

1 SENATE BILL 21

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

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE ENVIRONMENT; ENACTING THE POLLUTANT DISCHARGE
12 ELIMINATION SYSTEM ACT; REQUIRING PERMITS FOR DISCHARGES INTO
13 WATERS OF THE UNITED STATES; REQUIRING THE WATER QUALITY
14 CONTROL COMMISSION TO ADOPT RULES TO IMPLEMENT THE DISCHARGE
15 PROGRAM; PROVIDING POWERS AND DUTIES OF THE DEPARTMENT OF
16 ENVIRONMENT; PROVIDING FOR ENFORCEMENT OF THE PROGRAM;
17 PROVIDING FOR APPEALS TO THE WATER QUALITY CONTROL COMMISSION
18 AND THE COURT OF APPEALS; CREATING A PRIVATE RIGHT OF ACTION;
19 PROVIDING FOR PUBLICLY ACCESSIBLE RECORDS.
20

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

22 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
23 cited as the "Pollutant Discharge Elimination System Act".

24 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
25 Pollutant Discharge Elimination System Act:

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1 A. "business information" means any information
2 that pertains to the interests of a business, that was
3 developed or acquired by that business and, except where the
4 context otherwise requires, that is possessed by the commission
5 or department in recorded form;

6 B. "commission" means the water quality control
7 commission;

8 C. "department" means the department of
9 environment;

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

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

22 F. "knowingly" means a person acted with awareness
23 of the consequences of the person's actions, or that the
24 person's conduct could constitute a certain act, without
25 knowing the action was unlawful;

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

6 H. "negligently" means a person acted with
7 disregard of the rights or safety of others;

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

11 J. "person" means an individual, an association, a
12 partnership, a corporation, a municipality, a state or federal
13 agency or an agent or employee thereof;

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

22 L. "pollutant" means:

23 (1) dredged spoil, solid waste, incinerator
24 residue, filter backwash, sewage, garbage, sewage sludge,
25 munitions, chemical wastes, biological materials, radioactive

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1 materials (except those regulated under the federal Atomic
2 Energy Act of 1954, as amended), heat, wrecked or discarded
3 equipment, rock, sand, cellar dirt and industrial, municipal,
4 and agricultural waste discharged into water; and

5 (2) drilling fluids, produced waters and other
6 non-domestic wastes associated with the exploration,
7 development or production, transportation, storage, treatment
8 or refinement of crude oil, natural gas, carbon dioxide gas or
9 geothermal energy discharged into water; but

10 (3) "pollutant" does not include:

11 (a) sewage from vessels;

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

15 (c) water derived in association with
16 oil or gas production and disposed of in a well, if the well is
17 used either to facilitate production or for disposal purposes,
18 and if such injection or disposal will not result in the
19 degradation of ground or surface water resources;

20 M. "program" means the program authorized by the
21 Pollutant Discharge Elimination System Act and approved by the
22 United States environmental protection agency;

23 N. "regional administrator" means the regional
24 administrator of region six of the United States environmental
25 protection agency;

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1 O. "waters of the United States" means those waters
2 regulated under the program and defined in federal regulations;
3 and

4 P. "willfully" means a person acted voluntarily,
5 intentionally, deliberately or purposefully.

6 SECTION 3. [NEW MATERIAL] PERMIT REQUIRED.--

7 A. A person shall not discharge a pollutant from a
8 point source to waters of the United States without a permit
9 issued by the department pursuant to the Pollutant Discharge
10 Elimination System Act.

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

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

17 SECTION 4. [NEW MATERIAL] COMMISSION--DUTIES.--The
18 commission shall:

19 A. adopt, promulgate and publish rules to implement
20 and administer the program, including the standards,
21 requirements, exclusions, exemptions, variances and processes
22 to issue, renew, modify, deny and terminate permits, including
23 rules that are necessary and appropriate to obtain and sustain
24 authorization from the regional administrator. In adopting the
25 rules, the commission may incorporate by reference, including

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1 prospectively, those sections or parts of federal regulations
2 that the commission deems necessary and appropriate;

3 B. adopt a schedule of fees to pay the cost of
4 implementing the program, including the preparation and
5 adoption of rules, the review of applications, issuance and
6 enforcement of permits and rules, compliance assistance,
7 monitoring and inspection of facilities and discharges, data
8 stewardship, records management, administrative and legal costs
9 and other costs the commission deems appropriate. Fees
10 collected pursuant to this section shall be deposited in the
11 water quality management fund; and

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

15 SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES AND
16 POWERS.--

17 A. For the discharge of a pollutant to waters of
18 the United States, notwithstanding the provisions of Section
19 70-2-12 NMSA 1978, the department shall administer and enforce
20 rules adopted by the commission pursuant to the Pollutant
21 Discharge Elimination System Act.

