

1 SENATE BILL 22

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Peter Wirth and Kristina Ortez

5
6
7
8
9
10 AN ACT

11 RELATING TO THE ENVIRONMENT; ALPHABETIZING AND ADDING
12 DEFINITIONS TO THE WATER QUALITY ACT; PROVIDING FOR CERTAIN
13 WATER QUALITY CONTROL COMMISSION RULES RELATING TO THE
14 REGULATION OF WATER POLLUTION; CREATING THE NEGLECTED AND
15 CONTAMINATED SITES FUND; PROVIDING FOR GENERAL PERMIT COVERAGE
16 FOR MULTIPLE DISCHARGERS; REVISING THE WATER QUALITY MANAGEMENT
17 FUND AND DISTRIBUTION OF CERTAIN PENALTIES; ALLOWING FOR THE
18 DENIAL OF PERMITS THAT WOULD CONTRIBUTE TO WATER CONTAMINANT
19 LEVELS IN EXCESS OF DOWNSTREAM STATE OR TRIBAL WATER QUALITY
20 STANDARDS; AMENDING NOTICE REQUIREMENTS FOR WATER QUALITY ACT
21 PERMITS; PROVIDING FOR CERTAIN USES OF PERMIT FEES; AMENDING
22 THE PURPOSES OF THE WATER QUALITY MANAGEMENT FUND; CREATING
23 CERTAIN EXCEPTIONS FOR SURFACE WATER DISCHARGES; MAKING AN
24 APPROPRIATION; DECLARING AN EMERGENCY.

25
.229483.3SA

underscored material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

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

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

4 "74-6-2. DEFINITIONS.--As used in the Water Quality Act:

5 [A. ~~"gray water" means untreated household~~
6 ~~wastewater that has not come in contact with toilet waste and~~
7 ~~includes wastewater from bathtubs, showers, washbasins, clothes~~
8 ~~washing machines and laundry tubs, but does not include~~
9 ~~wastewater from kitchen sinks or dishwashers or laundry water~~
10 ~~from the washing of material soiled with human excreta, such as~~
11 ~~diapers;~~

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

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

24 D. ~~"wastes" means sewage, industrial wastes or any~~
25 ~~other liquid, gaseous or solid substance that may pollute any~~

.229483.3SA

underscored material = new
[bracketed material] = delete

1 ~~waters of the state;~~

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

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

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

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

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

24 A. "barrier" means a technical, including any log
25 reduction credits assigned, operational or managerial measure

.229483.3SA

underscored material = new
[bracketed material] = delete

1 to control microbial or chemical constituents;

2 [J-] B. "commission" means the water quality
3 control commission;

4 [K-] C. "constituent agency" means, as the context
5 may require, any or all of the following agencies of the state:

6 (1) the department [~~of environment~~];

7 (2) the state engineer and the interstate
8 stream commission;

9 (3) the department of game and fish;

10 (4) the oil conservation commission;

11 (5) the state parks division of the energy,
12 minerals and natural resources department;

13 (6) the New Mexico department of agriculture;

14 (7) the soil and water conservation
15 commission; and

16 (8) the bureau of geology and mineral
17 resources at the New Mexico institute of mining and technology;

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

19 ~~(1) any source, the construction of which is~~
20 ~~commenced after the publication of proposed regulations~~
21 ~~prescribing a standard of performance applicable to the source;~~
22 ~~or~~

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

.229483.3SA

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

24 R. ~~"standards of performance" means any standard,~~
25 ~~effluent limitation or effluent standard adopted pursuant to~~

.229483.3SA

underscored material = new
[bracketed material] = delete

1 ~~the federal act or the Water Quality Act; and~~

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

5 D. "compensatory mitigation" means the process of
6 restoring, establishing, enhancing or preserving wetlands,
7 streams or other aquatic resources to offset unavoidable
8 adverse impacts that remain after appropriate and practicable
9 avoidance and minimization measures have been achieved;

10 E. "department" means the department of
11 environment;

12 F. "facility" means all contiguous land, and
13 structures, other appurtenances and improvements on the land,
14 including any building, installation, equipment, pipe or
15 pipeline, including any pipe into a sewer or publicly owned
16 treatment works, well, pit, pond, lagoon, impoundment, ditch,
17 landfill, storage container, motor vehicle, rolling stock or
18 aircraft, or any site or area where a water contaminant has
19 been, is currently or is proposed to be managed, treated,
20 deposited, stored, disposed of or placed or otherwise come to
21 be located;

