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SURFACE WATER LEGISLATION AND REGULATION IN NEW MEXICO

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SUMMARY

The Water Quality Act, N.M. Stat. Ann. 74-6-4, empowers the Water Quality Control Commission (WQCC) to adopt a comprehensive water quality program and to adopt water quality standards as a guide to water pollution control. The commission is further empowered to adopt regulations to prevent or abate water pollution. In making its regulations, the commission is required to give the weight it deems to be appropriate to all facts and circumstances, including, but not limited to:

- gravity of injury to or interference with health, welfare and property;
- the public interest, including social and economic value of the water contaminant sources;

- technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources affected;
- successive uses;
- feasibility of pre-treating before a subsequent use; and
- property rights and accustomed uses.

Section 303(c)(1) and 303(c)(2)(B) of the Federal Clean Water Act require the Water Quality Control Commission to review "Water Quality Standards for Interstate and Intrastate Streams in New Mexico" triennially. Adoption of both regulations under the Water Quality Act and water quality standards under the Federal Clean Water Act must be preceded by a public hearing following at least 30 days notice (N.M. Stat. Ann. 74-6-6).

WQCC regulations and standards adopted as rules are appealable to the New Mexico Court of Appeals (N.M. Stat. Ann. 74-6-7; see *Bokum Resources Corp. v. N.M. WQCC*, 93 N.M. 546, 1979). However, the requirement that the commission consider the factors identified in section 74-6-4 D. appears to be limited to the adoption of regulations as distinguished from the adoption of water quality standards (N.M. Stat. Ann. 74-6-4 C). In any event, in the context of adopting standards for organic compounds in groundwater, the New Mexico Court of Appeals held that subsection D does not require the record before the commission to contain the commission's consideration of every part of every one of the six statutory factors for each compound, recognizing considerable commission discretion in its consideration of the factors and the weight it gives to each (*Tenneco Oil Co. v. New Mexico Water Quality Control Commission*, 107 N.M. 469, Ct. App. 1988).

Section 74-6-12 F of the Water Quality Act provides that reasonable degradation of water quality resulting from beneficial use shall be allowed in the adoption of both regulations and water quality standards. However, Part 1 of the WQCC Water Quality Standards for Interstate and Intrastate Streams sets forth an antidegradation policy which provides that degradation of waters the quality of which is better than the stream standards established by the WQCC is not reasonable degradation and is subject to abatement, unless it is justifiable as a result of necessary economic and social development. In addition, it requires protection and maintenance of existing instream water uses, WQCC Water Quality Standards 1-101.