

**GW - 264**

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# **INSPECTIONS & DATA**



NEW MEXICO ENERGY, MINERALS  
& NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505  
(505) 827-7131

May 13, 1996

**CERTIFIED MAIL**  
**RETURN RECEIPT NO. Z-765-963-148**

Mr. Floyd Abbott  
Abbott Brothers Rat Hole Service  
P.O.Box 305  
Hobbs, NM 88241

**RE: Facility Inspection**  
**Abbott Bothers Hobbs facility**  
**Lea County, New Mexico**

Dear Mr. Abbott:

The OCD has prepared the following inspection report in order to address environmental concerns at the Abbott Brothers Rat Hole Service yard located at 1923 W. Bender, Hobbs, New Mexico. The report will outline observations that were made on April 11, 1996 by OCD inspectors Wayne Price of the Hobbs District Office and Patricio Sanchez of the Santa Fe Division Office. **The OCD has regulatory jurisdiction over the Abbott facility through the "Water Quality Act and the Oil and Gas Act of the State of New Mexico."** (See attachments 1 and 2.) The report will also ask that Mr. Floyd Abbott clarify some items of concern as noted by the inspectors. The OCD inspectors were shown the facility by Mr. Calvin Brown and Mr. Dave Barela of Abbott Brothers Rat Hole Service. **Included with this inspection report are photographs taken by the OCD and a diagram of the facility.**(See attachments 3 and 4.)

1. **See Photo. No. 2 and point no. 1 on the facility diagram.**

Is this cover a water well or a valve box? If it is a water well is it still active or is it inactive? Also, is the septic system only connected to the front office, and has it only received domestic waste-i.e. sink/toilet waste water?

2. **See Photo. No. 3 and point no.2 on the facility diagram.**

Is the large vertical steel pipe in the fuel island a water well or a valve box? Also, small spills such as those around the fuel island and near the fuel tank area should be raked out as soon possible to promote bioremediation of the spill area. If a reportable spill occurs pursuant to OCD Rule 116 and WQCC 1203 - Abbott Brothers must notify the Hobbs OCD District Office at (505)-393-6161.

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**NOTE NO. 1:** ALL AREAS THAT HAVE VISIBLE CONTAMINATION DUE TO SPILLS OF ANY KIND SHOULD BE RAKED OUT WHERE POSSIBLE. IF THE AREA OF CONTAMINATION IS TOO LARGE FOR RAKING TO BE EFFECTIVE, ABBOTT BROTHERS SHOULD PROPOSE ALTERNATIVE MEASURES TO ADDRESS THE CONTAMINATION-I.E. INSITU BIOREMEDIATION OR OFFSITE DISPOSAL AT AN APPROPRIATE PERMITTED DISPOSAL FACILITY.

**NOTE NO. 2:** (See photo no. 7 and point no. 7 on the facility diagram.) All suspected Class V wells or open septic systems that have or are suspected to receive non-domestic waste shall submit a subsurface investigation plan that will address any contamination that may be associated with it. (see attachment no. 4 part 2)

**NOTE NO. 3:** Listed below are the general discharge plan conditions of approval that the OCD issues to all approved discharge plans - respond to each point and provide the OCD a copy of documentation that proves compliance with each item. If Abbott Brothers does not currently comply with an item please indicate as such.

A. **Drum Storage:** All drums containing materials other than fresh water must be stored on an impermeable pad and curb type containment. All empty drums should be stored on their sides with the bungs in place and lined up on a horizontal plane. Chemicals in other containers such as sacks or buckets should also be stored on an impermeable pad and curb type containment.

B. **Process Areas:** All process and maintenance areas which show evidence that leaks and spills are reaching the ground surface must be either paved and curbed or have some type of spill collection device incorporated into the design.

C. **Above Ground Tanks:** All above ground tanks which contain fluids other than fresh water must be bermed to contain a volume of one-third more than the total volume of the largest tank or of all interconnected tanks. All new facilities or modifications to existing facilities must place the tank on an impermeable type pad.

D. **Above Ground Saddle Tanks:** Above ground saddle tanks must have impermeable pad and curb type containment unless they contain fresh water or fluids that are gases at atmospheric temperature and pressure.

E. **Tank Labeling:** All tanks should be clearly labeled to identify their contents and other emergency information necessary if the tank were to rupture, spill, or ignite.

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F. **Below Grade Tanks/Sumps**: All below grade tanks, sumps, and pits must be approved by the OCD prior to installation or upon modification and must incorporate secondary containment and leak-detection into the design. All pre-existing sumps and below-grade tanks that do not have secondary containment and leak detection must demonstrate integrity on an annual basis. Integrity tests include pressure testing to 3 pounds per square inch above normal operating pressure and/or visual inspection of cleaned out tanks /or sumps.

G. **Underground Process/Wastewater Lines**: All underground process/wastewater pipelines must be tested to demonstrate their mechanical integrity at present and then every 5 years there after. Companies may propose various methods for testing such as pressure testing to 3 pounds per square inch above normal operating pressure or other means acceptable to the OCD.

H. **Class V Wells**: Leach fields and other wastewater disposal systems at OCD regulated facilities which inject fluid other than sewage below the surface are considered Class V injection wells under the EPA UIC program. All class V wells will be closed unless, it can be demonstrated that protectable groundwater will not be impacted in the reasonably foreseeable future. Class V wells must be closed through the Santa Fe Office. The OCD allows industry to submit closure plans which are protective of human health, environment and groundwater as defined by the WQCC, and are cost effective.

I. **Housekeeping**: All systems designed for spill collection/prevention should be inspected to ensure proper operation and to prevent overtopping or system failure.

Any contaminated soils that are collected at the facility will be tested for hazardous constituents, and after receiving OCD approval, will be disposed of at an OCD approved site.

J. **Spill Reporting**: All spills/releases shall be reported pursuant to OCD Rule 116 and WQCC 1203 to the OCD District Office.

**3. See Photo. No. 5 point 4 on the facility diagram.**

How does Abbott Brother currently recycle/dispose of used oil? As the photo shows misc. solid waste is mixed with the used oil in what appears to be leaking 55 gallon drums. The wastes should be segregated from each other and stored properly according to OCD approved methods. Please provide the paperwork from the firm or individual who accepts this used oil for recycling.

**4. On March 22, 1996 the OCD approved of the installation of a wash facility at the Abbott Brothers Rat Hole Service yard. Please provide the as built diagrams of the wash facility now that it has been installed. Note: All filter media of wash water effluent must be tested for Hazardous Constituents per 40 CFR Part 261 if the effluent or filter media is to be disposed of offsite - Abbott Brothers Rat Hole Service must obtain proper approval from the OCD before these wastes can be disposed of offsite. Further, before the wash facility was installed did Abbott Brothers Rat Hole Service wash at the site? And if so for how long and where on the facility site?**

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**5. Facility diagram point no. 5.**

What is the depth and construction of the Kelly Rat Hole? Is it cased of steel pipe all the way to bottom? Also, is the Casing cemented from bottom to top so that groundwater would not be in communication with the inside of the pipe or the surface?

**6. See the Facility diagram points no. 6 and no. 8.**

Are these points water wells or are they valve boxes? If they are wells are they properly completed so that contaminants from the surface could not infiltrate into ground water?


**7. Verify the following:**

- A. Are any solvents are present at the facility? If there are any solvents please provide the MSD Sheet for the solvent and the quantity stored and used at the facility?
- B. Where do used oil filters, empty paint cans, painting waste, spill sorbent, and any other non-domestic wastes from the facility go?
- C. The amount and type of fuel(s) used/stored at the facility? The amount and types of chemicals used/stored at the facility?
- D. Is Abbott Brothers aware of any possible contamination at the site in question that may have impacted the groundwater?
- E. Does Abbott Brothers have any ground water data on the water well(s) at the site such as: Depth to groundwater, Total Dissolved solids, Chemical analysis of any kind?
- F. Does Abbott Brothers have a written spill contingency plan for the site?

Abbott Brothers shall respond to all requests in this inspection report to the OCD Santa Fe office in follow-up writing within 30 days of receipt of this inspection report.

If Abbott Brothers has any further questions please feel free to call me at (505)-827-7156.

Sincerely,



Patricio W. Sanchez  
Petroleum Eng. Spec.

xc: Mr. Wayne Price and Mr. Jerry Sexton

# Attachment No. 1

Z 745 942 148



## Receipt for Certified Mail

No Insurance Coverage Provided  
Do not use for International Mail  
(See Reverse) *Mr. Floyd Abbott*

Sent to <i>Abbott Brothers Rent Hole Ser.</i>	
Street and No. <i>P.O. Box 305</i>	
P.O., State and ZIP Code <i>Hobbs, NM 88241</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, March 1993

## ARTICLE 6

### Water Quality

#### Sec.

- 74-6-1. Short title.
- 74-6-2. Definitions.
- 74-6-3. Water quality control commission created.  
(Effective until July 1, 2000.)
- 74-6-3.1. Legal advice.
- 74-6-4. Duties and powers of commission. (Effective until July 1, 2000.)
- 74-6-5. Permits; certification; appeals to commission.
- 74-6-5.1. Disclosure statements.
- 74-6-5.2. Water quality management fund created.
- 74-6-6. Adoption of regulations and standards; notice and hearing.
- 74-6-7. Administrative action; judicial review.
- 74-6-8. Duties of constituent agencies.

