

GROUND WATER PROTECTION ACT

74-6B-2. Findings; purpose of act

C. The purpose of the Ground Water Protection Act is to provide substantive provisions and funding mechanisms to the extent that funds are available to enable the state to take corrective action at sites contaminated by leakage from *storage* tanks.

74-6B-3. Definitions

- A. “above ground storage tank” means a single tank or a combination of tanks, including underground pipes connected thereto, that is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. The term does not include any:
- (4) storm water or wastewater collection system;

I. “release” means a spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

74-6B-5. Department's right of entry and inspection

74-6B-8. Liability; cost recovery

A. An owner or operator of a storage tank from which a release has occurred **shall be strictly liable for the owner's, operator's and department's cost of taking corrective action at the site.**

B. An owner or operator otherwise liable under Subsection A of this section **shall not be liable for expenditures from the state corrective action fund associated with corrective action at the site if he has proved to the department that he has complied with the following:**

(1) the owner or operator:

(a) is in substantial compliance with all of the requirements and provisions of rules adopted by the board to fulfill the requirements of Paragraphs (1) through (7) of Subsection C of Section 74-4-4 NMSA 1978;

(b) has paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(c) has conducted a minimum site assessment in accordance with rules of the board and, if contamination is found, has taken action to prevent continuing contamination; and

(d) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring; and

(2) for sites where storage tanks were removed or properly abandoned prior to March 7, 1990, the owner or the operator:

(a) has paid all storage tank fees required by Section 74-4-4.4 NMSA 1978 and a two hundred dollar (\$200) fee per site;

(b) has conducted a minimum site assessment in accordance with rules of the board; and

(c) has cooperated in good faith with the department and has granted access to the department for investigation, cleanup and monitoring.

C. In the event that the **department determines that an owner or operator has not complied with the requirements of Subsection B of this section**, the department may bring an **action in district court against the owner or operator to recover expenditures from the corrective action fund incurred by the department in taking corrective action at the site**. In addition, the department may bring an action in district court to recover any expenditures made of federal funds from the leaking underground storage tank trust fund in taking corrective action. These expenditures made from the corrective action fund and from federal funds include but are not limited to costs of investigating a release and undertaking corrective action, administrative costs and reasonable attorney fees. Expenditures recovered under this section, except for any recovered federal funds, shall be deposited into the corrective action fund.

D. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy and has a right of subrogation against any third party who caused or contributed to the release. The right of subrogation shall apply regardless of any defenses available to the owner or operator under Subsection B of this section. The right of subrogation shall apply to sites where corrective action is taken by owners or operators under Section 74-6B-13 NMSA 1978 as well as to sites where corrective action is taken by the state.

WATER QUALITY ACT

74-6-3. Water quality control commission created

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**¹ 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.

74-6-5. Permits; certification; appeals to commission

A. By rule, the **commission may require a person to obtain from a constituent agency designated by the commission a permit or general permit coverage for the discharge of a water contaminant or for the disposal or reuse of septage or sludge**.

B. The **commission shall adopt rules establishing procedures for certifying federal water quality permits.**

E. The constituent agency shall **deny an application for a permit** or request for general permit coverage 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) a provision of the *Water Quality Act would be violated*;
- (3) the discharge would cause or *contribute to water contaminant levels in excess of a state or federal standard*. Determination of the discharge's effect on ground water shall be measured at a place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharge's effect on surface waters shall be measured at the point of discharge;
- (4) the surface water discharge would cause or *contribute to water contaminant levels in excess of a downstream state or tribal water quality standard*; or
- (5) the applicant has, within the ten years immediately preceding the date of submission of the permit application or request for general permit coverage:
 - (a) *knowingly misrepresented a material fact* in an application for a permit or request for general permit coverage;
 - (b) *refused or failed to disclose information* required pursuant to the Water Quality Act;
 - (c) *been convicted of a felony or other crime involving moral turpitude*;
 - (d) *been convicted of a felony in court for a 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 a state or the United States; or
 - (f) had an environmental *permit revoked or permanently suspended* for cause under environmental laws of a state or the United States.

