

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING AND REPEALING CERTAIN SECTIONS OF THE ENVIRONMENTAL IMPROVEMENT ACT TO INCLUDE CAPACITY DEVELOPMENT AND ADMINISTRATIVE PENALTY AUTHORITY FOR DRINKING WATER SYSTEMS; ABOLISHING THE WATER SUPPLY FUND; DECLARING AN EMERGENCY.

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

Section 1. Section 74-1-7 NMSA 1978 (being Laws 1971, Chapter 277, Section 10, as amended) is amended to read:

"74-1-7. DEPARTMENT--DUTIES.--

A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce regulations and standards in the following areas:

(1) food protection;

(2) water supply, including implementing a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and establishing administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

- (4) air quality management as provided in the Air Quality Control Act;
- (5) radiation control as provided in the Radiation Protection Act;
- (6) noise control;
- (7) nuisance abatement;
- (8) vector control;
- (9) occupational health and safety as provided in the Occupational Health and Safety Act;
- (10) sanitation of public swimming pools and public baths;
- (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;
- (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;
- (13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and
- (14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any

political subdivision to approve subdivision plats."

Section 2. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate regulations and standards in the following areas:

(1) food protection;

(2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and regulations authorizing imposition of administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund."

Section 3. Section 74-1-10 NMSA 1978 (being Laws 1973, Chapter 340, Section 8, as amended) is amended to read:

"74-1-10. PENALTY.--

A. A person who violates any regulation of the board is guilty of a petty misdemeanor. This section does not apply to any regulation for which a criminal penalty is otherwise provided by law.

B. Whenever, on the basis of any information, the secretary determines that a person has violated, is violating or threatens to violate any provision of Paragraph (2) or (3) of Subsection A of Section 74-1-8 NMSA 1978 or any rule, regulation or permit condition adopted and promulgated thereunder, the secretary may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation, requiring compliance immediately or within a specified time period and 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.

C. An order issued pursuant to Subsection B of this section may include suspension or revocation of any permit issued by the department. Any penalty assessed in the order, except for residential on-site liquid waste systems, shall not exceed one thousand dollars (\$1,000) for each violation. Any penalty assessed in the order for a residential on-site liquid waste system shall not exceed one

hundred dollars (\$100) for each violation. A penalty imposed for violation of drinking water regulations 20 NMAC 7.1 or permit conditions shall not exceed one thousand dollars (\$1,000) per violation per day. In assessing the penalty, the secretary shall take into account the seriousness of the violation and any good-faith efforts to comply with the applicable requirements.

D. If a violator fails to take corrective actions within the time specified in the compliance order, the secretary shall:

(1) assess civil penalties of not more than one thousand dollars (\$1,000) for each noncompliance with the order; and

(2) suspend or revoke any permit issued to the violator pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978.

E. An order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person named in the order submits a written request to the secretary for a hearing. Upon such a request, the secretary shall conduct a hearing. The secretary shall appoint an independent hearing officer to preside over the hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based on the record to the secretary, who

shall make the final decision.

F. In connection with any proceeding pursuant to this section, the secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt and promulgate rules for discovery procedures.

G. Penalties collected pursuant to violations of rules, regulations or permit conditions adopted pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to be credited to the general fund.

H. Penalties collected pursuant to violations of drinking water regulations 20 NMAC 7.1 or permit conditions pursuant to Paragraph (2) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the state treasury to the credit of the water conservation fund."

Section 4. Section 74-1-12 NMSA 1978 (being Laws 1993, Chapter 317, Section 1) is amended to read:

"74-1-12. COMPLIANCE WITH THE FEDERAL SAFE DRINKING WATER ACT--PURPOSE.--The purpose of this section and Section 74-1-13 NMSA 1978 is to provide:

A. an incentive for conservation of water, the state's most precious resource; and

B. funding for certain locations in the state to comply with the federal Safe Drinking Water Act in which the

United States congress mandated that the United States environmental protection agency establish drinking water standards for contaminants, require filtration and disinfection for all public water supply systems, increase enforcement authority, establish public notification requirements, implement a lead ban and implement a capacity development program for existing and newly created water systems."

Section 5. TEMPORARY PROVISION.--On the effective date of this act, the balance in the water supply fund is transferred to the water conservation fund.

Section 6. REPEAL. Section 74-1-8.3 NMSA 1978 (being Laws 1993, Chapter 100, Section 6) is repealed.

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
