

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 773

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO THE ENVIRONMENT; CHANGING THE REVIEW OF CERTAIN APPEALS BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD FROM A HEARING DE NOVO TO A HEARING BASED UPON THE RECORD; CHANGING THE REVIEW OF CERTAIN APPEALS BEFORE THE WATER QUALITY CONTROL COMMISSION FROM A HEARING DE NOVO TO A HEARING BASED UPON THE RECORD.

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

Section 1. Section 74-2-2 NMSA 1978 (being Laws 1967, Chapter 277, Section 2, as amended) is amended to read:

"74-2-2. DEFINITIONS. --As used in the Air Quality Control Act:

A. "air contaminant" means ~~[any]~~ a substance, including ~~[but not limited to]~~ any particulate matter, fly

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms,
2 radioactive material, any combination thereof or any decay or
3 reaction product thereof;

4 B. "air pollution" means the emission, except
5 an emission that occurs in nature, into the outdoor atmosphere
6 of [~~one or more~~] an air [~~contaminants~~] contaminant in
7 quantities and of a duration that may with reasonable
8 probability injure human health or animal or plant life or
9 [~~as~~] may unreasonably interfere with the public welfare,
10 visibility or the reasonable use of property;

11 C. "department" means the department of
12 environment;

13 D. "director" means the administrative head of a
14 local agency;

15 E. "emission limitation" [~~and~~] or "emission
16 standard" [~~mean~~] means a requirement established by the
17 environmental improvement board or the local board, the
18 department, the local authority or the local agency or
19 pursuant to the federal act that limits the quantity, rate or
20 concentration, or combination thereof, of emissions of air
21 contaminants on a continuous basis, including [~~any~~]
22 requirements relating to the operation or maintenance of a
23 source to assure continuous reduction;

24 F. "federal act" means the federal Clean Air Act,
25 its subsequent amendments and successor provisions;

. 134566. 4

underscored material = new
[bracketed material] = delete

1 G. "federal standard of performance" means any
2 standard of performance, emission limitation or emission
3 standard adopted pursuant to 42 U.S.C. Section 7411 or 7412;

4 H. "hazardous air pollutant" means an air
5 contaminant that has been classified as a hazardous air
6 pollutant pursuant to the federal act;

7 I. "local agency" means the administrative agency
8 established by a local authority pursuant to Paragraph (2) of
9 Subsection A of Section 74-2-4 NMSA 1978;

10 J. "local authority" means any of the following
11 political subdivisions of the state that have, by following
12 the procedure set forth in Subsection A of Section 74-2-4 NMSA
13 1978, assumed jurisdiction for local administration and
14 enforcement of the Air Quality Control Act:

15 (1) a county that was a class A county as of
16 January 1, 1980; or

17 (2) a municipality with a population greater
18 than one hundred thousand located within a county that was a
19 class A county as of January 1, 1980;

20 K. "local board" means a municipal, county or
21 joint air quality control board created by [~~any~~] a local
22 authority;

23 L. "mandatory class I area" means any of the
24 following areas in this state that were in existence on August
25 7, 1977:

. 134566. 4

underscored material = new
[bracketed material] = delete

1 (1) national wilderness areas that exceed
2 five thousand acres in size; and

3 (2) national parks that exceed six thousand
4 acres in size;

5 M "modification" means [~~any~~] a physical change
6 in, or change in the method of operation of, a source that
7 results in an increase in the potential emission rate of [~~any~~]
8 a regulated air contaminant emitted by the source or that
9 results in the emission of [~~any~~] a regulated air contaminant
10 not previously emitted, but does not include:

11 (1) a change in ownership of the source;

12 (2) routine maintenance, repair or
13 replacement;

14 (3) installation of air pollution control
15 equipment, and all related process equipment and materials
16 necessary for its operation, undertaken for the purpose of
17 complying with [~~regulations~~] rules adopted by the
18 environmental improvement board or the local board or pursuant
19 to the federal act; or

20 (4) unless previously limited by enforceable
21 permit conditions:

22 (a) an increase in the production rate,
23 if such increase does not exceed the operating design capacity
24 of the source;