#### Sec.

- 74-6-9. Powers of constituent agencies.
- 74-6-10. Penalties enforcement; compliance orders; penalties; assurance of discontinuance.
- 74-6-10.1. Civil penalties.
- 74-6-10.2. Criminal penalties.
- 74-6-11. Emergency; powers of delegated constituent agencies; penalties.
- 74-6-12. Limitations.
- 74-6-13. Construction.
- 74-6-14. Recompiled.
- 74-6-15. Confidential information; penalties.
- 74-6-16. Effect and enforcement of water quality act during transition.
- 74-6-17. Termination of agency life; delayed repeal.

#### 74-6-1. Short title.

Chapter 74, Article 6 NMSA 1978 may be cited as the "Water Quality Act".

**History:** 1953 Comp., § 75-39-1, enacted by Laws 1967, ch. 190, § 1; 1993, ch. 291, § 1.

**Cross references.** — For the Pollution Control Revenue Bond Act, see 3-59-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 74, Article 6 NMSA 1978" for "This act".

**Water laws apply on Indian land.** — Where non-Indians enter into long-term lease with an Indian tribe under which the non-Indians are to develop the land as a subdivision, state laws concerning subdivision control, construction licensing and water cannot be held inapplicable to the lessee because of federal preemption. *Norvell v. Sangre de Cristo Dev. Co.*, 372 F. Supp. 348 (D.N.M. 1974), rev'd on other grounds, 519 F.2d 370 (10th Cir. 1975).

**Provided Indian proprietary interest and self-government unimpaired.** — The application of state antipollution laws to industries located on Indian land is valid, provided that the operation of those laws neither impairs the proprietary interest of the Indian people in their lands nor limits the right of the tribe or pueblo to govern matters of tribal relations. The regulation of industrial discharges is not a matter fundamental to tribal relations, and the state supervision of environment pollution will not limit, in any meaningful manner, the right of the several Indian

peoples to govern themselves. The extension of pollution controls to industries located on Indian land will not affect the ownership or control of the land. 1970 Op. Att'y Gen. No. 70-5.

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

For article, "Information for State Groundwater Quality Policymaking," see 24 Nat. Resources J. 1015 (1984).

For article, "Transboundary Toxic Pollution and the Drainage Basin Concept," see 25 Nat. Resources J. 589 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control-§ 134 et seq.

**Standing to sue for violation of state environmental regulatory statute.** 66 A.L.R.4th 685.

**Measure and elements of damages for pollution of well or spring.** 76 A.L.R.4th 629.

**Liability insurance coverage for violations of anti-pollution laws.** 87 A.L.R.4th 444.

39A C.J.S. Health and Environment § 131.

#### 74-6-2. Definitions.

As used in the Water Quality Act [this article]:

A. "water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

B. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

C. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance which may pollute any waters of the state;

D. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

E. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

F. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

G. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

H. "person" means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

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

J. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

- (1) the department of environment;
- (2) the state engineer and the interstate stream commission;
- (3) the department of game and fish;
- (4) the oil conservation commission;
- (5) the state park and recreation division of the energy, minerals and natural resources department;
- (6) the New Mexico department of agriculture;
- (7) the soil and water conservation commission; and
- (8) the bureau of mines and mineral resources at the New Mexico institute of mining and technology;

K. "new source" means:

- (1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or
- (2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

L. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

M. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

N. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

O. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

- (1) to human beings; or
- (2) that amounts to more than ten thousand dollars (\$10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; or ground water or surface water or to the lands of the state;

P. "federal act" means the federal Water Pollution Control Act, its subsequent amendment and successor provisions; and

Q. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act.

History: 1953 Comp., § 75-39-2, enacted by Laws 1967, ch. 190, § 2; 1970, ch. 64, § 1; 1971, ch.

277, § 49; 1973, ch. 326, § 1; 1977, ch. 253, § 73; 1983, ch. 291, § 2.



The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "that could alter if discharged or spilled" for "which alters", inserted "or radiological", added the second sentence, and made a minor stylistic change; made a minor stylistic change in Subsection C; substituted "plant" for "plat" in Subsection E; rewrote Subsection H; in Subsection J, in Paragraph (1), deleted "environmental improvement division of the health and environment" preceding "department" and inserted "of environment" following "department"; deleted "New Mexico" preceding "department" in Paragraph (3), substituted "division of the energy, minerals and natural resources department" for "commission" in Paragraph (5), substituted "soil and water" for "state natural resource" in Paragraph (7), in Paragraph (8), deleted "New Mexico" preceding "bureau" and added the

language following "mines"; in Subsection K, added the Paragraph (1) designation, added Paragraph (2), and made a minor stylistic change; and added Subsections L through Q.

**Compiler's notes.** — The water quality control commission is terminated on July 1, 1999. See 74-6-17 NMSA 1978.

**Water Pollution Control Act.** — The federal Water Pollution Control Act appears as 33 U.S.C. § 1251 et seq.

**Atomic Energy Act of 1954.** — The federal Atomic Energy Act of 1954, referred to in subsection A, appears as 42 U.S.C. § 2011 et seq.

**Law reviews.** — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

### **74-6-3. Water quality control commission created. (Effective until July 1, 2000.)**

**A.** There is created the "water quality control commission" consisting of:

- (1) the secretary of environment or a member of his staff designated by him;
- (2) the director of the department of game and fish or a member of his staff designated by him;
- (3) the state engineer or a member of his staff designated by him;
- (4) the chairman of the oil conservation commission or a member of his staff designated by him;
- (5) the director of the state park and recreation division of the energy, minerals and natural resources department or a member of his staff designated by him;
- (6) the director of the New Mexico department of agriculture or a member of his staff designated by him;
- (7) the chairman of the soil and water conservation commission or a member of his staff designated by him;
- (8) the director of the bureau of mines and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him; and
- (9) three representatives of the public to be appointed by the governor for a term of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**B.** No member of the commission shall receive or shall have received, during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act [this article].

**C.** The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

**D.** A majority of the commission constitutes a quorum for the transaction of business but no action of the commission is valid unless concurred in by six or more members present at a meeting.

**E.** The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

**F.** The commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the department of environment.

**History:** 1953 Comp., § 75-39-3, enacted by Laws 1967, ch. 190, § 3; 1970, ch. 64, § 2; 1971, ch. 277, § 50; 1973, ch. 328, § 2; 1977, ch. 253, § 74; 1987, ch. 234, § 81; 1993, ch. 291, § 3.

**Delayed repeals.** — See 74-6-17 NMSA 1978.

**Cross references.** — As to exemption of water quality control commission from authority of secretary of environment, see 9-7A-13 NMSA 1978. As to director of the New Mexico department of game and fish, see 17-1-5 NMSA 1978. As to the chairman of the oil conservation commission, see 70-2-4 NMSA 1978. As to the state engineer, see 72-2-1 NMSA 1978. As to the director of the New Mexico department of agriculture, see 76-1-3 NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "secretary of environment" for "director of the environmental improvement division of the health and environment department" in Paragraph (1) and, in Paragraph (9), substituted "three representatives" for "a representative", deleted "health and environment" preceding "department" and inserted "of environment" following "department"; in Subsection E, substituted "federal" and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act" for "Federal Water Pollution Control Act, the Water Quality Act of 1965 and the Clean Waters Restoration Act of 1966", and substituted "that act and those

programs" for "these acts"; and in Subsection F, deleted "health and environment" preceding "department" and inserted "of environment" following "department".

**Safe Drinking Water Act.** — The federal Safe Drinking Water Act, referred to in Subsection E, appears as 21 U.S.C. § 349 and 42 U.S.C. § 300f et seq.

**Authority of division to propose regulations and act as interested party at hearings.** — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment of 74-6-9 NMSA 1978 and the 1993 amendment of subsection A(1) of this section).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

### 74-6-3.1. Legal advice.

A. In the exercise of any of its powers or duties, the water quality control commission shall act with independent legal advice. The manner in which such advice is provided shall be determined by the commission, but from among one of the following:

- (1) the office of the attorney general;
- (2) independent counsel hired by the commission, whether full- or part-time; or
- (3) another state agency whose function is sufficiently distinct from the department of environment and each constituent agency to assure independent, impartial advice.

B. Notwithstanding the provisions of Subsection A of this section, attorneys from constituent agencies may act for the water quality control commission in lawsuits filed against or on behalf of the commission, and the attorney general may, at the request of the commission, file and defend lawsuits on behalf of the commission.

**History:** 1978 Comp., § 74-1-8.1, enacted by Laws 1982, ch. 73, § 28; recompiled as 1978 Comp., § 74-1-8.2; 1991, ch. 25, § 32; recompiled as 1978 Comp., § 74-6-3.1 by Laws 1993, ch. 291, § 18.

The 1991 amendment, effective March 29, 1991, inserted "the water quality control" and "water quality control" preceding "commission" in the first sentence in Subsection A and in Subsection B; and, in Subsection A, substituted "department of environ-

ment" for "health and environment department" in Paragraph (3) and made a minor stylistic change.

**Compiler's notes.** — Laws 1982, ch. 73, § 28, enacted this section as 74-1-8.1 NMSA 1978, but since Laws 1982, ch. 73, § 23, had already enacted 74-1-8.1 NMSA 1978, this section was compiled as 74-1-8.2 NMSA 1978. See 74-6-2 NMSA 1978 for the definition of "commission" and 74-6-4 NMSA 1978 for the general powers and duties of the commission.

### 74-6-4. Duties and powers of commission. (Effective until July 1, 2000.)

The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall adopt water quality standards for surface and ground waters of the state subject to the Water Quality Act [this article]. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality

criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable, a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, environment and property;

(2) the public interest, including the social and economic value of the sources of water contaminants;

(3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) successive uses, including but not limited to, domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act;

F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission, whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

H. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment; and

L. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act.

