

AN ACT

RELATING TO OCCUPATIONS; CHANGING THE POWERS AND DUTIES OF THE WATER QUALITY CONTROL COMMISSION AND THE DEPARTMENT OF ENVIRONMENT PERTAINING TO REGULATION OF UTILITY OPERATORS; INCREASING FEES; PROVIDING FOR HEARINGS AND APPEALS; MAKING AN APPROPRIATION.

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

Section 1. Section 61-33-2 NMSA 1978 (being Laws 1992, Chapter 44, Section 2, as amended) is amended to read:

"61-33-2. DEFINITIONS.--As used in the Utility Operators Certification Act:

A. "certified operator" means a person who is certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

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

C. "department" means the department of environment;

D. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

E. "domestic liquid waste treatment unit" means

any system that is designed to discharge less than two thousand gallons per day and that is subject to rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

F. "operate" means performing any activity, function, process control decision or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public wastewater facility or to affect human health, public welfare or the environment;

G. "person" means any agency, department or instrumentality of the United States and any of its officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation;

H. "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit; or

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirements of the federal Clean Water Act of 1977; and

I. "public water supply system" means:

(1) a system for the provision through pipes or other constructed conveyances to the public of water for human consumption or domestic purposes if the system:

(a) has at least fifteen service connections; or

(b) regularly serves an average of at least twenty-five individuals at least sixty days of the year; and

(2) includes any water supply source and any treatment, storage and distribution facilities under control of the operator of the system."

Section 2. Section 61-33-3 NMSA 1978 (being Laws 1973, Chapter 394, Section 3, as amended) is amended to read:

"61-33-3. ADMINISTRATION--ENFORCEMENT.--

A. The administration and enforcement of the Utility Operators Certification Act is vested in the department.

B. The department shall:

(1) approve and accredit schools and training programs designed to educate and qualify persons for certification in one of the classifications of public water supply system operators or public wastewater facility operators;

(2) prepare and administer written and practical examinations, based on nationally accepted standards, for certification of applicants as operators for one of the facility classifications established pursuant to Subsection A of Section 61-33-4 NMSA 1978;

(3) enter into agreements, contracts or cooperative arrangements with persons; and

(4) receive and accept financial and technical assistance."

Section 3. Section 61-33-4 NMSA 1978 (being Laws 1973, Chapter 394, Section 4, as amended) is amended to read:

"61-33-4. POWERS AND DUTIES OF COMMISSION.--The commission may adopt rules relating to the administration and enforcement of the Utility Operators Certification Act. The commission shall:

A. adopt rules that classify public water supply systems and public wastewater facilities based on:

(1) size and type of system or facility;

(2) capacity of the system or facility based

on the size of the serviced area and the number and size of

the users to be served;

(3) type and character of the water or wastewater to be treated; and

(4) physical conditions affecting the treatment plants, collection systems and distribution systems;

B. adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications;

C. appoint a seven-member board from certified operators to function with the commission to establish qualifications of operators, classify public water supply systems and public wastewater facilities, adopt rules and advise the department on the administration of the Utility Operators Certification Act. Two board members selected by the board shall sit as commission members on matters to which that act is applicable;

D. adopt and file under the State Rules Act rules necessary to carry out the provisions of the Utility Operators Certification Act; and

E. adopt rules providing criteria for identifying the minimum number of certified operators needed to operate the various classifications of public water supply systems or public wastewater facilities in order to protect human health,

public welfare or the environment."

Section 4. Section 61-33-5 NMSA 1978 (being Laws 1973, Chapter 394, Section 5, as amended) is amended to read:

"61-33-5. APPLICATION REQUIREMENTS--FEES--FUND
CREATED--ENDORSEMENT.--

A. An applicant for certification as a certified operator shall:

- (1) make application on forms furnished by the department;
- (2) submit evidence satisfactory to the department that the applicant has reached the age of majority; and
- (3) pay in advance to the department fees set by rule not to exceed:

- (a) for examination for certification in each classification \$100;
- (b) for renewal of a certificate after a period set by rule \$40; and
- (c) for issuance of a certificate by endorsement \$100.