25 (b) an increase in the hours of

underscored material = new
[bracketed material] = delete

1 operation; or

2 (c) use of an alternative fuel or raw
3 material if, prior to January 6, 1975, the source was capable
4 of accommodating such fuel or raw material or if use of an
5 alternate fuel or raw material is caused by [~~any~~] an natural
6 gas curtailment or emergency allocation or [~~any other~~]
7 another lack of supply of natural gas;

8 N. "nonattainment area" means for [~~any~~] an air
9 contaminant an area that is designated "nonattainment" with
10 respect to that contaminant within the meaning of Section
11 107(d) of the federal act;

12 O. "person" includes an individual, partnership,
13 corporation, association, the state or political subdivision
14 of the state and [~~any~~] an agency, department or
15 instrumentality of the United States and any of [~~their~~] its
16 officers, agents or employees;

17 P. "permitting action" means any action taken by
18 the department, local agency or constituent agency on a
19 permit;

20 [~~P.~~] Q. "potential emission rate" means the
21 emission rate of a source at its maximum capacity in the
22 absence of air pollution control equipment that is not vital
23 to production of the normal product of the source or to its
24 normal operation;

25 [~~Q.~~] R. "regulated air contaminant" means [~~any~~]

underscored material = new
[bracketed material] = delete

1 an air contaminant, the emission or ambient concentration of
2 which is regulated pursuant to the Air Quality Control Act or
3 the federal act;

4 [R-] S. "secretary" means the secretary of
5 environment;

6 [S-] T. "significant deterioration" means [~~any~~]
7 an increase in the ambient concentrations of [~~any~~] an air
8 contaminant above the levels allowed by the federal act or
9 federal regulations for that air contaminant in the area
10 within which the increase occurs;

11 [T-] U. "source" means [~~any~~] a structure,
12 building, equipment, facility, installation or operation that
13 emits or may emit [~~any~~] an air contaminant;

14 [U-] V. "standard of performance" means a
15 requirement of continuous emission reduction, including [~~any~~]
16 a requirement relating to operation or maintenance of a source
17 to assure continuous emission reduction;

18 [V-] W. "state implementation plan" means [~~any~~]
19 a plan submitted by New Mexico to the federal environmental
20 protection agency pursuant to 42 U.S.C. Section 7410; and

21 [W-] X. "toxic air pollutant" means [~~any~~] an air
22 contaminant, except a hazardous air pollutant, classified by
23 the environmental improvement board or the local board as a
24 toxic air pollutant. "

25 Section 2. Section 74-2-7 NMSA 1978 (being Laws 1972,

. 134566. 4

underscored material = new
[bracketed material] = delete

1 Chapter 51, Section 4, as amended) is amended to read:

2 "74-2-7. PERMITS--PERMIT APPEALS TO THE ENVIRONMENTAL
3 IMPROVEMENT BOARD OR THE LOCAL BOARD--PERMIT FEES.--

4 A. By regulation, the environmental improvement
5 board or the local board shall require:

6 (1) [~~any~~] a person intending to construct or
7 modify [~~any~~] a source, except as otherwise specifically
8 provided by regulation, to obtain a construction permit from
9 the department or the local agency prior to such construction
10 or modification; and

11 (2) [~~any~~] a person intending to operate [~~any~~]
12 a source for which an operating permit is required by the 1990
13 amendments to the federal act, except as otherwise
14 specifically provided by regulation, to obtain an operating
15 permit from the department or the local agency.