22 G. "federal act" means the Federal Water Pollution
23 Control Act, its subsequent amendment and successor provisions;

24 H. "general permit" means a permit that applies to
25 one or more categories or subcategories of discharges, sludge

.229483.3SA

underscored material = new
[bracketed material] = delete

1 use or disposal practices or facilities within a geographic
2 area, including the state or a region, basin or watershed in
3 the state;

4 I. "general permit coverage" means authorization to
5 discharge pursuant to a general permit and any additional
6 permit conditions required by a constituent agency;

7 J. "gray water" means untreated household
8 wastewater that has not come in contact with toilet waste and
9 includes wastewater from bathtubs, showers, washbasins, clothes
10 washing machines and laundry tubs, but does not include
11 wastewater from kitchen sinks or dishwashers or laundry water
12 from the washing of material soiled with human excreta, such as
13 diapers;

14 K. "new source" means:

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

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

21 L. "pathogen" means a microorganism capable of
22 causing illness in humans;

23 M. "person" means an individual or other entity,
24 including partnerships, corporations, associations, a
25 responsible business or association agents or officers, the

.229483.3SA

underscored material = new
[bracketed material] = delete

1 state or a political subdivision of the state or an agency, a
2 department or an instrumentality of the United States and any
3 of its officers, agents or employees;

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

7 O. "responsible party" means those persons
8 described in Section 107(a) of the federal Comprehensive
9 Environmental Response, Compensation, and Liability Act of
10 1980;

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

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

18 R. "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 S. "sludge" means solid, semi-solid or liquid waste
23 generated from a municipal, commercial or industrial wastewater
24 treatment plant, a water supply treatment plant or an air
25 pollution control facility that is associated with the

.229483.3SA

underscoring material = new
[bracketed material] = delete

1 treatment of these wastes. "Sludge" does not mean treated
2 effluent from a wastewater treatment plant;

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

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

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

12 (1) to human beings; or

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

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

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

25 Y. "water" means all water, including water

.229483.3SA

underscored material = new
[bracketed material] = delete

1 situated wholly or partly within or bordering upon the state,
2 whether surface or subsurface, public or private, except
3 private waters that do not combine with other surface or
4 subsurface water;

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

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

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

19 "74-6-4. DUTIES AND POWERS OF COMMISSION.--The
20 commission:

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

.229483.3SA

underscoring material = new
[bracketed material] = delete

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

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

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

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

.229483.3SA

underscoring material = new
~~[bracketed material] = delete~~

1 governing the disposal of septage and sludge may include the
2 use of tracking and permitting systems or other reasonable
3 means necessary to assure that septage and sludge are
4 designated for disposal in, and arrive at, disposal facilities,
5 other than facilities on the premises where the septage and
6 sludge is generated, for which a permit or other authorization
7 has been issued pursuant to the federal act or the Water
8 Quality Act. [~~Regulations~~] Rules may specify a standard of
9 performance for new sources that reflects the greatest
10 reduction in the concentration of water contaminants that the
11 commission determines to be achievable through application of
12 the best available demonstrated control technology, processes,
13 operating methods or other alternatives, including where
14 practicable a standard permitting no discharge of pollutants.
15 The rules governing the prevention or abatement of water
16 pollution shall include provisions for the responsible party
17 and defenses of the responsible party that are equivalent to
18 and no less stringent than federal regulations adopted pursuant
19 to the federal Comprehensive Environmental Response,
20 Compensation, and Liability Act of 1980. In making
21 [~~regulations~~] rules, the commission shall give weight it deems
22 appropriate to all relevant facts and circumstances, including:
23 (1) the character and degree of injury to or
24 interference with health, welfare, environment and property;
25 (2) the public interest, including the social

.229483.3SA

underscored material = new
[bracketed material] = delete

1 and economic value of the sources of water contaminants;

2 (3) the technical practicability and economic
3 reasonableness of reducing or eliminating water contaminants
4 from the sources involved and previous experience with
5 equipment and methods available to control the water
6 contaminants involved;

7 (4) the successive uses, including domestic,
8 commercial, industrial, pastoral, agricultural, wildlife and
9 recreational uses;

10 (5) feasibility of a user or a subsequent user
11 treating the water before a subsequent use;

12 (6) property rights and accustomed uses; and

13 (7) federal water quality requirements;

14 F. shall assign responsibility for administering
15 its [~~regulations~~] rules to constituent agencies [~~so as~~] to
16 assure adequate coverage and prevent duplication of effort. To
17 this end, the commission may make such classification of waters
18 and sources of water contaminants as will facilitate the
19 assignment of administrative responsibilities to constituent
20 agencies. The commission shall also hear and decide disputes
21 between constituent agencies as to jurisdiction concerning
22 [~~any~~] matters within the purpose of the Water Quality Act. In
23 assigning responsibilities to constituent agencies, the
24 commission shall give priority to the primary interests of the
25 constituent agencies. The department [~~of environment~~] shall