**History:** 1953 Comp., § 75-39-4, enacted by Laws 1967, ch. 190, § 4; 1970, ch. 64, § 3; 1971, ch. 277, § 51; 1973, ch. 328, § 3; 1981, ch. 347, § 1; 1984, ch. 8, § 13; 1993, ch. 291, § 4.

**Delayed repeals.** — See 74-6-17 NMSA 1978.

**Cross references.** — For certification of utility operators, see 61-33-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, inserted "management" in Subsection B; in Subsection C, deleted "as a guide to water pollution control" following "standards" in the first sentence and added all of the remaining language following the first occurrence of "standards"; in Subsection D, rewrote the introductory paragraph, inserted "environment" in Paragraph (1), made minor stylistic changes in Paragraphs (2), (5), and (6), and added Paragraph (7); substituted the last sentence of Subsection E for the former last sentence which read "The environmental improvement division of the health and environment department shall provide testing and other technical services"; made minor stylistic changes in Subsections G, H, and J; and inserted "or the environment" in Subsection K.

**New Mexico Community Assistance Act.** — See 11-6-1 NMSA 1978 and notes thereto.

**Discretion in consideration of factors.** — In adopting standards for organic compounds in groundwater, Subsection D does not require the record to contain the commission's consideration of every part within the six factors for each organic compound. The commission possesses reasonable discretion in its consideration of the six factors and in the weight it gives to each factor. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988) (decided prior to the 1993 amendment, which added Paragraph (7) to Subsection D).

**No requirement that commission consider complete environmental impact.** — There is no specific requirement in the commission's mandate that it consider to the fullest extent possible the environmental consequences of its action. The com-

mission could in all good faith adopt a regulation governing the effluent quality of sewage so restrictive that municipalities would turn to methods other than those currently used to dispose of it which would have adverse environmental consequences far more serious than some pollution of the waters of the state. *City of Roswell v. New Mexico Water Quality Control Comm'n*, 84 N.M. 561, 505 P.2d 1237 (Ct. App. 1972), cert. denied, 84 N.M. 560, 505 P.2d 1236 (1973) (decided under former law).

**Commission may delegate authority to administer regulations.** — Where the commission gives the environmental improvement division the authority to administer certain regulations, there is no unlawful delegation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

**Numerical standards for organic compounds in rainwater.** — The adoption of numerical standards for organic compounds in rainwater was not arbitrary and capricious, as they were technically achievable within the meaning of Subsection D. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 *Nat. Resources J.* 653 (1969).

For note, "Ground and Surface Water in New Mexico: Are They Protected Against Uranium Mining and Milling?" see 18 *Nat. Resources J.* 941 (1978).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 *Nat. Resources J.* 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?" see 24 *Nat. Resources J.* 549 (1984).

For article, "Information for State Groundwater Quality Policymaking," see 24 *Nat. Resources J.* 1015 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A *Am. Jur. 2d Pollution Control* §§ 133, 134.

39A *C.J.S. Health and Environment* §§ 133 to 136.

**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 [this article] 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 groundwater 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 will 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 hearing 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 request for hearing is made, the decision of the constituent agency shall be final.

O. If a timely petition for hearing 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 shall be 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.

**History:** 1953 Comp., § 75-39-4.1, enacted by Laws 1973, ch. 326, § 4; 1985, ch. 157, § 1; 1989, ch. 248, § 1; 1993, ch. 100, § 3; 1993, ch. 291, § 5.

The 1993 amendments. — Laws 1993, ch. 100, § 3, effective March 31, 1993, deleting the former last sentence of Subsection H. which read "Effective July 1, 1992, all fees collected pursuant to this section shall

be deposited in the general fund" and making minor stylistic changes throughout the section, was approved March 31, 1993. However, Laws 1993, ch. 291, § 5, effective June 18, 1993, also amending this section, rewriting it to the extent that a detailed comparison would be impracticable, but not giving effect to the changes made by the first 1993 amend-

ment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 291, § 5. See 12-1-8 NMSA 1978.

Commission's requirement of information to prevent water pollution within statutory mandate. — Where the objective of this article is to abate and prevent water pollution, it is not "clearly incorrect" for the commission to require a discharger of toxic pollutants to provide a site and method for flow measurement and to provide any pertinent information relating to the discharge of water contaminants in order to demonstrate to the commission that the plans of the discharger will not result in a violation of the standards and regulations; these requirements are well within the statutory mandate. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

In determining whether administrative interpretation is "clearly incorrect," the authority granted to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent or policy. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

Commission may delegate authority to administer regulations. — Where the commission gave the

environmental improvement division (now department of environment) the authority to administer certain regulations, there was no unlawful delegation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

Discharge of a toxic pollutant in violation of a discharge plan is a criminal act. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

Law reviews. — For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 *Nat. Resources J.* 693 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 *N.M.L. Rev.* 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 13 *N.M.L. Rev.* 235 (1983).

*Am. Jur. 2d, A.L.R. and C.J.S. references.* — 61A *Am. Jur. 2d Pollution Control* §§ 133 to 136.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 *A.L.R.3d* 1258.

39A *C.J.S. Health and Environment* §§ 134, 145, 154.

#### 74-6-5.1. Disclosure statements.

A. The commission by regulation may require every applicant for a permit to dispose or use septage or sludge, or within a source category designated by the commission, to file with the appropriate constituent agency a disclosure statement. The disclosure statement shall be submitted on a form developed by the commission and the department of public safety. The commission in cooperation with the department of public safety shall determine the information to be contained in the disclosure statement. The disclosure statement shall be submitted to the constituent agency at the same time that the applicant files an application for a permit pursuant to Section 74-6-5 NMSA 1978. The commission shall adopt regulations designating additional categories of sources subject to the disclosure requirements of this section as it deems appropriate and necessary to carry out the purposes of this section.

B. Upon a request by the constituent agency, the department of public safety shall prepare and transmit to the constituent agency an investigative report on the applicant within ninety days after the department of public safety receives an administratively complete disclosure statement prepared by the applicant for a permit. The investigative report shall be based in part upon the disclosure statement. The ninety-day deadline for preparing the investigative report may be extended by the constituent agency for a reasonable period of time for good cause. The department of public safety in preparing the investigative report may request and receive criminal history information from any other law enforcement agency or organization. The constituent agency may also request information regarding a person who will be or could reasonably be expected to be involved in management activities of the permitted facility or a person who has a controlling interest in a permitted facility. The information received from a law enforcement agency shall be kept confidential by the department of public safety to the extent that confidentiality is imposed by the law enforcement agency as a condition for providing the information to the constituent agency or the commission.

C. All persons required to file a disclosure statement shall provide any assistance or information requested by the constituent agency or the department of public safety and shall cooperate in any inquiry or investigation conducted by the department of public safety. If a person required to file a disclosure statement refuses to comply with a formal request to answer an inquiry or produce information, evidence or testimony, the application of the applicant or the permit of the permittee shall be denied or terminated by the constituent agency.

D. If the information required to be included in the disclosure statement changes or if additional information should be added after the filing of the disclosure statement, the person required to file the disclosure statement shall provide the information to the constituent agency in writing within thirty days after the change or addition. Failure to provide the information within thirty days shall constitute the basis for the termination of a permit or denial of an application for a permit. Prior to terminating a permit or denying an application for a permit, the constituent agency shall notify the permittee or applicant of the constituent agency's intent to terminate a permit or deny an application and the constituent agency shall give the permittee or applicant fourteen days from the date of notice to satisfactorily explain why the information was not provided within the thirty-day period. The constituent agency shall consider the explanation of the permittee or applicant when determining whether to terminate the permit or deny the application for a permit.

E. No person shall be required to submit the disclosure statement required by this section if:

(1) the application is for a facility owned and operated by the state, a political subdivision of the state or an agency of the federal government or for the permitted disposal or use of septage or sludge on the premises where the sludge or septage is generated;

(2) the person has submitted a disclosure statement pursuant to this section within the previous year and no changes have occurred that would require disclosure under Subsection D of this section; or

(3) the person is a corporation or an officer, director or shareholder of that corporation and that corporation:

(a) has on file and in effect with the federal securities and exchange commission a registration statement required by Section 5, Chapter 38, Title 1 of the Securities Act of 1933, as amended;

(b) submits to the constituent agency with the application for a permit evidence of the registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-K or an equivalent report; and

(c) submits to the constituent agency on the anniversary date of the issuance of the permit evidence of registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-K or an equivalent report.

F. Permit decisions made pursuant to this section shall be subject to the procedures established in Section 74-6-5 NMSA 1978, including notice and appeals.

History: Laws 1993, ch. 291, § 12.

Effective dates. — Laws 1993, ch. 291 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of

the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

Securities Act of 1933. — Section 5, Chapter 38, Title 1 of the Securities Act of 1933, referred to Subsection E(3)(a), appears as 15 U.S.C. § 77e.

## 74-6-5.2. Water quality management fund created.

There is created in the state treasury the "water quality management fund" to be administered by the department of environment. All fees collected pursuant to the regulations adopted by the commission under Subsection H of Section 74-6-5 NMSA 1978 shall be deposited in the fund. Money in the fund is appropriated to the department of environment for the purpose of administering the regulations adopted by the commission pursuant to Section 74-6-5 NMSA 1978. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment.

History: Laws 1993, ch. 100, § 4.

Emergency clauses. — Laws 1993, ch. 100, § 8

makes the act effective immediately. Approved March 31, 1993.