16 B. Regulations adopted by the environmental
17 improvement board or the local board shall include at least
18 the following provisions:

19 (1) requirements for the submission of
20 relevant information, including [~~but not limited to~~]
21 information the department or the local agency deems necessary
22 to determine that rules, regulations [~~and~~] or standards under
23 the Air Quality Control Act or the federal act will not be
24 violated;

25 (2) specification of the deadlines for

. 134566. 4

underscored material = new
[bracketed material] = delete

1 processing permit applications; provided the deadline for a
2 final decision by the department or the local agency on a
3 construction permit application may not exceed:

4 (a) ninety days after the application
5 is determined to be administratively complete, if the
6 application is not subject to requirements for prevention of
7 significant deterioration, unless the secretary or the
8 director grants an extension not to exceed ninety days for
9 good cause, including the need to [~~have~~] hold public hearings;
10 or

11 (b) one hundred eighty days after the
12 application is determined to be administratively complete, if
13 the application is subject to requirements for prevention of
14 significant deterioration, unless the secretary or the
15 director grants an extension not to exceed ninety days for
16 good cause, including the need to [~~have~~] hold public hearings;

17 (3) that if the department or local agency
18 fails to take final action on a construction permit
19 application within the deadlines specified in Paragraph (2) of
20 this subsection, the department or local agency shall notify
21 the applicant in writing that an extension of time is required
22 to process the application and specify in detail the grounds
23 for the extension;

24 (4) a description of elements required before
25 the department or local agency shall deem an application

. 134566. 4

underscored material = new
[bracketed material] = delete

1 administratively complete;

2 (5) specification of the public notice,
3 comment period and public hearing, if any, required prior to
4 the issuance of a permit; provided the permit regulations
5 adopted:

6 (a) by the environmental improvement
7 board shall include provisions governing notice to nearby
8 states; and

9 (b) by [~~any~~] a local board shall
10 include provisions requiring that notice be given to the
11 department of [~~all~~] a permit [~~applications~~] application by
12 [~~any~~] a source that emits, or has a potential emission rate
13 of, one hundred tons per year or more of [~~any~~] a regulated air
14 contaminant, including [~~any~~] a source of fugitive emissions of
15 each regulated air contaminant, at least sixty days prior to
16 the date on which construction or major modification is to
17 commence;

18 (6) a schedule of construction permit fees
19 sufficient to cover the reasonable costs of:

20 (a) reviewing and acting upon [~~any~~] an
21 application for such permit; and

22 (b) implementing and enforcing the
23 terms and conditions of the permit, excluding [~~any~~] court
24 costs or other costs associated with an enforcement action;

25 (7) a schedule of emission fees consistent

underscored material = new
[bracketed material] = delete

1 with the provisions of Section 502(b)(3) of the 1990
2 amendments to the federal act;

3 (8) a method for accelerated permit
4 processing that may be requested at the sole discretion of the
5 applicant at the time the applicant submits a construction
6 permit application and that:

7 (a) allows the department or local
8 agency to contract with qualified outside firms to assist the
9 department or local agency in its accelerated review of the
10 construction permit application; provided that the department
11 or local agency can contract with a qualified firm that does
12 not have a conflict of interest; and

13 (b) establishes a process for the
14 department or local agency to account for the expenditure of
15 the accelerated permit processing fees;

16 (9) [~~allows for~~] establishment of additional
17 permit application fees, sufficient to cover the reasonable
18 costs of an accelerated permit application review process.
19 Before the applicant is notified that the permit application
20 [~~has been~~] is determined to be complete, the department or
21 local [~~board~~] agency shall give the applicant a reasonable
22 estimate of the costs of an accelerated permit application
23 review process;

24 (10) specification of the maximum length of
25 time for which a permit shall be valid; provided that for an

underscored material = new
[bracketed material] = delete

1 operating permit such period may not exceed five years; and

2 (11) for an operating permit only:

3 (a) provisions consistent with Sections
4 502(b) and 505(b) of the federal act providing: 1) notice to
5 and review and comment by the United States environmental
6 protection agency; and 2) that if the department or local
7 agency receives notice of objection from the United States
8 environmental protection agency before the operating permit is
9 issued, the department or the local agency shall not issue the
10 permit unless it is revised and issued [~~under~~] pursuant to
11 Section 505(c) of the federal act;

12 (b) provisions governing renewal of the
13 operating permit; and

14 (c) specification of the conditions
15 under which the operating permit may be terminated, modified
16 or revoked and reissued prior to the expiration of the term of
17 the operating permit.

