order submits a written
6 request to the commission for a public hearing.

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

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

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

20 H. Unless otherwise required by law, money
21 collected pursuant to this section shall be deposited in the
22 water quality management fund.

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

24 A. A person shall not:

25 (1) discharge a pollutant to waters of the

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1 United States without a permit for the discharge issued
2 pursuant to the program;

3 (2) violate an applicable standard,
4 limitation, permit condition or other requirement of a permit
5 issued pursuant to the New Mexico Pollutant Discharge
6 Elimination System Act or a rule adopted pursuant to that act;

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

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

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

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

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

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

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

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

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

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

4 H. A single operational upset or event that leads
5 to simultaneous violations of more than one pollutant parameter
6 shall be treated as a single violation.

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

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

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

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

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

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

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

25 C. Unless a timely petition for review is made, the

1 decision of the department shall be final and shall not be
2 subject to judicial review or review by the commission.

3 D. If a timely petition for review is made, the
4 commission shall consider the petition within ninety days after
5 receipt of the petition at a commission meeting open to the
6 public. The commission shall notify the petitioner and the
7 applicant or permittee, if other than the petitioner, of the
8 date, time and location of the public commission meeting at
9 which the petition for review will be considered. If the
10 petitioner is not the applicant or permittee, the applicant or
11 permittee shall be a party to the proceeding. The commission
12 shall ensure that the public receives notice of the date, time
13 and place of the review.

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

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

21 G. Based on the review of the evidence, the
22 arguments of the parties, if any, and the recommendations of
23 the hearing officer, if one is designated, the commission shall
24 sustain, modify or reverse the action of the department. The
25 commission shall enter ultimate findings of fact and

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1 conclusions of law and keep a record of the review.

2 H. Prior to the date set for review, if a party
3 shows to the satisfaction of the commission that there was no
4 reasonable opportunity to submit comment or evidence on an
5 issue being challenged, the commission shall order that
6 additional comment or evidence be taken by the department.
7 Based on the additional evidence, the department may revise the
8 decision and shall promptly file with the commission the
9 additional evidence received and action taken. The commission
10 shall consider the additional evidence within ninety days after
11 receipt of the additional evidence and shall notify the
12 petitioner and the applicant or permittee, if other than the
13 petitioner, of the date, time and place of the review.

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

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

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

24 B. A person who participated in a permitting or
25 compliance order review before the commission may appeal to the

1 court of appeals for further relief no later than thirty days
2 after the commission's final action.

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

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

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

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

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

24 A. takes away or modifies a property right in
25 water, except that the discharge of a pollutant to waters of

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1 the United States without a permit shall not be a property
2 right in water;

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

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

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

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

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

23 C. For other records, the commission or department
24 shall not disclose the record if a person submitting the record
25 asserts at the time of submission that the record or part of

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1 the record, if made public, would divulge confidential business
2 information or trade secrets as defined in the Uniform Trade
3 Secrets Act.

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

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

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

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

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

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

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

25 (2) submit the designated records separately

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1 from other records submitted pursuant to the New Mexico
2 Pollutant Discharge Elimination System Act.

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