22 B. The department may implement the program,
23 including the authority to:

24 (1) propose rules for adoption by the
25 commission;

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- 1 (2) conduct investigations;
- 2 (3) require monitoring, sampling and
- 3 reporting;
- 4 (4) require the keeping and production of
- 5 records, documents and other information;
- 6 (5) review applications;
- 7 (6) require, issue, renew, modify, deny or
- 8 terminate permits;
- 9 (7) enter into or through any site or premises
- 10 subject to rules adopted for the program or in which records
- 11 relevant to program operation are kept or may be located, at a
- 12 reasonable time and upon the presentation of proper
- 13 credentials, in order to investigate whether a discharge may be
- 14 present, inspect, monitor, copy records, sample, photograph,
- 15 collect other information or otherwise investigate compliance
- 16 with the program, including compliance with permit conditions
- 17 and other program requirements. Entry into a private residence
- 18 shall be allowed only by consent of the owner of the residence
- 19 or order of the district court for the county in which venue is
- 20 proper;
- 21 (8) issue administrative compliance orders and
- 22 file civil and criminal actions in the district court to
- 23 enforce the Pollutant Discharge Elimination System Act, permits
- 24 and rules, including pretreatment standards and local limits
- 25 adopted by publicly owned treatment works;

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1 (9) enter into agreements with the regional
2 administrator for the implementation of the program;

3 (10) enter into agreements with other
4 governmental entities; and

5 (11) receive and expend funds appropriated,
6 authorized, granted, donated or allocated to the department for
7 purposes consistent with the Pollutant Discharge Elimination
8 System Act.

9 SECTION 6. [NEW MATERIAL] ADMINISTRATIVE AND CIVIL
10 ENFORCEMENT.--

11 A. Whenever the department determines that a person
12 violated or is violating or that a violation may occur of any
13 requirement of the Pollutant Discharge Elimination System Act,
14 program, permit or rule, the department may:

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

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

23 (3) commence a civil action in district court
24 for appropriate relief, including a temporary restraining order
25 or injunctive relief for a threatened or continuing violation

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1 of a program requirement and a civil penalty.

2 B. An administrative compliance order shall state
3 with reasonable specificity the nature of the violation. Civil
4 penalties shall be recoverable for the violation of a provision
5 of the Pollutant Discharge Elimination System Act or the
6 program; a program permit condition; a program filing
7 requirement; a duty to allow or carry out inspection, entry or
8 monitoring activities; or a rule or an order issued by the
9 department. A civil penalty assessed shall not be less than
10 five thousand dollars (\$5,000) per day of noncompliance for
11 each violation.

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

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

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1 request to the commission for a public hearing.

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

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

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

15 H. Civil penalties shall be deposited in the
16 current school fund.

17 SECTION 7. [NEW MATERIAL] CRIMINAL ENFORCEMENT.--

18 A. A person shall not:

19 (1) discharge a pollutant to waters of the
20 United States without a permit for the discharge issued under
21 the program;

22 (2) violate an applicable standard,
23 limitation, permit condition or other requirement of a permit
24 issued pursuant to the Pollutant Discharge Elimination System
25 Act or a rule adopted pursuant to that act;

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

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

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

15 (6) violate a filing requirement under the
16 Pollutant Discharge Elimination System Act or a rule or permit
17 adopted or issued pursuant to that act.

18 B. A person who willfully or negligently either
19 violates, causes or allows another person to violate Paragraph
20 (1) of Subsection A of this section is guilty of a fourth
21 degree felony and shall be sentenced in accordance with the
22 Criminal Sentencing Act.