18 C. The department or the local agency may deny
19 [~~any~~] an application for:

20 (1) a construction permit if it appears that
21 the construction or modification will not meet an applicable
22 [~~requirements~~] requirement of the Air Quality Control Act, the
23 federal act or [~~any~~] a rule or regulation adopted pursuant to
24 either; or

25 (2) an operating permit if:

. 134566. 4

underscored material = new
[bracketed material] = delete

1 (a) the source for which the permit is
2 sought will emit a hazardous air pollutant or [~~any~~] an air
3 contaminant in excess of a federal standard of performance or
4 a regulation of the environmental improvement board or the
5 local board;

6 (b) it appears that the source for
7 which the permit is sought will cause or contribute to air
8 contaminant levels in excess of [~~any~~] a national or state
9 standard or, within the boundaries of a local authority,
10 applicable local ambient air quality standards; or

11 (c) [~~any other~~] another provision of
12 the Air Quality Control Act or the federal act will be
13 violated.

14 D. The department or the local agency may specify
15 conditions to [~~any~~] a permit granted under this section,
16 including:

17 (1) for a construction permit, a requirement
18 that such source install and operate control technology,
19 determined on a case-by-case basis, sufficient to meet the
20 requirements of the Air Quality Control Act, the federal act
21 and rules or regulations promulgated pursuant to either; and

22 (2) for an operating permit:

23 (a) imposition of individual emission
24 limits, determined on a case-by-case basis, but only as
25 restrictive as necessary to meet the requirements of the Air

underscored material = new
[bracketed material] = delete

1 Quality Control Act and the federal act or the emission rate
2 specified in the operating permit application, whichever is
3 more stringent;

4 (b) compliance with applicable federal
5 standards of performance;

6 (c) imposition of reasonable
7 restrictions and limitations not relating to emission limits
8 or emission rates; or

9 (d) any combination of the conditions
10 listed in this paragraph.

11 E. This section does not authorize the department
12 or the local agency to require the use of machinery, devices
13 or equipment from a particular manufacturer if the federal
14 standards of performance, state regulations [~~and~~] or permit
15 conditions may be met by machinery, devices or equipment
16 otherwise available.

17 F. The issuance of a permit does not relieve [~~any~~]
18 a person from the responsibility of complying with the
19 provisions of the Air Quality Control Act [~~and any~~] or
20 an applicable [~~regulations~~] regulation of the environmental
21 improvement board or the local board. [~~Any conditions~~] A
22 condition placed upon a permit by the department or the local
23 agency shall be enforceable to the same extent as a
24 regulation of its board.

25 G. [~~Any~~] A person who participated in a permitting

underscored material = new
[bracketed material] = delete

1 action before the department or the local agency shall be
2 notified by the department or the local agency of the action
3 taken and the reasons for the action. Notification of the
4 applicant shall be by certified mail.

5 H. ~~[Any]~~ A person who participated in a permitting
6 action before the department or the local agency ~~[and]~~ who is
7 adversely affected by such permitting action may file a
8 petition for ~~[hearing]~~ review before the environmental
9 improvement board or the local board. The petition shall be
10 made in writing to the environmental improvement board or the
11 local board within thirty days from the date notice is given
12 of the department's or the local agency's action. Unless a
13 timely petition for ~~[hearing]~~ review is made, the decision of
14 the department or the local agency shall be final.

15 I. If a timely petition for ~~[hearing]~~ review is
16 made ~~[the environmental improvement board or]~~ to the local
17 board, the local board shall hold a hearing within sixty days
18 after receipt of the petition. The ~~[environmental improvement~~
19 ~~board or the]~~ local board shall notify the petitioner and the
20 applicant or permittee, if other than the petitioner, by
21 certified mail of the date, time and place of the hearing. If
22 the subject of the petition is a permitting action deemed by
23 the ~~[environmental improvement board or the]~~ local board to
24 substantially affect the public interest, the ~~[environmental~~
25 ~~improvement board or the]~~ local board shall ensure that the

underscored material = new
[bracketed material] = delete

1 public receives notice of the date, time and place of the
2 hearing. The public [~~in such circumstances~~] shall [~~also~~] be
3 given a reasonable opportunity to submit data, views or
4 arguments orally or in writing and to examine witnesses
5 testifying at the hearing. [~~Any~~] A person submitting data,
6 views or arguments orally or in writing shall be subject to
7 examination at the hearing. [~~J.~~] The [~~environmental~~
8 ~~improvement board or the~~] local board may designate a hearing
9 officer to take evidence in the hearing. All hearings shall
10 be recorded.