## 74-6-6. Adoption of regulations and standards; notice and hearing.

A. No regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing.



B. Any person may petition in writing to have the commission adopt, amend or repeal a regulation or water quality standard. The commission shall determine whether to hold a hearing within ninety days of submission of the petition. The denial of such a petition shall not be subject to judicial review.

C. Hearings on regulations or water quality standards of statewide application shall be held in Santa Fe. Hearings on regulations or standards that are not of statewide application may be held within the area that is substantially affected by the regulation or standard. At least thirty days prior to the hearing date, notice of the hearing shall be published in the New Mexico register and a newspaper of general circulation in the area affected and mailed to all persons who have made a written request to the commission for advance notice of hearings and who have provided the commission with a mailing address. The notice shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or water quality standard.

D. At the hearing, the commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The commission may designate a hearing officer to take evidence in the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the commission.

E. No regulation or water quality standard or amendment or repeal thereof adopted by the commission shall become effective until thirty days after its filing in accordance with the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

**History:** 1953 Comp., § 75-39-5, enacted by Laws 1967, ch. 190, § 6; 1982, ch. 73, § 26; 1993, ch. 291, § 6.

**Delayed repeals.** — See 74-6-14 NMSA 1978.

**Cross references.** — As to filing with the supreme court law librarian, see 14-4-9 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "and standards" in the catchline; inserted the subsection designations; in Subsection A, deleted "within the area of the state concerned; provided that the commission may adopt water quality standards on the basis of the record of hearings held by the New Mexico department of public health prior to the effective date of the Water Quality Act if those hearings were held in general conformance with the provisions of this section" from the end; in Subsection B, substituted the language following "Any person may" for "recommend or propose regulations to the commission for promulgation"; in Subsection C, in the first sentence, inserted "or water quality standards" and made a minor stylistic change, added the second sentence, in the third sentence, added "At least thirty days prior to the hearing date" and substituted the language following "hearing shall be" for "given at least thirty days prior to the hearing date and", inserted "The notice" at the beginning of the fourth sentence and deleted the last two sentences, which read "The notice shall be published in a newspaper of general circulation in the area affected. Reasonable effort shall be made to give notice to all persons who have made a written request to the commission for advance notice of its hearings"; and deleted the former second sentence of Subsection E, which read "The commission

shall determine whether or not to hold a hearing within sixty days of submission of a proposed regulation."

**Authority of division to propose regulations and act as interested party at hearings.** — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment of 74-6-9 NMSA 1978 and the 1993 amendment to 74-6-3A(1)).

**Adequacy of hearing.** — Given the extensive nature of the public meetings and public hearing on the matter, with an opportunity to present evidence and cross-examine witnesses and with the prehearing disclosure of six references, the allegation of the concealment of the basic data on which standards for organic compounds in ground-water were based, was without merit. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 61A Am. Jur. 2d Pollution Control §§ 6, 134.

39A C.J.S. Health and Environment §§ 138, 142.

## 74-6-7. Administrative action; judicial review.

A. Except as otherwise provided in the Water Quality Act [this article], a person who is adversely affected by a regulation adopted by the commission or by a compliance order approved by the commission or who participated in a permitting action or appeal of a certification before the commission and who is adversely affected by such action may appeal to the court of appeals for further relief. All such appeals shall be upon the record made

before the commission and shall be taken to the court of appeals within thirty days after the regulation, compliance order, permitting action or certification that is being appealed occurred. If an appeal of a regulation is made, then the date of the commission's action shall be the date of the filing of the regulation under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-4 NMSA 1978].

B. Upon appeal, the court of appeals shall set aside the commission's action only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

C. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outcome of the judicial review. The stay of the action may be granted by the commission or by the court of appeals if the commission denies a stay within ninety days after receipt of the application.

**History:** 1953 Comp., § 75-39-6, enacted by Laws 1967, ch. 190, § 6; 1970, ch. 64, § 4; 1993, ch. 291, § 7.

The 1993 amendment, effective June 18, 1993, substituted "Administrative Action" for "Validity of Regulation" in the catchline; rewrote Subsection A; deleted former Subsection B, relating to the procedure for perfecting an appeal; redesignated former Subsection C as present Subsection B; in present Subsection B, substituted "commission's action" for "regulation", deleted "or reasonably related to the prevention or abatement of water pollution" following "the record" in Paragraph (2), and made a minor stylistic change; and added present Subsection C.

Standard is rule, if the proper procedure has been followed in promulgating it. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

Standards adopted as rules are appealable. — Since the standards for the evaluation of waste water to determine whether it is contaminated were adopted as rules, they are appealable to the court of appeals. *Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n*, 93 N.M. 546, 603 P.2d 285 (1979).

Lack of numerical standards not basis for invalidating regulation. — Although there are no numerical standards in a regulation for what concentration of compounds triggers the label "toxic pollutant," this is not detrimental to a discharger where the director of the environmental improvement division will make that determination before a discharge plan is approved or disapproved, and the discharger will be notified. The lack of numerical standards is, therefore, not a basis for finding the regulation unconstitutional. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

Stay from operation of order or regulation. — Implicit in this section is the power to grant a stay

from the operation of an administrative order or regulation, after due notice and opportunity for hearing. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 105 N.M. 708, 736 P.2d 986 (Ct. App. 1986) (decided prior to the 1993 amendment, which added the provisions in Subsection C authorizing a stay of the action being appealed).

Evidence upon review. — The "whole record" standard of judicial review to findings of fact made by administrative agencies controls where the commission acts in its rule-making capacity. Therefore, such a review must include the record of all public meetings and public hearings. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

The legal residuum rule, which requires support by some evidence that would be admissible in a jury trial, is not applicable in a judicial review of a rule-making proceeding. *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1988).

Law reviews. — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 38, 113, 179 to 181, 265, 273, 292.

Validity and construction of anti-water pollution statutes and ordinances, 32 A.L.R.3d 215.

Pollution control: validity and construction of statutes, ordinances or regulations controlling discharge of industrial wastes into sewer system, 47 A.L.R.3d 1224.

39A C.J.S. Health and Environment § 146.

## 74-6-8. Duties of constituent agencies.

Each constituent agency shall administer regulations adopted pursuant to the Water Quality Act [this article], responsibility for the administration of which has been assigned to it by the commission.

**History:** 1953 Comp., § 75-39-7, enacted by Laws 1967, ch. 190, § 7.

Commission may delegate authority to administer regulations. — Where the commission gives the environmental improvement division the authority to administer certain regulations, there is no unlawful

delegation of authority. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982).

Law reviews. — For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

### 74-6-9. Powers of constituent agencies.

Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act [this article];

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy furnished to the commission and to the owner or occupant of the premises investigated;

C. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

D. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;

E. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

(1) have access to and reproduce for their use any copy of the records;

(2) inspect any treatment works, monitoring equipment or methods required to be installed by regulations of the federal government or the commission; and

(3) sample any effluents, water contaminant or receiving waters;

F. on the same basis as any other person, recommend and propose regulations and standards for promulgation by the commission; and

G. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the commission or any other administrative agency with responsibility in the areas of environmental management, public health or consumer protection, but shall not be given any special status over any other party; provided that the participation by a constituent agency in a hearing shall not require the recusal or disqualification of the commissioner representing that constituent agency.

**History:** 1953 Comp., § 75-39-8, enacted by Laws 1967, ch. 190, § 8; 1973, ch. 326, § 5; 1982, ch. 73, § 27; 1993, ch. 291, § 8.

The 1993 amendment, effective June 18, 1993, made a minor stylistic change in Subsection B; in Subsection E, in the introductory paragraph, substituted "a water contaminant" for "an effluent" and inserted "federal government or the", inserted "and reproduce for their use" in Paragraph (1), in Paragraph (2), inserted "treatment works" and "federal government or the", inserted "water contaminant or receiving waters" in Paragraph (3); inserted "and standards" in Subsection F; and inserted "public health" in Subsection G.

Authority of division to propose regulations

and act as interested party at hearings. — In light of the fact that the legislature had seen fit to have the director of the environmental improvement division sit as a member of the commission, the division could propose regulations to the commission and then act as an interested party at the hearings. *Kerr-McGee Nuclear Corp. v. New Mexico Water Quality Control Comm'n*, 98 N.M. 240, 647 P.2d 873 (Ct. App. 1982) (decided prior to 1982 amendment and the 1993 amendment to 74-6-3A(1)).

**Law reviews.** — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

### 74-6-10. Penalties enforcement; compliance orders; penalties; assurance of discontinuance.

A. Whenever, on the basis of any information, a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the Water Quality Act [this article] or a condition of a permit issued pursuant to that act, the constituent agency may:

(1) issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty, or both; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

B. A compliance order issued pursuant to Paragraph (1) of Subsection A of this section may include a suspension or termination of the permit allegedly violated.

C. A compliance order shall state with reasonable specificity the nature of the violation. Any penalty assessed in the compliance order shall not exceed:

(1) fifteen thousand dollars (\$15,000) per day of noncompliance with the provisions in Section 74-6-5 NMSA 1978, including a regulation adopted or a permit issued pursuant to that section; or

(2) ten thousand dollars (\$10,000) per day for each violation of a provision of the Water Quality Act other than the provisions in Section 74-6-5 NMSA 1978 or of a regulation or water quality standard adopted pursuant to the Water Quality Act.

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

E. For purposes of this section, a single operational event that leads to simultaneous violations of more than one standard shall be treated as a single violation.