23 C. A person who is convicted of a second or
24 subsequent violation of Paragraph (1) of Subsection A of this
25 section or who knowingly or negligently either violates, causes

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1 or allows another person to violate Paragraph (1) of Subsection
2 A of this section is guilty of a third degree felony and shall
3 be sentenced in accordance with the Criminal Sentencing Act.

4 D. A person who knowingly or negligently violates
5 Paragraph (1) of Subsection A of this section and knows at the
6 time of the violation that the action is creating a substantial
7 danger of death or serious bodily injury to another person is
8 guilty of a second degree felony and shall be sentenced in
9 accordance with the Criminal Sentencing Act.

10 E. In addition to the sentence specified in Section
11 31-18-15 NMSA 1978, a person guilty of a felony under this
12 section may be assessed a penalty not less than ten thousand
13 dollars (\$10,000) per day for each violation of a requirement
14 of the Pollutant Discharge Elimination System Act or a rule or
15 permit adopted or issued pursuant to that act.

16 F. A single operational upset or event that leads
17 to simultaneous violations of more than one pollutant parameter
18 shall be treated as a single violation.

19 SECTION 8. [NEW MATERIAL] APPEALS TO THE COMMISSION.--

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

- 23 (1) be made in writing to the commission
24 within thirty days from the date notice is given of the
25 department's action;

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

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

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

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

13 D. If a timely petition for review is made, the
14 commission shall consider the petition within ninety days after
15 receipt of the petition at a commission meeting open to the
16 public. The commission shall notify the petitioner and the
17 applicant or permittee, if other than the petitioner, by
18 certified mail of the date, time and location of the public
19 commission meeting at which the petition for review will be
20 considered. If the petitioner is not the applicant or
21 permittee, the applicant or permittee shall be a party to the
22 proceeding. The commission shall ensure that the public
23 receives notice of the date, time and place of the review.

24 E. The commission shall review the record compiled
25 before the department, including the transcript of any public

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1 hearing held on the permitting action or compliance order, and
2 shall allow any party to submit arguments.

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

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

12 H. Prior to the date set for review, if a party
13 shows to the satisfaction of the commission that there was no
14 reasonable opportunity to submit comment or evidence on an
15 issue being challenged, the commission shall order that
16 additional comment or evidence be taken by the department.
17 Based on the additional evidence, the department may revise the
18 decision and shall promptly file with the commission the
19 additional evidence received and action taken. The commission
20 shall consider the additional evidence within ninety days after
21 receipt of the additional evidence and shall notify the
22 petitioner and the applicant or permittee, if other than the
23 petitioner, of the date, time and place of the review.

24 I. The commission shall notify the petitioner and
25 all other participants in the review proceeding of the action

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1 taken by the commission and the reasons for that action.

2 SECTION 9. [NEW MATERIAL] JUDICIAL REVIEW.--

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

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

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

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

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

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1 (1) arbitrary, capricious or an abuse of
2 discretion;

3 (2) not supported by substantial evidence in
4 the record; or

5 (3) otherwise not in accordance with law.

6 SECTION 10. [NEW MATERIAL] PRIVATE RIGHT OF ACTION--
7 CITIZEN SUITS--RIGHT TO INTERVENE.--

8 A. Except as provided in Subsection C of this
9 section, a person may commence a civil action in state district
10 court on the person's own behalf:

11 (1) against any other person that is regulated
12 by the Pollutant Discharge Elimination System Act, or by a
13 rule, permit or order adopted or issued pursuant to that act,
14 for the alleged violation; or

15 (2) against the department for the alleged
16 failure to perform a nondiscretionary act or duty.

17 B. State district courts shall have jurisdiction to
18 enforce compliance with the Pollutant Discharge Elimination
19 System Act or a rule, permit or order adopted or issued
20 pursuant to that act, to issue a restraining order or
21 injunction, to compel the department to perform the
22 nondiscretionary act or duty and to assess an appropriate civil
23 penalty in accordance with Section 74-6-7 NMSA 1978.

24 C. No action may be commenced under this section:

25 (1) until sixty days after the plaintiff has

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1 given written notice of the alleged violation to the
2 department, the attorney general and the alleged violator;

3 (2) if the department has issued and is
4 processing an administrative notice of violation or a
5 compliance order or has commenced and is prosecuting a civil or
6 criminal action to require compliance with the act, rule,
7 permit, order, standard or discharge limitation; or

8 (3) if the attorney general has commenced and
9 is prosecuting a civil or criminal action to require compliance
10 with the act, rule, permit, order, standard or discharge
11 limitation.

