

AN ACT

RELATING TO THE ENVIRONMENT; RE-AUTHORIZING THE WATER QUALITY CONTROL COMMISSION; AMENDING SECTIONS OF NMSA 1978.

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 by Laws 1993, Chapter 100, Section 3 and also by Laws 1993, Chapter 291, Section 5) 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 re-use of septage or sludge.

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

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

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and

designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit.

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

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

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

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharges' effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharges' effect on surface waters shall be measured at the point of discharge; or

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

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

(b) refused or failed to disclose any

information required under the Water Quality Act;

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

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

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

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

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance or modification of a permit. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

G. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable,

that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

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

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

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

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

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

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

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water

contaminants being introduced from sources in existence at the time of the issuance of the permit.

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

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

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

(1) violation of any condition of the permit;

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

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

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

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

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

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

O. If a timely petition for review is made, the commission shall hold a hearing within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee if other than the petitioner by certified mail of the date, time and place of the hearing. If the commission deems the action that is the subject of the petition to be affected with substantial public interest, it shall ensure that the public receives

notice of the date, time and place of the hearing and is given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

P. If the petitioner requests, the hearing shall be recorded at the cost of the petitioner. Unless the petitioner requests that the hearing be recorded, the decision of the commission shall be final."

Section 2. Section 74-6-17 NMSA 1978 (being Laws 1987, Chapter 333, Section 15, as amended) is amended to read:

"74-6-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.-
-The water quality control commission is terminated on July 1, 2005 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Sections 74-6-3 and 74-6-4 NMSA 1978 are repealed." ==

==