11 [~~K.~~] J. The burden of proof shall be upon the
12 petitioner. Based upon the evidence presented at the hearing,
13 the [~~environmental improvement board or the~~] local board shall
14 sustain, modify or reverse the action of the [~~department or~~
15 ~~the~~] local agency [~~respectively~~].

16 K. If a timely petition for review is made to the
17 environmental improvement board, the environmental improvement
18 board shall hold a hearing within sixty days after receipt of
19 the petition. The environmental improvement board shall
20 notify the petitioner and the applicant or permittee, if other
21 than the petitioner, by certified mail of the date, time and
22 place of the hearing. The environmental improvement board
23 shall ensure that the public receives notice of the date, time
24 and place of the hearing. A person submitting data, views or
25 arguments orally or in writing shall be subject to examination

underscored material = new
[bracketed material] = delete

1 at the hearing. A person who participates in the hearing
2 shall be given an opportunity to make a brief opening
3 statement. The environmental improvement board may designate
4 a hearing officer if evidence is to be taken at the hearing.
5 All hearings shall be recorded.

6 L. The burden of proof shall be upon the
7 petitioner. If before the department took action on the
8 permit application there was a hearing or an opportunity for a
9 hearing, the environmental improvement board shall not take
10 additional evidence and the environmental improvement board's
11 review of the decision shall be based upon the record before
12 the department only and shall not be a de novo proceeding,
13 except as provided in Subsection M of this section.

14 M. Prior to the hearing, the environmental
15 improvement board may order the department to take additional
16 evidence from the petitioner, other parties or the public if:

17 (1) before the date set for the hearing,
18 application is made to the environmental improvement board to
19 present additional evidence;

20 (2) in the application it is shown to the
21 satisfaction of the environmental improvement board that the
22 additional evidence is material; and

23 (3) in the application it is shown to the
24 satisfaction of the environmental improvement board that there
25 is a good reason why the additional evidence was not presented

underscored material = new
[bracketed material] = delete

1 at the initial proceeding.

2 N. Based on additional evidence taken pursuant to
3 Subsection M of this section, the department may modify its
4 findings or decision. If the department modifies its findings
5 or decision, the department shall file with the environmental
6 improvement board the record of the additional evidence
7 together with the modified findings or decision.

8 O. Based upon the record before it, the
9 environmental improvement board shall sustain, modify or
10 reverse the action of the department.

11 ~~[L-]~~ P. Notwithstanding ~~[any]~~ other ~~[provision]~~
12 provisions of law and subject to the provisions of Section
13 74-2-4 NMSA 1978, a final decision on a permit by the
14 department, the environmental improvement board, the local
15 agency, the local board or the court of appeals that a new
16 source will or will not meet applicable local, state and
17 federal air pollution standards, rules and regulations shall
18 be conclusive and is binding on every ~~[other]~~ state agency and
19 as an issue before ~~[any other]~~ another state agency shall be
20 deemed resolved in accordance with that final decision.

21 ~~[M-]~~ Q. Subject to the provisions of Section
22 74-2-4 NMSA 1978, if the local board has adopted a permit
23 regulation pursuant to this section, ~~[persons]~~ a person
24 constructing or modifying ~~[any]~~ a new source within the
25 boundaries of the local authority shall obtain a permit from

. 134566. 4

underscored material = new
[bracketed material] = delete

1 the local agency and not from the department.