F. If a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may:

(1) assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of continued noncompliance with the compliance order; and

(2) suspend or terminate the permit violated by the person.

G. Any compliance order issued by a constituent agency 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 commission for a public hearing. The commission shall conduct a public hearing within ninety days after receipt of a request.

H. The commission may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection F of this section. The hearing officer shall:

(1) make and preserve a complete record of the proceedings; and

(2) forward to the commission a report that includes recommendations, if recommendations are requested by the commission.

I. The commission shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the commission shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the commission may:

(1) adopt rules for discovery procedures; and

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

K. Penalties collected pursuant to this section shall be deposited in the general fund.

L. As an additional means of enforcing the Water Quality Act or any regulation or standard of the commission, the commission may accept an assurance of discontinuance of any act or practice deemed in violation of the Water Quality Act or any regulation or standard adopted pursuant to that act, from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the chairman of the commission and the party affected. Any such assurance shall specify a time limit during which the discontinuance is to be accomplished.

History: 1953 Comp., § 75-39-9, enacted by Laws 1967, ch. 180, § 9; 1970, ch. 64, § 5; 1993, ch. 291, § 9.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

Voluntary compliance no bar to assessment of

civil penalties and cleanup costs. — The former voluntary compliance provision of Subsection A did not apply to the remedies provided for violations of this article. The absence of voluntary compliance actions on the part of the state in a case did not prevent the state from seeking civil penalties and costs of cleanup. State ex rel. New Mexico Water

Quality Control Comm'n v. Molybdenum Corp. of Am., 89 N.M. 552, 555 P.2d 375 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976) (decided prior to the 1993 amendment, which rewrote this section, deleting reference to voluntary compliance and shifting penalty provisions to 74-6-10.1 and 74-6-10.2 NMSA 1978).

Law reviews. — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 534 to 547.

Injunction against pollution of stream by private

persons or corporations, 46 A.L.R. 8.

Validity and construction of statutes, ordinances or regulations controlling discharge of industrial wastes into sewer system, 47 A.L.R.3d 1224.

Preliminary mandatory injunction to prevent, correct or reduce effects of polluting practices, 49 A.L.R.3d 1239.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency, 60 A.L.R.3d 665.

Validity, under federal constitution, of state statute or local ordinance regulating phosphate content of detergents, 21 A.L.R. Fed. 365.

39A C.J.S. Health and Environment §§ 150 to 154.

### 74-6-10.1. Civil penalties.

A. Any person who does not comply with the provisions of Section 74-6-5 NMSA 1978, including any regulation adopted pursuant to that section, or any permit issued pursuant to that section, shall be assessed civil penalties up to the amount of fifteen thousand dollars (\$15,000) per day of noncompliance for each violation.

B. Any person who violates any provision of the Water Quality Act other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation.

History: Laws 1993, ch. 291, § 14.

Effective dates. — Laws 1993, ch. 291 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days

after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

### 74-6-10.2. Criminal penalties.

A. No person shall:

(1) discharge any water contaminant without a permit for the discharge, if a permit is required, or in violation of any condition of a permit for the discharge from the federal environmental protection agency, the commission or a constituent agency designated by the commission;

(2) make any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the Water Quality Act [this article];

(3) falsify, tamper with or render inaccurate any monitoring device, method or record required to be maintained under the Water Quality Act;

(4) fail to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation; or

(5) introduce into a sewerage system or into a publicly owned treatment works any water contaminant or hazardous substance, other than in compliance with all applicable federal, state or local requirements or permits, that the person knew or reasonably should have known could cause personal injury or property damage, which causes the treatment works to violate an effluent limitation or condition in a permit issued to the treatment works pursuant to the Water Quality Act or applicable federal water quality statutes.

B. Any person who knowingly violates or knowingly causes or allows another person to violate Subsection A of this section is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

C. Any person who is convicted of a second or subsequent violation of Subsection A of this section is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

D. Any person who knowingly violates Subsection A of this section or knowingly causes another person to violate Subsection A of this section and thereby causes a substantial

adverse environmental impact is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. Any person who knowingly violates Subsection A of this section and knows at the time of the violation that he is creating a substantial danger of death or serious bodily injury to any other person is guilty of a second degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

F. A single operational event that leads to simultaneous violations of more than one water contaminant parameter shall be treated as a single violation.

History: Laws 1993, ch. 291, § 15.

Effective dates. — Laws 1993, ch. 291 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days

after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

## 74-6-11. Emergency; powers of delegated constituent agencies; penalties.

A. If a constituent agency determines upon receipt of evidence that a pollution source or combination of sources over which it has been delegated authority by the commission poses an imminent and substantial danger to public health, it may bring suit in the district court for the county in which such a source is located to:

(1) restrain immediately any person causing or contributing to the alleged condition from further causing or contributing to the condition; or

(2) take such other action as deemed necessary and appropriate.

B. If it is not practicable to assure prompt protection of public health solely by commencement of a civil action as set forth in Subsection A of this section, the constituent agency may issue such orders as it deems necessary to protect public health. Any order issued by the constituent agency shall be effective for not more than seventy-two hours unless the constituent agency brings an action in district court within the seventy-two hour period. If the constituent agency brings an action within seventy-two hours of issuance of the order, the order shall be effective for one hundred sixty-eight hours or for a longer period of time authorized by the court.

C. Any person who willfully violates or fails or refuses to comply with an order issued by a constituent agency under Subsection B of this section shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) for each day during which the violation, failure or refusal occurs.

History: 1953 Comp., § 75-39-10, enacted by Laws 1967, ch. 190, § 10; 1970, ch. 64, § 6; 1971, ch. 277, § 52; 1993, ch. 291, § 10.

The 1993 amendment, effective June 18, 1993, rewrote the catchline, which read "Emergency Procedure"; deleted the former language of the section relating to the procedure followed by the director of the environmental improvement agency to abate water pollution, and added new Subsections A through C.

Law reviews. — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control §§ 493, 538, 539. 39A C.J.S. Health and Environment § 144.

## 74-6-12. Limitations.

A. The Water Quality Act [this article] does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, the Ground Water Protection Act or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are

confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. Except as required by federal law, in the adoption of regulations and water quality standards and in any action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission under the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978], Section 70-2-12 NMSA 1978, and other laws conferring power on the oil conservation commission to prevent or abate water pollution.

**History:** 1953 Comp., § 75-39-11, enacted by Laws 1967, ch. 190, § 11; 1973, ch. 328, § 6; 1993, ch. 291, § 11.

The 1993 amendment, effective June 18, 1993, deleted former Subsection B relating to the availability of data obtained by the commission to the public and inserted present Subsection B; in Subsection F, inserted "Except as required by federal law", substituted "pursuant to that act" for "thereunder", and added the last sentence; and rewrote Subsection G.

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

For note, "New Mexico Water Pollution Regulations and Standards Upheld," see 19 Nat. Resources J. 693 (1979).

For article, "The Assurance of Reasonable Toxic Risk?," see 24 Nat. Resources J. 549 (1984).

### 74-6-13. Construction.

The Water Quality Act [this article] provides additional and cumulative remedies to prevent, abate and control water pollution, and nothing abridges or alters rights of action or remedies in equity under the common law or statutory law, criminal or civil. No provision of the Water Quality Act or any act done by virtue thereof estops the state or any political subdivision or person as owner of water rights or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

**History:** 1953 Comp., § 75-39-12, enacted by Laws 1967, ch. 190, § 12.

**Court retains jurisdiction of case seeking tort and contract damages.** — The trial court correctly retains jurisdiction of a case seeking tort and contract damages against a utility for its failure to supply water meeting certain minimal standards of quality since the government agencies involved have no expertise in considering tort and contractual claims and

are without power to grant the relief that the plaintiffs have asked, and this section evidences the legislative intent that common-law remedies against water pollution be preserved. *O'Hare v. Valley Utils., Inc.*, 89 N.M. 105, 547 P.2d 1147 (Ct. App.), modified, 89 N.M. 262, 550 P.2d 274 (1976).

**Law reviews.** — For comment, "Control of Industrial Water Pollution in New Mexico," see 9 Nat. Resources J. 653 (1969).

### 74-6-14. Recompiled.

**Recompilations.** — Section 74-6-14 NMSA 1978, as amended by Laws 1993, ch. 291, § 17, relating to

the termination of agency life, was recompiled as 74-6-17 NMSA 1978 in 1993.

### 74-6-15. Confidential information; penalties.

A. Records, reports or information obtained by the commission or a constituent agency pursuant to the Water Quality Act [this article] shall be generally available to the public. All ambient water quality data and all effluent data obtained by the commission or a constituent agency shall be available to the public. Records, reports or information or particular parts of the records, reports or information shall be held confidential, if a person can demonstrate to the commission or constituent agency that the records, reports or

information or particular parts of the records, reports or information, if made public, would divulge confidential business records or methods or processes entitled to protection as trade secrets. Except that the record, report or information may be disclosed:

(1) to officers, employees or authorized representatives of the commission or a constituent agency concerned with carrying out the purposes and provisions of the Water Quality Act;

(2) to officers, employees or authorized representatives of the United States government; or

(3) when relevant in any proceeding pursuant to the Water Quality Act or the federal act.

B. The commission shall promulgate regulations to implement the provisions of this section, including regulations specifying business records entitled to protection as confidential.

C. An officer, employee or authorized representative of the commission or a constituent agency who knowingly or willfully publishes, divulges, discloses or makes known any information that is required to be considered confidential pursuant to this section shall be fined not more than one thousand dollars (\$1,000) or imprisonment of not more than one year, or both.

