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HOUSE BILL 220

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Matthew McQueen

AN ACT

RELATING TO WATER; AMENDING THE WATER QUALITY ACT TO PROVIDE WHERE THE EFFECT OF A DISCHARGE ON GROUND OR SURFACE WATER IS TO BE DETERMINED.

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

SECTION 1. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

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

A. By regulation, the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or reuse of septage or sludge.

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

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1 C. Prior to the issuance of a permit, the  
2 constituent agency may require the submission of plans,  
3 specifications and other relevant information that it deems  
4 necessary.

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

22 E. The constituent agency shall deny any  
23 application for a permit or deny the certification of a federal  
24 water quality permit if:

- 25 (1) the effluent would not meet applicable

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1 state or federal effluent regulations, standards of performance  
2 or limitations;

3 (2) any provision of the Water Quality Act  
4 would be violated;

5 (3) the discharge would cause or contribute to  
6 water contaminant levels in excess of any state or federal  
7 standard. [~~Determination of the discharge's effect on ground~~  
8 ~~water shall be measured at any place of withdrawal of water for~~  
9 ~~present or reasonably foreseeable future use. Determination~~  
10 ~~of] The discharge's effect on ground water shall be determined  
11 at the place where the discharge enters ground water, and state  
12 and federal ground water standards shall apply throughout the  
13 aquifer affected by the discharge. The discharge's effect on  
14 surface waters shall be [measured] determined at the point of  
15 discharge; or~~

16 (4) the applicant has, within the ten years  
17 immediately preceding the date of submission of the permit  
18 application:

19 (a) knowingly misrepresented a material  
20 fact in an application for a permit;

21 (b) refused or failed to disclose any  
22 information required under the Water Quality Act;

23 (c) been convicted of a felony or other  
24 crime involving moral turpitude;

25 (d) been convicted of a felony in any

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1 court for any crime defined by state or federal law as being a  
2 restraint of trade, price-fixing, bribery or fraud;

3 (e) exhibited a history of willful  
4 disregard for environmental laws of any state or the United  
5 States; or

6 (f) had an environmental permit revoked  
7 or permanently suspended for cause under any environmental laws  
8 of any state or the United States.

9 F. The commission shall by regulation develop  
10 procedures that ensure that the public, affected governmental  
11 agencies and any other state whose water may be affected shall  
12 receive notice of each application for issuance, renewal or  
13 modification of a permit. Public notice shall include:

14 (1) for issuance or modification of a permit:

15 (a) notice by mail to adjacent and  
16 nearby landowners; local, state and federal governments; land  
17 grant organizations; ditch associations; and Indian nations,  
18 tribes or pueblos;

19 (b) posting at a place conspicuous to  
20 the public and near the discharge or proposed discharge site;  
21 and

22 (c) a display advertisement in English  
23 and Spanish in a newspaper of general circulation in the  
24 location of the discharge or proposed discharge; provided,  
25 however, that the advertisement shall not be displayed in the

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1 classified or legal advertisement sections; and

2 (2) for issuance of renewals of permits:

3 (a) notice by mail to the interested  
4 public, municipalities, counties, land grant organizations,  
5 ditch associations and Indian nations, tribes or pueblos; and

6 (b) a display advertisement in English  
7 and Spanish in a newspaper of general circulation in the  
8 location of the discharge; provided, however, that the  
9 advertisement shall not be displayed in the classified or legal  
10 advertisement sections.

11 G. No ruling shall be made on any application for a  
12 permit without opportunity for a public hearing at which all  
13 interested persons shall be given a reasonable chance to submit  
14 evidence, data, views or arguments orally or in writing and to  
15 examine witnesses testifying at the hearing. The hearing shall  
16 be recorded. Any person submitting evidence, data, views or  
17 arguments shall be subject to examination at the hearing.

18 H. The commission may adopt regulations for the  
19 operation and maintenance of the permitted facility, including  
20 requirements, as may be necessary or desirable, that relate to  
21 continuity of operation, personnel training and financial  
22 responsibility, including financial responsibility for  
23 corrective action.

24 I. Permits shall be issued for fixed terms not to  
25 exceed five years, except that for new discharges, the term of

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1 the permit shall commence on the date the discharge begins, but  
2 in no event shall the term of the permit exceed seven years  
3 from the date the permit was issued.

