PENGAD 800-631-6989 DOCUMENT #8

the county or municipality has, on staff or under contract, either a registered professional engineer with education or experience in sanitary engineering or a class II wastewater operator certified by the state of New Mexico.

History: Laws 1997, ch. 139, § 11.

74-1-15. Liquid waste fund created.

The "liquid waste fund" is created in the state treasury. On-site liquid waste system fees shall be deposited in the fund. Money in the fund is appropriated to the department for administration of liquid waste regulations. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or his designee. Any unexpended or unencumbered balance or income earned from the money in the liquid waste fund remaining at the end of any fiscal year shall not revert to the general fund.

History: Laws 2000, ch. 96, § 3.

Effective dates. — Laws 2000, ch. 96, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 17, 2000, 90 days after the adjournment of the legislature.

ARTICLE 2

Air Pollution

Sec.
74-2-1. Short title.
74-2-2. Definitions.
74-2-3. Environmental improvement board.
74-2-4. Local authority.
74-2-5. Duties and powers; environmental improvement board; local board.
74-2-5.1. Duties and powers of the department and the local agency.
74-2-5.2. State air pollution control agency; specific duties and powers of the department.
74-2-6. Adoption of regulations; notice and hearings.
74-2-7. Permits; permit appeals to the environmental improvement board or the local board; permit fees.
74-2-8. Variances.
74-2-9. Judicial review; administrative actions.
74-2-10. Emergency powers of the secretary and the director.
Sec.
74-2-11. Confidential information.
74-2-11.1. Limitations on regulations.
74-2-12. Enforcement; compliance orders; field citations.
74-2-12.1. Civil penalty; representation of department or local authority.
74-2-13. Inspection.
74-2-14. Criminal penalties.
74-2-15. State air quality permit fund.
74-2-15.1. Repealed.
74-2-16. Municipal or county air quality permit fund.
74-2-17. Continuing effect of existing laws, rules and regulations.
74-2-18 to 74-2-22. Repealed.

74-2-1. Short title.

Chapter 74, Article 2 NMSA 1978 may be cited as the "Air Quality Control Act".

History: 1953 Comp., § 12-14-1, enacted by Laws 1967, ch. 277, § 1; 1972, ch. 51, § 1; 1989, ch. 278, § 1.

Cross references. — For the Environmental Improvement Act, see Chapter 74, Article 1 NMSA 1978. For the Pollution Control Revenue Bond Act, see 3-59-1 to 3-59-14 NMSA 1978.

Comparison to Federal Clean Air Act. — New Mexico's Air Quality Control Act is not generally more stringent than the Federal Clean Air Act except in areas of air pollution prevention not preempted by the Federal Clean Air Act and not precluded by the limiting provisions in the Air Quality Control Act. 1987 Op. Att'y Gen. No. 87-11.

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 environmental 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, "Delegation of Legislative Authority on the State Level; Environmental Protection in New Mexico: Public Service Co. of New Mexico et al. v. New Mexico Environmental

74-2-12. Enforcement; compliance orders; field citations.

A. When, on the basis of any information, the secretary or the director determines that a person has violated or is violating a requirement or prohibition of the Air Quality Control Act, a regulation promulgated pursuant to that act or a condition of a permit issued under that act, the secretary or the director may:

(1) issue a compliance order within one year after the violation becomes known by the department or the local agency stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for a past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. An order issued pursuant to Subsection A of this section may include a suspension or revocation of the permit or portion thereof issued by the secretary or the director that is alleged to have been violated. Any penalty assessed in the order shall not exceed fifteen thousand dollars ($15,000) per day of noncompliance for each violation.

C. An order issued pursuant to Subsection A of this section shall become final unless, no later than thirty days after the order is served, the person named therein submits a written request to the secretary or the director for a public hearing. Upon such request, the secretary or the director shall promptly conduct a public hearing. The secretary or the director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the secretary or the director, who shall make the final decision.

D. The environmental improvement board or the local board may implement a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed one thousand dollars ($1,000) per day of violation may be issued by officers or employees of the department or the local agency as designated by the secretary or the director.

E. A person to whom a field citation is issued pursuant to Subsection D of this section may, within a reasonable time as prescribed by regulation by the environmental improvement board or the local board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

F. Payment of a civil penalty required by a field citation issued pursuant to Subsection D of this section shall not be a defense to further enforcement by the department or the local agency to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act if the violation continues.

G. In determining the amount of a penalty to be assessed pursuant to this section, the secretary, the director or the person issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

H. In connection with a proceeding under this section, the secretary or the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

I. If a person fails to comply with an administrative order, the secretary or director may initiate an action to suspend or revoke the permit, or portion thereof, alleged to have been violated or to commence a civil action in district court to enforce the order, or to suspend or revoke the permit, or both.

J. If a person fails to pay an assessment of a civil penalty, the secretary or director may commence a civil action in district court to collect the civil penalties assessed in the order.

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

(1) municipal or county general fund, as applicable, if the administrative order or field citation was directed to a source located within a local authority; or

(2) state general fund if the administrative order or field citation was directed to any other source.

History: 1978 Comp., § 74-2-12, enacted by Laws 1992, ch. 20, § 14; 2001, ch. 133, § 3; 2006, ch. 61, § 1.

The 2001 amendment, effective June 15, 2001, inserted "within one year after the violation known by the department or the local agency" in Paragraph A(1).

The 2006 amendment, effective May 17, 2006, added Subsection I to provide remedies for violation of a permit and added Subsection J to provide remedies for failure to pay an assessment of a civil penalty.