12 D. A person who has standing pursuant to Subsection
13 A of this section and who has provided notice pursuant to
14 Subsection B of this section prior to the initiation of the
15 civil or criminal action may intervene as a matter of right.

16 E. Notwithstanding Subsection C of this section,
17 alleged violations that constitute an immediate threat to the
18 health or safety of the plaintiff or would immediately and
19 irreversibly impair a legal interest of the plaintiff may be
20 brought immediately after the plaintiff gives written notice of
21 the alleged violation to the department, the attorney general
22 and the alleged violator.

23 F. The action shall be brought in the judicial
24 district in which the alleged violator is located. The
25 department and any citizen having an interest that is or may be

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1 adversely affected, if not a party, have the right of
2 intervention at any time in any proceeding brought under this
3 section. The plaintiff shall serve a copy of the complaint on
4 the attorney general and the department. A consent decree or
5 stipulated judgment may not be entered in an action brought
6 under this section unless or until:

7 (1) the department is a party to the consent
8 decree; or

9 (2) the plaintiff has provided a complete and
10 unredacted copy of the proposed consent decree, settlement
11 agreement or stipulated judgment to the department and the
12 attorney general by certified mail and the department and the
13 attorney general have had at least forty-five days to submit
14 comments on the proposed decree or judgment to the court for
15 consideration prior to the entry of the decree or judgment.

16 G. The court may award litigation costs, including
17 reasonable attorney and expert witness fees, to:

18 (1) a prevailing plaintiff;

19 (2) a substantially prevailing plaintiff; or

20 (3) a substantially prevailing defendant if
21 the plaintiff's claim was frivolous, unreasonable or
22 groundless.

23 H. Costs collected by the department pursuant to
24 this section shall be deposited in the state treasury to be
25 credited to the water quality management fund. Penalties

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1 collected by the department pursuant to this section shall be
2 deposited in the current school fund.

3 I. The limitations period in Section 37-1-8 NMSA
4 1978 for injuries to the person shall apply to all actions
5 brought under this section.

6 J. Nothing in this section shall restrict a right
7 that a person or class of persons may have pursuant to a
8 statute or common law to seek enforcement of the Pollutant
9 Discharge Elimination Act and rules, permits or orders adopted
10 or issued pursuant to that act or to seek any other relief.

11 SECTION 11. [NEW MATERIAL] LIMITATIONS.--The Pollutant
12 Discharge Elimination System Act does not authorize the
13 commission or department to require a permit that:

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

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

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

23 D. applies to a discharge composed entirely of
24 return flows from irrigated agriculture;

25 E. applies to a discharge of storm water runoff

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

16 F. applies to a discharge of runoff resulting from
17 the following silviculture activities conducted in accordance
18 with standard industry practice: nursery operations, site
19 preparation, reforestation and subsequent cultural treatment,
20 thinning, prescribed burning, pest and fire control, harvesting
21 operations, surface drainage or road construction and
22 maintenance.

23 SECTION 12. [NEW MATERIAL] AVAILABILITY OF RECORDS.--

24 A. Records, including the names and addresses of
25 permit applicants or permittees, applications, permits,

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1 inspections and effluent data, including data relating to
2 discharges and ambient water quality, obtained by the
3 commission or department pursuant to the Pollutant Discharge
4 Elimination System Act shall be available to the public.

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

12 C. Except as provided in Subsection D of this
13 section, for other records, the commission or department shall
14 not disclose the record if a person submitting the record
15 asserts at the time of submission that the record or part of
16 the record, if made public, would divulge confidential business
17 information as defined in the Pollutant Discharge Elimination
18 System Act or trade secrets as defined in the Uniform Trade
19 Secrets Act.

20 D. Subsection C of this section does not apply to a
21 record if the record is disclosed:

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

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

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(3) in a proceeding pursuant to the Pollutant Discharge Elimination System Act or the federal act.

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

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

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

(2) submit the designated records separately from other records submitted under the Pollutant Discharge Elimination System Act.