B. Fees collected pursuant to Subsection A of this section shall be deposited with the state treasurer in the "public water supply system operator and public wastewater facility operator fund", hereby created. The fund shall be

used solely for the purpose of administering and enforcing the Utility Operators Certification Act. The fund shall be administered by the department. Money in the fund shall be retained by the department for use, subject to appropriation by the legislature. Balances in the fund at the end of any fiscal year shall not revert to the general fund, but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. The department may, in its discretion, endorse for certification without examination an operator who submits evidence satisfactory to the department that the applicant has reached the age of majority and holds a valid license or certification in any state, territory or foreign jurisdiction having standards equal to or exceeding those of New Mexico.

D. Fees shall not be increased more than once per calendar year. The first increase of the fees shall not result in any fee greater than thirty dollars (\$30.00). Any subsequent increase of the fees shall not be more than five percent of the existing fee."

Section 5. Section 61-33-6 NMSA 1978 (being Laws 1973, Chapter 394, Section 6, as amended) is amended to read:

"61-33-6. CERTIFICATION REQUIRED--PROHIBITION.--It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a

certified operator who meets or exceeds the appropriate certification level."

Section 6. Section 61-33-7 NMSA 1978 (being Laws 1973, Chapter 394, Section 7, as amended) is amended to read:

"61-33-7. SUSPENSION AND REVOCATION.--The department, in accordance with the provisions of the Uniform Licensing Act relating to notice and hearing, may suspend or revoke a certification upon the grounds that the certified operator:

A. committed fraud or deceit in procuring the certification;

B. committed gross incompetence in the operation of a public water supply system or public wastewater facility;

C. was derelict in the performance of a duty as a certified operator;

D. performed in the capacity of a higher classification of certified operator than that in which the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility; or

E. is convicted of any violation of Section 61-33-8 NMSA 1978 or any state or federal water quality statutes."

Section 7. Section 61-33-8 NMSA 1978 (being Laws 1973, Chapter 394, Section 8, as amended) is amended to read:

"61-33-8. PROHIBITIONS--PENALTY.--

A. It is unlawful for any person not certified as an operator to:

- (1) use the title "certified operator" or words of similar import in connection with the person's employment;
- (2) represent himself as a certified operator; or
- (3) perform the duties of a certified operator, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility.

B. Any violation of the provisions of this section is a misdemeanor."

Section 8. Section 61-33-10 NMSA 1978 (being Laws 1992, Chapter 44, Section 10) is amended to read:

"61-33-10. ENFORCEMENT--COMPLIANCE ORDERS.--

A. Whenever, on the basis of any information, the department determines that a person has violated, is violating or threatens to violate any requirement of the Utility Operators Certification Act, any rule adopted pursuant to that act or any condition of a certification issued under that act, the department may:

- (1) issue a compliance order stating with

reasonable specificity the nature of the violation or threatened violation and either requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any penalty assessed in the compliance order shall not exceed two thousand five hundred dollars (\$2,500) per day for each violation of any provision of the Utility Operators Certification Act, any rule adopted pursuant to the provisions of that act or any condition of a certification issued under that act.

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

D. If a violator fails to take corrective actions within the time specified in a compliance order, the department may assess a civil penalty of not more than five thousand dollars (\$5,000) for each day of continued noncompliance with the compliance order.

E. Any compliance order issued by the department pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any

person named in the compliance order submits a written request to the department for a public hearing. Upon receiving a request, the department shall promptly conduct a public hearing. A complete record of the proceedings shall be made and preserved.

F. The department may appoint a hearing officer to preside over the public hearing held pursuant to this section. If a hearing officer is appointed, the hearing officer shall forward a recommendation based upon the record to the secretary of environment, who shall make the final decision.

G. In connection with any proceeding pursuant to the provisions of this section, the department may:

(1) adopt rules for discovery procedures;
and

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

H. A person aggrieved by an adverse final decision of the secretary may appeal the decision to the commission. The appeal shall be on the record. The commission may, upon motion by a party, receive either oral or written arguments by the parties limited to the evidence contained in the record.

I. All penalties collected pursuant to this section shall be deposited in the general fund to the credit of the current school fund."

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005. _____

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