.229483.3SA

underscored material = new
[bracketed material] = delete

1 provide technical services, including certification of permits
2 pursuant to the federal act, and shall maintain a repository of
3 the scientific data required by the Water Quality Act;

4 G. may enter into or authorize constituent agencies
5 to enter into agreements with the federal government or other
6 state governments for purposes consistent with the Water
7 Quality Act and receive and allocate to constituent agencies
8 funds made available to the commission;

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

21 I. may adopt [~~regulations~~] rules to require the
22 filing with [~~it~~] the commission or a constituent agency of
23 proposed plans and specifications for the construction and
24 operation of new sewer systems, treatment works or sewerage
25 systems or extensions, modifications of or additions to new or

.229483.3SA

underscoring material = new
~~[bracketed material]~~ = delete

1 existing sewer systems, treatment works or sewerage systems.
2 Filing with and approval by the federal housing administration
3 of plans for an extension to an existing or construction of a
4 new sewerage system intended to serve a subdivision solely
5 residential in nature shall be deemed compliance with all
6 provisions of this subsection;

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

11 K. shall specify in [~~regulations~~] rules the
12 measures to be taken to prevent water pollution and to monitor
13 water quality. The commission may adopt [~~regulations~~] rules
14 for particular industries. The commission shall adopt
15 [~~regulations~~] rules for the dairy industry and the copper
16 industry. The commission shall consider, in addition to the
17 factors listed in Subsection E of this section, the best
18 available scientific information. The [~~regulations~~] rules may
19 include variations in requirements based on site-specific
20 factors, such as depth and distance to ground water and
21 geological and hydrological conditions. The constituent agency
22 shall establish an advisory committee composed of persons with
23 knowledge and expertise particular to the industry category and
24 other interested stakeholders to advise the constituent agency
25 on appropriate [~~regulations~~] rules to be proposed for adoption

.229483.3SA

underscored material = new
[bracketed material] = delete

1 by the commission. The [~~regulations~~] rules shall be developed
2 and adopted in accordance with a schedule approved by the
3 commission. The schedule shall incorporate an opportunity for
4 public input and stakeholder negotiations;

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

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

17 N. shall not require a permit for applying less
18 than two hundred fifty gallons per day of private residential
19 gray water originating from a residence for the resident's
20 household gardening, composting or landscape irrigation if:

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

24 (2) a gray water storage tank is covered to
25 restrict access and to eliminate habitat for mosquitos or other

.229483.3SA

1 vectors;

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

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

6 (5) gray water pressure piping is clearly
7 identified as a nonpotable water conduit;

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

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

13 (8) ponding is prohibited, application of gray
14 water is managed to minimize standing water on the surface and
15 to ensure that the hydraulic capacity of the soil is not
16 exceeded;

17 (9) gray water is not sprayed;

18 (10) gray water is not discharged to a
19 watercourse; and

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

23 0. shall coordinate application procedures and
24 funding cycles for loans and grants from the federal
25 government and from other sources, public or private, with

.229483.3SA

underscoring material = new
[bracketed material] = delete

1 the local government division of the department of finance
2 and administration pursuant to the New Mexico Community
3 Assistance Act;

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

13 Q. [~~may~~] shall adopt [~~regulations~~] rules to be
14 administered by the department [~~of environment~~] for surface
15 water discharges, including discharges of dredged or fill
16 materials. In making the rules, the commission shall give
17 weight the commission deems appropriate to relevant facts and
18 circumstances, including those identified in Subsection E of
19 this section. For discharges of dredged or fill material, the
20 rules shall prioritize avoidance and minimization of adverse
21 impacts to wetlands, streams and other aquatic resources and
22 may require compensatory mitigation for unavoidable adverse
23 impacts that remain after appropriate and practicable avoidance
24 and minimization measures have been achieved;

25 R. shall adopt rules to be administered by the

underscored material = new
[bracketed material] = delete

1 department for state-led response, investigation and
2 remediation of water pollution and contamination in soil and
3 soil vapor for the protection of human health and the
4 environment; and

5 S. shall adopt rules to be administered by the
6 department to govern the transfer and use of treated wastewater
7 for potable reuse. The rules may specify a standard of
8 performance, including log reduction for pathogen removal,
9 critical control points, barriers and the greatest reduction in
10 the concentration of water contaminants and pathogens that the
11 commission determines to be achievable through application of
12 the best available demonstrated control technology, processes,
13 operating methods or other alternatives, including, where
14 practicable, a standard permitting no risk to human health.
15 The rules governing the potable reuse of wastewater may include
16 the use of existing permitting systems or create new permitting
17 rules that include the means necessary to assure that potable
18 reuse projects are conducted in a manner that is directly
19 protective of human health."

