

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, 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.

### **ANNOTATIONS**

**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*, 1982-NMCA-015, 98 N.M. 240, 647 P.2d 873.

**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;

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. respond to, investigate and remediate water pollution and contamination in soil and soil vapor; provided that in its investigation, the department shall identify

responsible parties and shall prepare a written report of the investigation; and provided further that prior to remediation of water pollution and soil contamination in soil and soil vapor, the department shall:

- (1) prepare a work plan consistent with rules adopted by the commission;
- (2) issue public notice of the work plan; and
- (3) provide opportunities for public comment and participation in accordance with rules adopted by the commission;

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

F. 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 its 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;

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

H. 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; 2025, ch. 112, § 5.

## ANNOTATIONS

**The 2025 amendment**, effective June 20, 2025, expanded the ability of constituent agencies to respond to and investigate water pollution and contamination; added a new Subsection D and redesignated former Subsections D through G as Subsections E through H, respectively.

**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. N.M. Water Quality Control Comm'n*, 1982-NMCA-015, 98 N.M. 240, 647 P.2d 873 (decided under prior law).

**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 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: