

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 335

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT; PROVIDING FOR ASSISTANCE TO WATER AND WASTEWATER SYSTEMS; CREATING A FUND; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"NEW MATERIAL WATER AND WASTEWATER SYSTEM MANAGEMENT ASSISTANCE FUND--CREATED--PURPOSE.--

A. The "water and wastewater system management assistance fund" is created in the state treasury. The department shall administer the fund. The fund is composed of appropriations, donations and transfers of money earned from investment of the fund and otherwise accruing to the fund and .178100.3

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1 transfers of money from the liquid waste fund, the water
2 quality management fund or the corrective action fund.
3 Balances remaining in the fund at the end of a fiscal year
4 shall remain to the credit of the fund. Disbursements from the
5 fund shall be drawn on warrant of the secretary of finance and
6 administration pursuant to vouchers signed by the secretary of
7 environment or the secretary's authorized representative.
8 Money in the fund is appropriated to the department to assist
9 small water and wastewater systems that qualify for funding to
10 pay for:

11 (1) a certified water or wastewater operator
12 to maintain and manage a small water or wastewater system;

13 (2) the administrative management of a small
14 water or wastewater system; or

15 (3) all or a portion of the connection fees to
16 connect a small water or wastewater system to another water or
17 wastewater system so as to create a regional water or
18 wastewater system.

19 B. System operation, maintenance, construction and
20 administrative activities funded by the water and wastewater
21 system management assistance fund shall be performed by
22 contractors selected through competitive bid pursuant to
23 guidelines provided by the department.

24 C. No more than five percent of the fund shall be
25 used by the department on an annual basis to pay for the

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1 department costs associated with management and implementation
2 of fund activities.

3 D. As used in this section:

4 (1) "administrative management" means
5 activities such as rate structure development and other system
6 business management, record keeping, customer service and
7 customer invoicing and collections;

8 (2) "connection fee" means the fee paid
9 directly to a public water or wastewater system or other water
10 or wastewater management organization and does not include
11 other fees, such as legal fees, related to connecting a small
12 water or wastewater system to another water or wastewater
13 system to create a regional water or wastewater system; and

14 (3) "small water or wastewater system" means a
15 water or wastewater system that serves no more than three
16 hundred connections, whether public or private, including small
17 systems managed by a political subdivision of the state,
18 including a water and sanitation district, a mutual domestic
19 water consumers association or a public school district and as
20 further established by department qualification criteria."

21 Section 2. Section 74-1-15 NMSA 1978 (being Laws 2000,
22 Chapter 96, Section 3) is amended to read:

23 "74-1-15. LIQUID WASTE FUND CREATED.--The "liquid waste
24 fund" is created in the state treasury. On-site liquid waste
25 system fees shall be deposited in the fund. Money in the fund

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1 is appropriated to the department for administration of liquid
2 waste regulations, and money in the fund is appropriated to the
3 liquid waste disposal system assistance fund, if enacted into
4 law by the first session of the forty-ninth legislature, and
5 the water and wastewater system management assistance fund.

6 Disbursements from the fund shall be by warrant drawn by the
7 secretary of finance and administration pursuant to vouchers
8 signed by the secretary of environment or [~~his~~] the secretary
9 of environment's designee. Any unexpended or unencumbered
10 balance or income earned from the money in the liquid waste
11 fund remaining at the end of any fiscal year shall not revert
12 to the general fund."

13 Section 3. Section 74-6-5.2 NMSA 1978 (being Laws 1993,
14 Chapter 100, Section 4) is amended to read:

15 "74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There
16 is created in the state treasury the "water quality management
17 fund" to be administered by the department of environment. All
18 fees collected pursuant to the regulations adopted by the
19 commission under Subsection [H] J of Section 74-6-5 NMSA 1978
20 shall be deposited in the fund. Money in the fund is
21 appropriated to the department of environment for the purpose
22 of administering the regulations adopted by the commission
23 pursuant to Section 74-6-5 NMSA 1978, and money in the fund is
24 appropriated to the liquid waste disposal system assistance
25 fund, if enacted into law by the first session of the forty-

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1 ninth legislature, and the water and wastewater system
 2 management assistance fund. Disbursements from the fund shall
 3 be made upon warrants drawn by the secretary of finance and
 4 administration pursuant to vouchers signed by the secretary of
 5 environment."