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

22 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

23 A. By [~~regulation~~] rule, the commission may require
24 [~~persons~~] a person to obtain from a constituent agency
25 designated by the commission a permit or general permit

.229483.3SA

underscored material = new
[bracketed material] = delete

1 coverage for the discharge of [~~any~~] a water contaminant or for
2 the disposal or reuse of septage or sludge.

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

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

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

.229483.3SA

underscored material = new
[bracketed material] = delete

1 the reasons for the conditions from the constituent agency.

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

5 (1) the effluent would not meet applicable
6 state or federal effluent regulations, standards of performance
7 or limitations;

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

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

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

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

20 ~~[(4)]~~ (5) the applicant has, within the ten
21 years immediately preceding the date of submission of the
22 permit application or request for general permit coverage:

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

.229483.3SA

underscored material = new
[bracketed material] = delete

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

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

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

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

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

14 F. The commission shall by ~~[regulation]~~ rule
15 develop procedures that ensure that the public, affected
16 governmental agencies, Indian nations, tribes and pueblos and
17 any other state whose water may be affected shall receive
18 notice of each ~~[application for issuance, renewal or~~
19 ~~modification of a]~~ draft permit. Public notice shall include
20 the following, except that for a general permit, Paragraphs (1)
21 and (3) of this subsection shall not be required:

22 (1) ~~[for issuance or modification of a permit:~~
23 ~~(a)]~~ notice ~~[by mail]~~ to adjacent and nearby landowners using
24 postal or electronic mail, text messages or a combination of
25 these methods;

.229483.3SA

underscoring material = new
[bracketed material] = delete

1 (2) notice to potentially affected local,
2 state and federal [~~governments~~] government agencies, land grant
3 organizations, ditch associations and Indian nations, tribes
4 [~~or~~] and pueblos using postal or electronic mail;

5 ~~[(b)]~~ (3) posting at a place conspicuous to
6 the public and near the discharge or proposed discharge site;
7 [~~and (c) a display advertisement in English and Spanish]~~

8 (4) notice to the general public and others
9 whom the commission deems appropriate using one or more
10 reasonable and appropriate methods, such as electronic mail to
11 persons who have requested notification, social media posts,
12 radio announcements or advertisements in a newspaper of general
13 circulation in the location of the discharge or proposed
14 discharge; [~~provided, however, that the advertisement shall not~~
15 be displayed in the classified or legal advertisement sections]
16 and

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

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

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

.229483.3SA

underscoring material = new
[bracketed material] = delete

1 (5) consideration of the languages spoken by
2 and the communication methods accessible to the intended
3 recipients of the public notice.

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

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

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

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

.229483.3SA

underscored material = new
[bracketed material] = delete

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

3 (2) sample effluents and receiving waters for
4 any known or suspected water contaminants in accordance with
5 methods and at locations and intervals as may be prescribed by
6 the commission;

7 (3) establish and maintain records of the
8 nature and amounts of effluents and the performance of effluent
9 control devices;

10 (4) provide [~~any~~] other information relating
11 to the discharge or direct or indirect release of water
12 contaminants; and

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

18 K. The commission shall provide by [~~regulation~~]
19 rule a schedule of fees for permits [~~not exceeding the~~
20 ~~estimated cost of investigation and issuance, modification and~~
21 ~~renewal of permits] and approvals of general permit coverage
22 sufficient to pay the cost of developing and implementing the
23 permitting rules authorized pursuant to Section 74-6-4 NMSA
24 1978, including the review of applications, issuance and
25 enforcement of permits and rules, compliance assistance,~~

.229483.3SA

underscored material = new
[bracketed material] = delete

1 monitoring and inspection of facilities and discharges, data
2 stewardship, records management and administrative and legal
3 costs. Fees collected pursuant to this section shall be
4 deposited in the water quality management fund.

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

11 M. A permit or general permit coverage may be
12 terminated or modified by the constituent agency that issued
13 the permit or approved the general permit coverage prior to its
14 date of expiration for any of the following causes:

15 (1) violation of [~~any~~] a condition of the
16 permit;

17 (2) obtaining the permit or general permit
18 coverage by misrepresentation or failure to disclose fully all
19 relevant facts;

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

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

25 (5) change in [~~any~~] a condition that requires

underscoring material = new
[bracketed material] = delete

1 either a temporary or permanent reduction or elimination of the
2 permitted discharge.