2 [N-] R. Fees collected pursuant to this section
3 shall be deposited in:

4 (1) the state air quality permit fund created
5 by Section 74-2-15 NMSA 1978 if collected by the department;

6 or

7 (2) a fund created pursuant to Section
8 74-2-16 NMSA 1978 if collected by a local agency pursuant to a
9 permit regulation adopted by the local board pursuant to this
10 section. "

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

13 "74-6-5. PERMITS--CERTIFICATION--APPEALS TO
14 COMMISSION.--

15 A. By regulation the commission may require
16 persons to obtain from a constituent agency designated by the
17 commission a permit for the discharge of [any] a water
18 contaminant or for the disposal or re-use of septage or
19 sludge.

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

23 C. Prior to the issuance of a permit, the
24 constituent agency may require the submission of plans,
25 specifications and other relevant information [that] it deems

. 134566. 4

underscored material = new
[bracketed material] = delete

1 necessary.

2 D. The commission shall by regulation set the
3 dates upon which applications for permits shall be filed and
4 designate the time periods within which the constituent agency
5 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.

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

11 (1) the effluent would not meet applicable
12 state or federal effluent rules, regulations, standards of
13 performance or limitations;

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

16 (3) the discharge would cause or contribute
17 to water contaminant levels in excess of [~~any~~] a state or
18 federal standard. Determination of the discharge's effect on
19 ground water shall be measured at any place of withdrawal of
20 water for present or reasonably foreseeable future use.
21 Determination of the discharge's effect on surface waters
22 shall be measured at the point of discharge; or

23 (4) the applicant has, within the ten years
24 immediately preceding the date of submission of the permit
25 application:

underscored material = new
[bracketed material] = delete

1 (a) knowingly misrepresented a material
2 fact in an application for a permit;

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

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

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

10 (e) exhibited a history of willful
11 disregard for environmental laws of any state or the United
12 States; or

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

16 F. The commission shall by regulation develop
17 procedures [~~that~~] to ensure that the public, including
18 adjacent property owners or occupants, affected governmental
19 agencies [~~and any other~~] or another state whose water may be
20 affected shall receive notice of each application for issuance
21 or modification of a permit. No ruling shall be made on [any]
22 an application for a permit without opportunity for a public
23 hearing at which all interested persons shall be given a
24 reasonable chance to submit data, views or arguments orally or
25 in writing and to examine witnesses testifying at the hearing.

underscored material = new
[bracketed material] = delete

1 G. The commission may adopt regulations for the
2 operation and maintenance of the permitted facility, including
3 requirements, as may be necessary or desirable, that relate to
4 continuity of operation, personnel training and financial
5 responsibility, including financial responsibility for
6 a corrective action.

7 H. Permits shall be issued for fixed terms not to
8 exceed five years, except that for new discharges, the term of
9 the permit shall commence on the date the discharge begins,
10 but in no event shall the term of the permit exceed seven
11 years from the date the permit was issued.

12 I. By regulation, the commission may impose
13 reasonable conditions upon permits requiring permittees to:

14 (1) install, use and maintain effluent
15 monitoring devices;

16 (2) sample effluents and receiving waters for
17 [~~any~~] a known or suspected water [~~contaminants~~] contaminant in
18 accordance with methods and at locations and intervals as may
19 be prescribed by regulation of the commission;

20 (3) establish and maintain records of the
21 nature and amounts of effluents and the performance of
22 effluent control devices;

23 (4) provide [~~any~~] other information relating
24 to the discharge or direct or indirect release of water
25 contaminants; and

underscored material = new
[bracketed material] = delete

1 (5) notify a constituent agency of the
2 introduction of a new water [~~contaminants~~] contaminant from a
3 new source [~~and~~] or of a substantial change in the volume or
4 character of a water [~~contaminants~~] contaminant being
5 introduced from [~~sources~~] a source in existence at the time of
6 the issuance of the permit.

7 J. The commission shall provide by regulation a
8 schedule of fees for permits, not exceeding the estimated cost
9 of investigation, [~~and~~] issuance, modification and renewal of
10 permits. Fees collected pursuant to this section shall be
11 deposited in the water quality management fund.

12 K. The issuance of a permit does not relieve [~~any~~]
13 a person from the responsibility of complying with [~~the~~
14 ~~provisions~~] a provision of the Water Quality Act, [~~any~~]
15 applicable regulations or water quality standards of the
16 commission or [~~any~~] applicable federal laws, regulations or
17 standards.