**History:** Laws 1993, ch. 291, § 13.

**Effective dates.** — Laws 1993, ch. 291 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days

after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

#### **74-6-16. Effect and enforcement of water quality act during transition.**

A. All rules, regulations, water quality standards and administrative determinations of the commission and any constituent agency pertaining to the Water Quality Act [this article] that existed prior to the effective date of this 1993 act shall remain in full force and effect after that date until repealed or amended, unless in conflict with, prohibited by or inconsistent with the provisions of the Water Quality Act.

B. All enforcement actions taken before the effective date of this 1993 act shall be valid if based upon a violation of the Water Quality Act, including any regulation or water quality standard that was in effect at the time of the violation.

**History:** Laws 1993, ch. 291, § 16.

**Effective dates.** — Laws 1993, ch. 291 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23 is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

**Compiler's notes.** — The "effective date of this 1993 act", referred to in Subsection A, means June 18, 1993, the effective date of Laws 1993, ch. 29, which enacted this section.

#### **74-6-17. Termination of agency life; delayed repeal.**

The water quality control commission is terminated on July 1, 1999 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Sections 74-6-3 and 74-6-4 [NMSA 1978] (being Laws 1967, Chapter 190, Sections 3 and 4, as amended) are repealed.

**History:** 1978 Comp., § 74-6-13.1, enacted by Laws 1987, ch. 333, § 15; 1993, ch. 291, § 17.

The 1993 amendment, effective June 18, 1993, substituted "1999" for "1993" in the first sentence,

substituted "2000" for "1994" at the end of the second sentence, and rewrote the third sentence which read "Effective July 1, 1994, Article 6, Chapter 74 is repealed."



# WATER QUALITY CONTROL COMMISSION

## DELEGATION OF RESPONSIBILITIES TO ENVIRONMENTAL IMPROVEMENT DIVISION AND OIL CONSERVATION DIVISION

In an effort to prevent duplication of effort and to clarify the division of responsibilities pursuant to the provisions of the Water Quality Act, NMSA Sections 74-6-1 et seq. (1978), as administered and enforced by the Water Quality Control Commission, the Commission hereby approves the following list of delegated duties and responsibilities for two of the agencies that are constituent agencies to which authority can be delegated, the Environmental Improvement Division ("EID") and the Oil Conservation Division ("OCD"). The Commission is specifically authorized to take this action by NMSA Section 74-6-4E (1978) and by other general provisions of the Water Quality Act. The Commission notes that pursuant to NMSA Section 74-6-9C (1978), constituent agencies may "report to the Commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report." The Commission encourages OCD and EID to continue close communication and cooperation where responsibility is unclear, to ensure that water pollution is prevented or abated quickly, efficiently and consistently. In situations involving discharges or facilities under the jurisdiction of both agencies, the agencies shall mutually agree which shall be the lead agency and shall determine the method by which the discharge plan shall be evaluated and approved. In preparing this delegation statement, the Commission is cognizant of the limitations imposed on its authority by the Water Quality Act, especially NMSA Section 74-6-12G (1978) which prohibits it from taking any action which would "interfere with the exclusive authority of the Oil Conservation Commission over all persons and things necessary to prevent water pollution as a result of oil or gas operations...."

This delegation shall supersede all previous delegations to EID and OCD; reference to the dates and minutes of Commission meetings in which previous delegations were made are in parentheses and the minutes are attached. The specific grants of authority are not intended to be comprehensive. When a question of authority and jurisdiction arises, which is not specifically delegated, the general provisions below shall control.

### 1. General Provisions

As a general rule, OCD will administer and enforce applicable Commission regulations pertaining to surface and ground water discharges at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities, natural gas transmission lines, and discharges

associated with activities of the oil field service industry. The Commission recognizes that OCD also administers regulations under both the Oil and Gas Act and the Geothermal Resources Act, and that OCD shall have discretion as to which regulations to enforce in any given situation. OCD shall have jurisdiction over all activities associated with exploration for or development, production, transportation before refinement, refinement, storage or treatment of unrefined oil and natural gas, or oil or gas products on refinery premises.

EID will administer and enforce Commission regulations regarding discharges from transmission, transportation and storage facilities for oil or oil by-products after refinement (including but not limited to gasoline stations), except those within refinery premises. EID will administer and enforce all Commission regulations pertaining to all other discharges to surface and ground water which are not specifically delegated to other departments and agencies. (Source: 1/13/69 and 5/8/84 Commission minutes)

## 2. Specific Grants of Authority

A. EID shall certify Section 404 dredge and fill material permits under the Clean Water Act ("CWA"). (Source: 1/13/76 and 6/14/83 Commission minutes)

B. EID shall administer the Wastewater Construction Grants program pursuant to Section 205 of the CWA. (Source: 6/14/83 Commission minutes)

C. EID shall certify NPDES permits pursuant to Title IV of the Federal Water Pollution Control Act Amendments of 1972 and S402 of the CWA. (Source: 10/1/74 and 8/14/84 Commission minutes)

D. EID shall certify hydropower licenses issued by the Federal Energy Regulatory Commission. (Source: 8/14/84 Commission minutes)

E. EID shall administer and enforce Commission regulations pertaining to the disposal of human excrement and bath water at oil and natural gas production sites, oil refineries, natural gas processing plants, geothermal installations, carbon dioxide facilities and natural gas transmission lines when the treatment facilities for the sewage are a separate and isolated discharge unmixed with any produced water, oil field waste or oil field service waste. (Such an isolated discharge would include: a small sewage treatment plant, package plant, or septic tank and drainfield.) If, on the other hand, sewage is in a discharge combined or mixed with produced water, oil field waste or oil field service waste, OCD shall have jurisdiction. (Source: 5/8/84 Commission minutes)

F. OCD shall administer and enforce Commission regulations at brine manufacturing operations and concerning discharges to ground or surface water at brine manufacturing operations, including all brine production wells, holding ponds and tanks. OCD shall have jurisdiction over all manufactured brine once it is transported, used or disposed of off brine plant premises for use in or directly related to oil and gas operations regulated by OCD. OCD shall regulate brine injection through its Class II Underground Injection control (UIC) Program if the brine is used in the drilling for or production of oil and gas. EID shall regulate brine injection through its UIC Program if the brine is used for other purposes. (Source: 6/13/89 Commission minutes)

G. EID shall administer and enforce all programs implemented by the state under PL 92-500 (The Federal Water Pollution Control Act) and its Amendments, unless directed otherwise by the Commission. (Source: 7/8/75 Commission minutes)

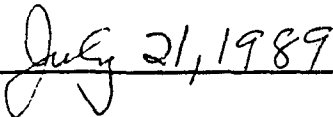
H. OCD shall have general jurisdiction over the oil field service industry. Many activities that would ordinarily be regulated by EID are regulated by OCD when those activities occur in the oil field service industry. The following list, which is not intended to be inclusive, serves to help clarify this delegation:

OCD	EID
waste oil handled or processed by oil field service companies or treating plants	used motor oil handlers
all underground and above-ground tanks on refinery premises, unless the tanks contain unmixed sewage; all underground and above-ground tanks not on refinery premises which contain crude petroleum, produced water or oil field service chemicals	all underground and above-ground tanks not on refinery premises, unless the tanks contain crude petroleum, produced water or oil field service chemicals
tanker trucks hauling, spilling or disposing of well-service chemicals, kill water, produced water, crude oil, tank bottom sludge and other oil field wastes and oil field service materials	tanker trucks spilling or disposing of non-oil and gas production wastes, non-oil and gas service materials, or refined petroleum products
washings from trucks and other equipment used in the transport, production or refining of oil and gas crude products, production wastes or service materials	washings from trucks and other equipment not used for oil and gas production related purposes

Both EID and OCD are authorized to continue to take appropriate legal action in their respective areas of delegation (including initiating proceedings in court) on behalf of the Commission on a finding of good cause to believe any person is violating or is threatening to violate a Commission regulation or the Water Quality Act. The agencies shall send a copy of each Complaint, Settlement Agreement and Judgment to the Commission Secretary for distribution to Commission members. (Source: NMSA Section 74-1-8.2(B) (1978), 2/8/71 and 1/11/83 Commission minutes)

WATER QUALITY CONTROL COMMISSION

  
By: Richard Mitzelfelt, Chairman

  
Date

Attachment No. 2

**NEW MEXICO  
STATUTES  
1978**

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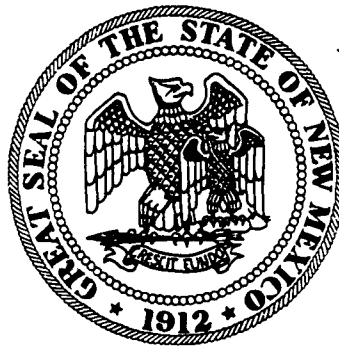
**ANNOTATED**

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**Chapter 70  
Oil and Gas**

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**Pamphlet 111**



**1993 CUMULATIVE SUPPLEMENT**

This supplement includes laws enacted since the 1987 Replacement Pamphlet through the First Regular Session of the Forty-First Legislature (1993) and annotations through 844 P.2d 499, 113 S. Ct. 834, 981 F.2d 535, 806 F. Supp. 1024, 144 F.R.D. 427, and 147 Bankr. 821.