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

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

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

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

24 (3) be provided to all other persons
25 submitting evidence, data, views or arguments in the proceeding

.229483.3SA

underscoring material = new
~~[bracketed material]~~ = delete

1 before the constituent agency.

2 P. If a timely petition for review is made, the
3 commission shall consider the petition within ninety days after
4 receipt of the petition. The commission shall notify the
5 petitioner and the applicant or permittee, if other than the
6 petitioner, by certified mail of the date, time and place of
7 the review. If the petitioner is not the applicant or
8 permittee, the applicant or permittee shall be a party to the
9 proceeding. The commission shall ensure that the public
10 receives notice of the date, time and place of the review.

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

.229483.3SA

underscored material = new
[bracketed material] = delete

1 and keep a record of the review.

2 R. 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 constituent
7 agency. Based on the additional evidence, the constituent
8 agency may revise the decision and shall promptly file with the
9 commission the additional evidence received and action taken.
10 The commission shall consider the additional evidence within
11 ninety days after receipt of the additional evidence and shall
12 notify the petitioner and the applicant or permittee, if other
13 than the petitioner, of the date, time and place of the review.

14 S. 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 T. Exemptions for surface water permits shall
18 include:

19 (1) normal farming and ranching activities as
20 determined by the commission or constituent agency;

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

24 (3) construction or maintenance of farm roads
25 in accordance with best management practices."

.229483.3SA

underscoring material = new
[bracketed material] = delete

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

3 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There
4 is created as a nonreverting fund in the state treasury the
5 "water quality management fund" to be administered by the
6 department [~~of environment~~]. Unless otherwise required by law,
7 all fees and penalties collected pursuant to [~~the regulations~~
8 ~~adopted by the commission under Subsection H of~~] Section 74-6-5
9 NMSA 1978 and for the operation and maintenance of a permitted
10 facility pursuant to Subsection H of Section 74-6-5 NMSA 1978
11 shall be deposited in the fund. Money in the fund is
12 appropriated to the department [~~of environment~~] for the purpose
13 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 74-6-10 NMSA 1978 (being Laws 1967,
19 Chapter 190, Section 9, as amended) is amended to read:

20 "74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--
21 PENALTIES--ASSURANCE OF DISCONTINUANCE.--

22 A. Whenever, on the basis of any information, a
23 constituent agency determines that a person violated or is
24 violating a requirement, regulation or water quality standard
25 adopted pursuant to the Water Quality Act or a condition of a

.229483.3SA

underscoring material = new
~~[bracketed material] = delete~~

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

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

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

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

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

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

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

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

.229483.3SA

underscoring material = new
[bracketed material] = delete

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

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

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

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

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

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

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

25 (2) forward to the commission a report that

underscoring material = new
~~[bracketed material]~~ = delete

1 includes recommendations if recommendations are requested by
2 the commission.

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

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

9 (1) adopt rules for discovery procedures; and

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

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

20 L. As an additional means of enforcing the Water
21 Quality Act or any regulation or standard of the commission,
22 the commission may accept an assurance of discontinuance of any
23 act or practice deemed in violation of the Water Quality Act,
24 or any regulation or standard adopted pursuant to that act,
25 from any person engaging in, or who has engaged in, such act or

.229483.3SA

underscored material = new
[bracketed material] = delete

1 practice, signed and acknowledged by the [~~chairman~~] chair of
2 the commission and the party affected. Any such assurance
3 shall specify a time limit during which the discontinuance is
4 to be accomplished."

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

7 "74-6-12. LIMITATIONS.--

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

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

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

24 D. The Water Quality Act does not grant to the
25 commission any jurisdiction or authority affecting the relation

.229483.3SA

underscoring material = new
[bracketed material] = delete

1 between employers and employees with respect to or arising out
2 of ~~[any]~~ a condition ~~[of water]~~ or quality of water.

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

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

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

22 H. When changes in dissolved oxygen, temperature,
23 dissolved solids, sediment or turbidity in a water of the state
24 is attributable to natural causes or to the reasonable
25 operation of irrigation and flood control facilities that are

.229483.3SA

underscoring material = new
[bracketed material] = delete

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

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

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

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

22 B. The department shall administer the fund. Money
23 in the fund is appropriated to the department for state-led
24 response, investigation and remediation of water pollution and
25 contamination in soil and soil vapor.

.229483.3SA