V. The **only exemptions** from surface water discharge permits for discharges of dredged or fill material are:

- (1) *normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products or upland soil and water conservation practices*;
- (2) maintenance, including *emergency reconstruction* of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways and bridge abutments or approaches and transportation structures;
- (3) construction or maintenance of farm or stock ponds, acequias or irrigation ditches or the maintenance of drainage ditches;
- (4) construction of temporary sedimentation basins on a construction site that does not include placement of fill material into the surface waters;
- (5) construction or maintenance of farm roads, forest roads or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that:

- (a) flow and circulation patterns and chemical and biological characteristics of the surface waters are not impaired;
- (b) the reach of the surface waters is not reduced; and
- (c) any adverse effect on the aquatic environment will be otherwise minimized; and
- (6) discharges that are subject to effective and enforceable surface water quality requirements in a state-issued or federally issued permit, unless there is a hazard to public health or the environment that may result or an applicable state water quality standard will not be achieved.

W. The exemptions provided in Subsection V of this section shall not apply if the discharge resulting from the activities contains any toxic pollutant as set forth in rule by the commission or if a new activity brings a surface water of the state into farm production where the area of the surface water has not previously been used for farming.

74-6-5.2. Water quality management fund created

The fund consists of appropriations, gifts, grants, donations and money received by the department. All fees collected pursuant to Section 74-6-4 NMSA 1978 and for the operation and maintenance of a permitted facility pursuant to Subsection I of Section 74-6-5 NMSA 1978 shall be deposited in the fund.

74-6-7. Administrative action; judicial review

Voluntary Remediation Act 74-4G-1

74-4G-2. Purpose

The purpose of the Voluntary Remediation Act is to provide incentives for the voluntary assessment and remediation of contaminated property, with state oversight, and to remove future liability of lenders and landowners.

74-4G-6. Agreement

A. After the department determines that an applicant is eligible, the secretary of environment may enter into a voluntary remediation agreement for remediation of the site that sets forth the terms and conditions of the department's evaluation and implementation of the oversight to be performed.

B. A voluntary remediation agreement shall include a provision for the department's oversight, including access to the site, on-site collection of samples and inspection and copying of site records.

C. The department shall not initiate an enforcement action, including an administrative or judicial action, against a participant for the contamination or release thereof, or for the activity that resulted in the contamination or release thereof, if the contamination is the subject of an agreement pursuant to the provisions of the Voluntary Remediation Act; however, this section shall not be a bar to enforcement if the participant does not successfully initiate or implement the agreement within a reasonable time.

D. The participant may terminate a voluntary remediation agreement on sixty days' written notice. The department may terminate a voluntary remediation agreement on a finding that the participant is not in compliance with the voluntary remediation agreement. The department's costs incurred or obligated before the date the notice of termination is received are recoverable under the agreement if the agreement is terminated.

E. In the event that any participant is unable to resolve a dispute concerning the actions required under a voluntary remediation agreement, that participant may submit a written request for a final decision to the secretary of environment. The secretary of environment shall issue a binding final decision, including a written statement of the reason for the decision.

F. Unless the participant demonstrates that a cleanup is not required in order to comply with applicable standards, after a voluntary remediation agreement becomes effective, the participant shall submit a proposed voluntary remediation work plan for the site remediation.

74-4G-8. Covenant not to sue

A. After the department issues a certificate of completion for a site, the secretary of environment shall provide a covenant not to sue to a purchaser of the site that did not contribute to the site contamination for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release a participant from liability to the federal government for claims based on federal law. Except as may be agreed to by a third party, the covenant not to sue shall not release a person from liability to third parties.

B. The secretary of environment's covenant not to sue under this section shall be transferable with title to the site.

74-4G-11.1. Brownfields cleanup revolving loan fund

A. The "brownfields cleanup revolving loan fund" is created in the state treasury. The fund shall be comprised of money from a grant from the environmental protection agency, repayments of loans and interest and income accruing on the balance of the fund. **The department may make secured and unsecured loans or grants from the fund to eligible participants for the purpose of financing remedial actions and other approved activities at abandoned or underused industrial, commercial or agricultural sites or on abandoned or underused residential property.** Loans or grants may be made from the fund to political subdivisions, tribes, nonprofit organizations and private entities for eligible cleanup activities pursuant to requirements for eligibility set by the environmental protection agency's brownfields program. 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 the secretary's designee. Any unexpended or unencumbered balance or income earned from

the money in the fund remaining at the end of a fiscal year shall not revert to the general fund.

B. The department shall review and approve qualified loan applications, and cleanup activities shall be performed pursuant to the Voluntary Remediation Act.

C. Loan repayments shall be deposited into the brownfields cleanup revolving loan fund. Interest and earnings on the balance in the fund shall be credited to the brownfields cleanup revolving loan fund.