18 L. A permit may be terminated or modified by the
19 constituent agency that issued the permit prior to its date of
20 expiration for [~~any of~~] the following causes:

- 21 (1) violation of [~~any~~] a condition of the
22 permit;
- 23 (2) obtaining the permit by misrepresentation
24 or failure to disclose fully all relevant facts;
- 25 (3) violation of [~~any provisions~~] a

underscored material = new
[bracketed material] = delete

1 provision of the Water Quality Act or [~~any~~] an applicable
2 [~~regulations~~] regulation, standard of performance or water
3 quality [~~standards~~] standard;

4 (4) violation of [~~any~~] an applicable state or
5 federal effluent [~~regulations~~] rule, regulation or
6 [~~limitations~~] limitation; or

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

10 M. If the constituent agency denies, terminates or
11 modifies a permit or grants a permit subject to condition, the
12 constituent agency shall notify the applicant or permittee by
13 certified mail of the action taken and the reasons.

14 N. A person who participated in a permitting
15 action before a constituent agency or a person affected by a
16 certification of a federal permit [~~and~~] who is adversely
17 affected by such permitting action or certification may file a
18 petition for review before the commission. The petition shall
19 be made in writing to the commission within thirty days from
20 the date notice is given of the constituent agency's action.
21 Unless a timely petition for review is made, the decision of
22 the constituent agency shall be final.

23 O. If a timely petition for review is made, the
24 commission shall hold a hearing within ninety days after
25 receipt of the petition. The commission shall notify the

underscored material = new
[bracketed material] = delete

1 petitioner and the applicant or permittee if other than the
2 petitioner by certified mail of the date, time and place of
3 the hearing. [~~If the commission deems the action that is the~~
4 ~~subject of the petition to be affected with substantial~~
5 ~~public interest, it]~~ The commission shall ensure that the
6 public receives notice of the date, time and place of the
7 hearing and, except as provided in Subsection Q of this
8 section, is given a reasonable chance to submit data, views
9 or arguments orally or in writing and to examine witnesses
10 testifying at the hearing. A person submitting data, views
11 or arguments orally or in writing shall be subject to
12 examination at the hearing. [~~In the hearing, the burden of~~
13 ~~proof shall be upon the petitioner.~~] A person who
14 participates in the hearing shall be given an opportunity to
15 make a brief opening statement. The commission may designate
16 a hearing officer [~~to take~~] if evidence is to be taken in the
17 hearing. [~~Based upon the evidence presented at the hearing,~~
18 ~~the commission shall sustain, modify or reverse the action of~~
19 ~~the constituent agency.~~]

20 P. If the petitioner requests, the hearing shall
21 be recorded at the cost of the petitioner. Unless the
22 petitioner requests that the hearing be recorded, the
23 decision of the commission shall be final.

24 Q. The burden of proof shall be upon the
25 petitioner. If there was an opportunity for a hearing before

underscored material = new
[bracketed material] = delete

1 the constituent agency, the commission shall not take
2 additional evidence and the commission's review of the
3 agency's decision shall be based upon the record before the
4 constituent agency only and shall not be a de novo
5 proceeding, except as provided in Subsection R of this
6 section.

7 R. Prior to the hearing, the commission may order
8 the constituent agency to take additional evidence from the
9 petitioner, other parties or the public if:

10 (1) before the date set for the hearing,
11 application is made to the commission to present additional
12 evidence;

13 (2) in the application it is shown to the
14 satisfaction of the commission that the additional evidence
15 is material; and

16 (3) in the application it is shown to the
17 satisfaction of the commission that there is a good reason
18 why the additional evidence was not presented at the initial
19 proceeding.

20 S. Based on additional evidence taken pursuant to
21 Subsection R of this section, the constituent agency may
22 modify its findings or decision. If the constituent agency
23 modifies its findings or decision, the agency shall file with
24 the commission the record of the additional evidence together
25 with the modified findings or decision.

. 134566. 4

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

T. Based upon the record before it, the
commission shall sustain, modify or reverse the action of the
constituent agency."