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**THE STATE OF NEW MEXICO**

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# CHAPTER 70

## Oil and Gas

### Art.

2. Oil Conservation Commission; Division; Regulation of Wells, 70-2-1 to 70-2-38.
3. Pipelines, 70-3-1 to 70-3-20.
- 3A. Gathering Line Land Acquisition, 70-3A-1 to 70-3A-7.
4. Liens on Wells and Pipelines, 70-4-1 to 70-4-15.
5. Liquefied and Compressed Gases, 70-5-1 to 70-5-23.
6. Underground Storage of Natural Gas, 70-6-1 to 70-6-8.
10. Oil and Gas Proceeds Payments, 70-10-1 to 70-10-6.
11. Office of Interstate Natural Gas Markets, 70-11-1 to 70-11-6.

## ARTICLE 1

### Assignments and Leases

#### 70-1-1. [Production of oil, gas or other minerals; assignments of royalties to be recorded.]

Am. Jur. 2d, A.L.R. and C.J.S. references. — Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

## ARTICLE 2

### Oil Conservation Commission; Division; Regulation of Wells

#### Sec.

- 70-2-1. Short title.  
70-2-12. Enumeration of powers.  
70-2-36.1. Repealed.

#### Sec.

- 70-2-37. Oil and gas reclamation fund created; disposition of fund.

#### 70-2-1. Short title.

Chapter 70, Article 2 NMSA 1978 may be cited as the "Oil and Gas Act".

History: 1953 Comp., § 65-3-1.1, enacted by Laws 1977, ch. 237, § 1; 1988, ch. 130, § 13.  
The 1989 amendment, effective June 16, 1989,

substituted "Chapter 70, Article 2 NMSA 1978" for "Sections 65-3-1.1 through 65-3-31 and 65-3-35 and 65-3-36 NMSA 1953".

#### 70-2-4. Oil conservation commission; members; term; officers; quorum; power to administer oaths.

Judicial decisions preclusive. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v.*

*Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, U.S. , 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

#### 70-2-6. Commission's and division's powers and duties.

Judicial powers. — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod. Co. v. Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, U.S. , 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

Authority held not exceeded. — Where an oil well was located so that it could produce oil from the top portion of the pool, thereby avoiding waste that would have occurred unless the well was allowed, but the well was located so that it could effectively drain the entire pool, and the oil conservation commission,



charged with the protection of correlative rights of the other lease owners in the pool, placed a production penalty on the well to protect these rights, the commission did not exceed the broad statutory authority

granted by the Oil and Gas Act. Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103, 835 P.2d 819 (1992).

## **70-2-7. Rules of procedure in hearings; manner of giving notice; record of rules, regulations and orders.**

**Oil well spacing increase application.** — A proceeding on an oil and gas estate lessee's application for an increase in oil well spacing was adjudicatory, and the lessor was entitled to actual notice under the

due process requirements of the New Mexico and United States Constitutions. Uhden v. New Mexico Oil Conservation Comm'n, 112 N.M. 528, 817 P.2d 721 (1991).

## **70-2-11. Power of commission and division to prevent waste and protect correlative rights.**

**Authority held not exceeded.** — Where an oil well was located so that it could produce oil from the top portion of the pool, thereby avoiding waste that would have occurred unless the well was allowed, but the well was located so that it could effectively drain the entire pool, and the oil conservation commission, charged with the protection of correlative rights of the

other lease owners in the pool, placed a production penalty on the well to protect these rights, the commission did not exceed the broad statutory authority granted by the Oil and Gas Act. Santa Fe Exploration Co. v. Oil Conservation Comm'n, 114 N.M. 103, 835 P.2d 819 (1992).

## **70-2-12. Enumeration of powers.**

A. Included in the power given to the oil conservation division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act [this article]; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars (\$50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

- (8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;
- (9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;
- (10) to fix the spacing of wells;
- (11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;
- (12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;
- (13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;
- (14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;
- (15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;
- (16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;
- (17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash which may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;
- (18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act and the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;
- (19) to make well price category determinations pursuant to the provisions of the Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars (\$25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature;
- (20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;
- (21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and
- (22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment including administering the Water Quality Act [74-6-1 to 74-6-4, 74-6-6 to 74-6-13 NMSA 1978] as provided in Subsection E of Section 74-6-4 NMSA 1978.

**History:** 1953 Comp., § 65-3-11, enacted by Laws 1978, ch. 71, § 1; 1986, ch. 76, § 1; 1987, ch. 234, § 61; 1989, ch. 289, § 1.

The 1989 amendment, effective June 16, 1989, added Subsections B(21) and B(22).

**Natural Gas Policy Act of 1978.** — The federal Natural Gas Policy Act of 1978, referred to in Subsection B(19), appears as 15 U.S.C. § 3301 et seq.

## **70-2-18. Spacing or proration unit with divided mineral ownership.**

**Proceedings to increase oil well spacing.** — A proceeding on an oil and gas estate lessee's applica-

tion for an increase in oil well spacing was adjudicatory, and the lessor was entitled to actual notice under

the due process requirements of the New Mexico and United States Constitutions. *Uhden v. New Mexico*

*Oil Conservation Comm'n*, 112 N.M. 528, 817 P.2d 721 (1991).

### 70-2-25. Rehearings; appeals.

**Commission's judicial decision preclusive.** — Commission was acting in a judicial capacity when it approved a proposed unitization plan; its decision was therefore entitled to preclusive effect. *Amoco Prod.*

*Co. v. Heimann*, 904 F.2d 1405 (10th Cir. 1990), cert. denied, U.S. , 111 S. Ct. 350, 112 L. Ed. 2d 314 (1990).

### 70-2-36.1. Repealed.

**Temporary provisions.** — Laws 1991, ch. 9, § 43, effective July 1, 1991, provides that all money in the oil conservation fund in excess of any money to be transferred to the oil and gas reclamation fund shall be transferred to the general fund.

**Repeals.** — Laws 1991, ch. 9, § 45A repeals 70-2-36.1 NMSA 1978, as amended by Laws 1989, ch. 130, § 12, relating to creation and disposition of the conservation fund, effective July 1, 1991. For provisions of former section, see 1989 Cumulative Supplement.

### 70-2-37. Oil and gas reclamation fund created; disposition of fund.

There is created the "oil and gas reclamation fund". All funds in the oil and gas reclamation fund are appropriated to the energy, minerals and natural resources department for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act [this article].

**History:** 1953 Comp., § 65-3-37, enacted by Laws 1977, ch. 237, § 4; 1978, ch. 117, § 2; 1987, ch. 234, § 64; 1989, ch. 324, § 33.

The 1989 amendment, effective April 7, 1989, deleted "and the earnings therefrom" following "gas reclamation fund" in the second sentence.

### 70-2-38. Oil and gas reclamation fund administered; plugging wells on federal land; right of indemnification; annual report; contractors selling equipment for salvage.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Duty of oil or gas lessee to restore surface of leased

premises upon termination of operations, 62 A.L.R.4th 1153.

## ARTICLE 3

### Pipelines

Sec.

70-3-5. Eminent domain power.  
70-3-12. Definitions.

Sec.

70-3-19. Enforcement; penalties.

### 70-3-5. Eminent domain power.

A. Any person, firm, association or corporation may exercise the right of eminent domain to take and acquire the necessary right-of-way for the construction, maintenance and operation of pipelines, including microwave systems and structures and other necessary facilities for the purpose of conveyance of petroleum, natural gas, carbon dioxide gas and the products derived therefrom, but any such right-of-way shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]. Pursuant to the requirements of Sections 42A-1-8 through 42A-1-12 NMSA 1978, the engineers, surveyors and other employees of such person, firm, association or corporation shall have the right to enter upon the lands and property of the state and of private persons and of private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for such pipelines, microwave systems, structures and other

Attachment No. 3



Photo No. 1 4-11-96

(All Photos taken by the NMOC D)



Photo No. 2 4-11-96

ABBOTT BROTHERS RAT HOLE SERVICE





Photo No. 3 4-11-96  
(All Photos taken by the NMOCB)



Photo No. 4 4-11-96

ABBOTT BROTHERS RATHOLE SERVICE



Photo No. 5 4-11-96

(All Photos Taken by the NMOC)



Photo No. 6 4-11-96

ABBOTT BROTHERS RAT HOLE SERVICE





Photo No. 7 4-11-96  
(All photos taken by the NMOC)