6 Section 4. Section 74-6B-7 NMSA 1978 (being Laws 1990,
 7 Chapter 124, Section 7, as amended) is amended to read:

8 "74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION
 9 FOR EXPENDITURES.--

10 A. There is created the "corrective action fund".
 11 The fund is intended to provide for financial assurance
 12 coverage and shall be used by the department to the extent that
 13 revenues are available to take corrective action in response to
 14 a release, to pay for the costs of a minimum site assessment in
 15 excess of ten thousand dollars (\$10,000), to pay the state's
 16 share of federal leaking underground storage tank trust fund
 17 cleanup costs as required by the federal Resource Conservation
 18 and Recovery Act ~~and~~, to make payments to or on behalf of
 19 owners and operators for corrective action taken in accordance
 20 with Section 74-6B-13 NMSA 1978 and to transfer money to the
 21 liquid waste disposal system assistance fund, if enacted into
 22 law by the first session of the forty-ninth legislature, and
 23 the water and wastewater system management assistance fund.

24 The legislature may appropriate up to thirty percent of the
 25 annual distribution to the fund pursuant to Section 7-1-6.25

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1 NMSA 1978 to the department to match federal funds, for
2 underground contamination cleanup and to address water needs.
3 The owner or operator of a site shall not use the corrective
4 action fund as evidence of financial assurance to satisfy
5 claims of third parties.

6 B. The board, after recommendations from the
7 storage tank committee, shall adopt rules for establishing
8 priorities for corrective action at sites contaminated by
9 storage tanks. The priorities for corrective action shall be
10 based on public health, safety and welfare and environmental
11 concerns. In adopting rules pursuant to this subsection, the
12 board shall follow the procedures of Section 74-4-5 NMSA 1978.
13 The provisions of that section relating to all other matters in
14 connection with the adoption of rules shall apply. The
15 department shall establish priority lists of sites in
16 accordance with the rules adopted by the board.

17 C. The department shall make expenditures from the
18 corrective action fund in accordance with rules adopted by the
19 board or the secretary for corrective action taken by the
20 state, owners or operators at sites contaminated by storage
21 tanks; provided that:

22 (1) payments may be made only for corrective
23 action taken by persons qualified by the department to perform
24 the work pursuant to rules adopted by the board;

25 (2) no expenditures from the fund shall be

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1 paid to or on behalf of an owner or operator for corrective
2 action, other than a minimum site assessment or sampling, if
3 the corrective action is conducted by a person that is a
4 subsidiary or parent of or that is otherwise affiliated with
5 the owner or operator;

6 (3) expenditures shall be made by the
7 department to perform corrective action, to pay for the costs
8 of minimum site assessment in excess of ten thousand dollars
9 (\$10,000) or to make payments to or on behalf of an owner or
10 operator in accordance with Section 74-6B-13 NMSA 1978;

11 (4) any corrective action taken shall be taken
12 at sites in the order of priority appearing on the priority
13 lists, unless an emergency threat to public health, safety and
14 welfare or to the environment exists;

15 (5) when available revenues are limited and
16 the fund can no longer be approved as a financial
17 responsibility mechanism, priorities for expenditures from the
18 fund shall also be based on financial need as determined by
19 rules adopted by the board; and

20 (6) corrective action involving remediation
21 shall follow a competitive bidding procedure based on technical
22 merit and cost effectiveness.

23 D. No expenditure from the corrective action fund
24 shall be authorized for corrective action at sites owned or
25 operated by the United States or any agency or instrumentality

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1 thereof.

2 E. Nothing in this section authorizes payments for
3 the repair or replacement of a storage tank or equipment.

4 F. Nothing in this section authorizes payments or
5 commitments for payments in excess of the funds available.

6 G. The board, by rule, may provide for a specific
7 amount to be reserved in the fund for emergencies. The amount
8 reserved may be expended by the department only for corrective
9 action necessary when an emergency threat to public health,
10 safety and welfare or to the environment exists.

11 H. Within sixty days after receipt of notification
12 that the corrective action fund has become incapable of paying
13 for assured corrective actions, the owner or operator shall
14 obtain alternative financial assurance acceptable to the
15 department."

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