HOUSE BILL 711

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY
Jose A. Campos II

AN ACT
RELATING TO WATER; PROVIDING THAT WATER QUALITY COMMISSION
REGULATIONS AND STANDARDS FOR SURFACE WATER ARE NO MORE
STRINGENT THAN REQUIRED BY FEDERAL LAW.

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

Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967,
Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--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 based on credible scientific data and other evidence appropriate under the Water Quality Act. The commission shall not adopt or enforce standards for surface waters that are more stringent than those required by, or apply to any class or body of water other than those surface waters covered by, the federal act and federal regulations pertaining to surface water quality standards. 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 commission shall not adopt or enforce regulations governing surface waters that are more stringent than those required by, or apply to any class or body of water other than those surface waters covered by, the federal act and federal regulations pertaining to surface water quality standards.
stringent than those required by, or apply to any class or body of water other than those surface waters covered by, the federal act and federal regulations pertaining to surface waters. 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, and shall maintain a repository of the
scientific data required by this 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

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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;

L. shall not require a permit for applying less
than two hundred fifty gallons per day of private residential
gray water originating from a residence for the resident's
household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution
system provides for overflow into the sewer system or on-site
wastewater treatment and disposal system;
(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;
M. 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."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.