4 J. By regulation, the commission may impose  
5 reasonable conditions upon permits requiring permittees to:

6 (1) install, use and maintain effluent  
7 monitoring devices;

8 (2) sample effluents and receiving waters for  
9 any known or suspected water contaminants in accordance with  
10 methods and at locations and intervals as may be prescribed by  
11 the commission;

12 (3) establish and maintain records of the  
13 nature and amounts of effluents and the performance of effluent  
14 control devices;

15 (4) provide any other information relating to  
16 the discharge or direct or indirect release of water  
17 contaminants; and

18 (5) notify a constituent agency of the  
19 introduction of new water contaminants from a new source and of  
20 a substantial change in volume or character of water  
21 contaminants being introduced from sources in existence at the  
22 time of the issuance of the permit.

23 K. The commission shall provide by regulation a  
24 schedule of fees for permits, not exceeding the estimated cost  
25 of investigation and issuance, modification and renewal of

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1 permits. Fees collected pursuant to this section shall be  
2 deposited in the water quality management fund.

3 L. The issuance of a permit does not relieve any  
4 person from the responsibility of complying with the provisions  
5 of the Water Quality Act, any applicable regulations or water  
6 quality standards of the commission or any applicable federal  
7 laws, regulations or standards.

8 M. A permit may be terminated or modified by the  
9 constituent agency that issued the permit prior to its date of  
10 expiration for any of the following causes:

11 (1) violation of any condition of the permit;

12 (2) obtaining the permit by misrepresentation  
13 or failure to disclose fully all relevant facts;

14 (3) violation of any provisions of the Water  
15 Quality Act or any applicable regulations, standard of  
16 performance or water quality standards;

17 (4) violation of any applicable state or  
18 federal effluent regulations or limitations; or

19 (5) change in any condition that requires  
20 either a temporary or permanent reduction or elimination of the  
21 permitted discharge.

22 N. If the constituent agency denies, terminates or  
23 modifies a permit or grants a permit subject to condition, the  
24 constituent agency shall notify the applicant or permittee by  
25 certified mail of the action taken and the reasons. Notice

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1 shall also be given by mail to persons who participated in the  
2 permitting action.

3 O. A person who participated in a permitting action  
4 before a constituent agency or a person affected by a  
5 certification of a federal permit and who is adversely affected  
6 by such permitting action or certification may file a petition  
7 for review before the commission. Unless a timely petition for  
8 review is made, the decision of the constituent agency shall be  
9 final and not subject to judicial review. The petition shall:

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

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

15 (3) be provided to all other persons  
16 submitting evidence, data, views or arguments in the proceeding  
17 before the constituent agency.

18 P. If a timely petition for review is made, the  
19 commission shall consider the petition within ninety days after  
20 receipt of the petition. The commission shall notify the  
21 petitioner and the applicant or permittee, if other than the  
22 petitioner, by certified mail of the date, time and place of  
23 the review. If the petitioner is not the applicant or  
24 permittee, the applicant or permittee shall be a party to the  
25 proceeding. The commission shall ensure that the public



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1 receives notice of the date, time and place of the review.

2 Q. The commission shall review the record compiled  
3 before the constituent agency, including the transcript of any  
4 public hearing held on the application or draft permit, and  
5 shall allow any party to submit arguments. The commission may  
6 designate a hearing officer to review the record and the  
7 arguments of the parties and recommend a decision to the  
8 commission. The commission shall consider and weigh only the  
9 evidence contained in the record before the constituent agency  
10 and the recommended decision of the hearing officer, if any,  
11 and shall not be bound by the factual findings or legal  
12 conclusions of the constituent agency. Based on the review of  
13 the evidence, the arguments of the parties and recommendations  
14 of the hearing officer, the commission shall sustain, modify or  
15 reverse the action of the constituent agency. The commission  
16 shall enter ultimate findings of fact and conclusions of law  
17 and keep a record of the review.

18 R. Prior to the date set for review, if a party  
19 shows to the satisfaction of the commission that there was no  
20 reasonable opportunity to submit comment or evidence on an  
21 issue being challenged, the commission shall order that  
22 additional comment or evidence be taken by the constituent  
23 agency. Based on the additional evidence, the constituent  
24 agency may revise the decision and shall promptly file with the  
25 commission the additional evidence received and action taken.

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1 The commission shall consider the additional evidence within  
2 ninety days after receipt of the additional evidence and shall  
3 notify the petitioner and the applicant or permittee, if other  
4 than the petitioner, of the date, time and place of the review.

5 S. The commission shall notify the petitioner and  
6 all other participants in the review proceeding of the action  
7 taken by the commission and the reasons for that action."