Photo No. 8 4-11-96

ABBOTT BROTHERS RATHOLE SERVICE



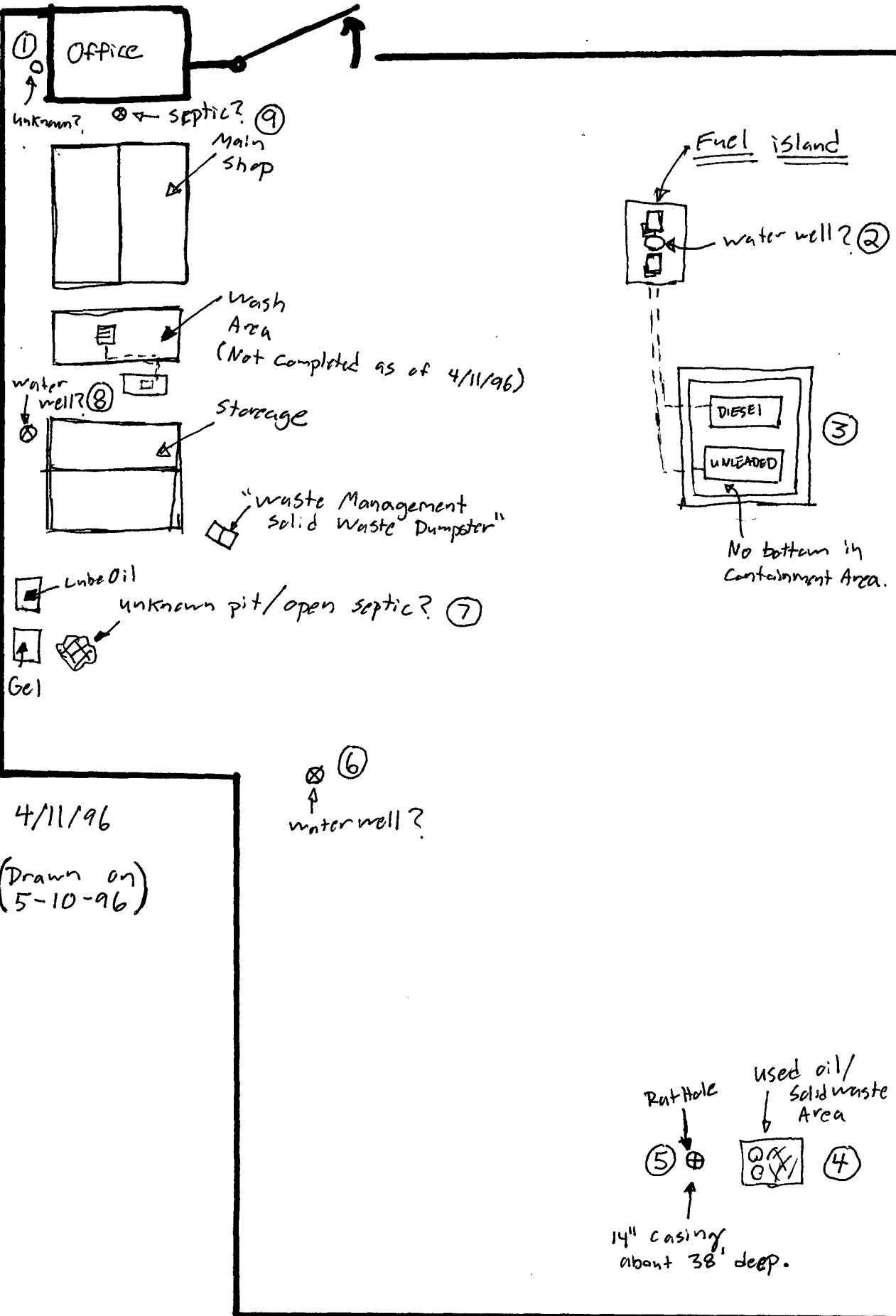
Attachment No. 4

ABBOTT BROTHERS  
RATHOLE SERVICE.

1923 W. BENDER

Hobbs, NM

22-141 50 SHEETS  
22-142 100 SHEETS  
22-144 200 SHEETS



(Not to Scale: by P.W.B.)

# Contractors, Injection Wells, and the TC Rule

**D**o you have a floor drain in your equipment garage that leads to a well, a dry well, or septic system? Do you install injection wells at service stations, industrial facilities or other locations? If you answer yes to either of these questions, you need to be aware of U.S. EPA's new Toxicity Characteristic (TC) rule. How this regulation may apply to you or your customers is a complicated process involving two laws, two programs, a couple of well classes, and several types of wells within those classes.

The two laws are the Resource Conservation and Recovery Act (RCRA) and the Safe Drinking Water Act (SDWA). The two programs are RCRA's hazardous waste program and the SDWA's underground injection program.

Within RCRA, there are two mechanisms for determining if wastes are hazardous. One mechanism is for EPA to identify and list particular wastes. The second mechanism is a determination by the waste generator based on knowledge or testing that the waste is "characteristically" hazardous. Wastes are characteristically hazardous due to ignitability, reactivity, corrosivity, or toxicity characteristic (TC rule). The TC rule replaces the extraction procedure. It expands the number of wastes that will be considered hazardous because of its new procedures and because it adds 25 organic constituents to the list that must be considered (see Table 1).

The SDWA's underground injection control program was developed to prevent contamination of underground sources of drinking water by injection wells. The program divides injection wells into five main categories (see Table 2).

This article will focus on Class

By Chris Reimer

IV and Class V wells. Class IV wells are those that dispose of hazardous or radioactive wastes into or above an underground source of drinking water. Class IV wells are banned by law. Class V wells are commonly referred to as shallow injection wells. Examples of Class V wells are septic systems, industrial disposal wells, aquifer recharge wells, drainage wells, and ground water heat pump return wells. U.S. EPA has identified 32 individual well types within the Class V category.

Because of the TC regulation, some formerly non-hazardous injection fluids will now be considered hazardous waste. Some Class V wells will be reclassified as prohibited Class IV because they inject a newly defined "characteristic" hazardous waste at a concentration greater than the regulatory level into or above an underground source of drinking water. Operations that EPA has identified as potentially having Class IV wells are the following:

- Industrial facilities in areas that are not sewered or in which a request to discharge into the sanitary sewer has been denied. Industry types most likely to generate characteristically hazardous waste are petroleum products, textiles, industrial organic chemicals, plastic materials and synthetic resins, synthetic rubber, cellulosic and other man-made fibers, electronic manufacturers, and small plating and other metal fabricating operations.

- Automobile service stations, repair shops, and carwashing activities in unsewered areas or municipalities with restrictions on

**TABLE 1**  
**TC Constituents**  
**and Regulatory Levels**

Constituent	Regulatory Levels (mg/L)
Arsenic <sup>1</sup>	5.0
Barium <sup>1</sup>	100.0
Benzene	0.5
Cadmium <sup>1</sup>	1.0
Carbon tetrachloride	0.5
Chlordane	0.03
Chlorobenzene	100.0
Chloroform	6.0
Chromium	5.0
o-Cresol	200.0
m-Cresol	200.0
p-Cresol	200.0
Cresol	200.0
2,4-D1	10.0
1,4-Dichlorobenzene	7.5
1,2-Dichloroethane	0.5
1,1-Dichloroethylene	0.7
2,4-Dinitrotoluene	0.13
Endrin <sup>1</sup>	0.02
Heptachlor (and its hydroxide)	0.008
Hexachlorobenzene	0.13
Hexachloro-1,3-butadiene	0.5
Hexachloroethane	3.0
Lead <sup>1</sup>	5.0
Lindane <sup>1</sup>	0.4
Mercury <sup>1</sup>	0.2
Methoxychlor <sup>1</sup>	10.0
Methyl ethyl ketone	200.0
Nitrobenzene	2.0
Pentachlorophenol	100.0
Pyridine	5.0
Selenium <sup>1</sup>	1.0
Silver <sup>1</sup>	5.0
Tetrachloroethylene	0.7
Toxaphene <sup>1</sup>	0.5
Trichloroethylene	0.5
2,4,5-Trichlorophenol	400.0
2,4,6-Trichlorophenol	2.0
2,4,5-TP (Silvex) <sup>1</sup>	1.0
Vinyl chloride	0.2

Note: 1. Constituents identified with EP.

sewer hookups for industries.

- Large tank farms and chemical storage facilities.

EPA estimates that 10 to 25 percent of industrial process injection wells and 3 to 16 percent of motor vehicle waste wells will be now considered Class IV instead of Class V wells.

If you have a floor drain in your garage area that leads to an injection well, a dry well, or septic system, you will want to consider the types of wastes that you are disposing and whether you are now the owner/operator of a banned Class IV well. Of particular significance would be the disposal of petroleum products containing benzene or degreasers containing a listed constituent. Class IV wells must be plugged or otherwise closed and abandoned. Ceasing to inject the hazardous waste can constitute proper closure of the Class IV well. This means that if you can demonstrate that the hazardous waste is no longer able to enter a septic system because floor drains have been eliminated or Best Management Practices to minimize/eliminate spills have been implemented, the septic system may not have to be plugged or abandoned. However, sludges from the septic tank may need to be treated as a hazardous waste and disposed of in a hazardous waste facility. Contact your state

environmental agency concerning proper closure.

The American Petroleum Institute has published a brochure to help owners of automotive facilities with floor drains. For a copy of *Best Management Practices for Service Station Floor Drains*, contact Chris Reimer, NWWA, (614) 761-1711, extension 596, or the

American Petroleum Institute, (202) 682-8224.

NWWA has recommended that during the upcoming SDWA reauthorization process, Congress consider the impact of the TC rule on injection wells. ■

Chris Reimer is director of Legislative Services for the National Water Well Association.

TABLE 2

## The Federal UIC Program Divides Injection Wells into These Five Categories

### Class I

Wells used to inject hazardous wastes or dispose of non-hazardous industrial waste and treated municipal sewage below the deepest underground source of drinking water.

### Class II

Wells used to inject fluids associated with the production of oil and natural gas or fluids and compounds used for enhanced hydrocarbon recovery. These wells normally inject below the deepest underground source of drinking water except in cases where the USDW contains producible quantities of oil or gas.

### Class III

Wells that inject fluids used in subsurface mining of minerals.

### Class IV

Wells that dispose of hazardous or radioactive wastes into or above an underground source of drinking water. These wells are banned.

### Class V

Wells not included in the other classes, that inject non-hazardous fluid into or above an underground source of drinking water.

***These wells are commonly referred to as shallow injection wells.***

**1 point for each hour  
of instruction awarded for  
documentation of attendance  
for safety training.**

**In order to qualify,  
the owner or individual  
conducting the course  
must submit a two-page  
written document  
of the safety training program.  
The document would include  
the date the program was held,  
the length of the program,  
and the signatures  
of those employees attending,  
to ensure they receive  
Continuing Education Points  
for Contractor Certification.**

