

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 381

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING PROVISIONS FOR THE
WASTEWATER TECHNICAL ADVISORY COMMITTEE.

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

SECTION 1. Section 9-7A-15 NMSA 1978 (being Laws 2003,
Chapter 99, Section 1) is amended to read:

"9-7A-15. TECHNICAL ADVISORY COMMITTEE CREATED--DUTIES
AND POWERS OF THE COMMITTEE.--

A. The "wastewater technical advisory committee" is
created. The committee shall consist of five members to be
appointed by and to serve at the pleasure of the secretary of
environment. The members shall include:

(1) a wastewater treatment system engineer
with at least ten years of experience in wastewater system
design and construction;

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1 (2) a faculty member from a university or
2 college located within New Mexico with a minimum of a master's
3 degree in biological science, microbiology, soil science or
4 engineering, and with a minimum of ten years of work or
5 academic experience with wastewater treatment or wastewater
6 treatment facility management;

7 (3) a representative from the [~~New Mexico~~
8 ~~state university~~] water utilities technical assistance program
9 or a member of the New Mexico water and wastewater association
10 with at least ten years of practical experience in the
11 operation and maintenance of wastewater treatment and disposal
12 systems;

13 (4) a class IV certified wastewater operator
14 with at least ten years of experience; and

15 (5) a public member who shall serve no more
16 than one term and who shall be any of the following:

17 (a) a representative from the New Mexico
18 home builders association;

19 (b) an individual currently licensed as
20 a New Mexico real estate broker;

21 (c) a member of the New Mexico farm and
22 livestock bureau;

23 (d) a dairy producer or a designee of
24 the New Mexico dairy industry; or

25 (e) a member of the New Mexico rural

1 water association.

2 B. The term of appointed members shall be three
3 years. Members shall be appointed for staggered terms
4 beginning with the effective date of this 2011 act. No member
5 shall serve more than two consecutive terms. Members shall
6 serve until their successors are appointed. Vacancies
7 occurring in the membership of an appointed member shall be
8 filled by the secretary for the remainder of the unexpired
9 term.

10 C. The committee shall conduct [~~open~~] meetings as
11 needed, but not less than quarterly. The meetings shall be
12 held in compliance with the Open Meetings Act and the Uniform
13 Trade Secrets Act.

14 D. The department of environment shall provide
15 [~~technical and legal assistance to the committee as needed~~]:

16 (1) a clerk from the office of administrative
17 hearings of the department, who shall keep a record of the
18 meetings in the form of a recording or written transcript. The
19 clerk shall also keep all documents and exhibits offered in the
20 course of committee hearings to evaluate any wastewater
21 treatment and disposal technology;

22 (2) assistance to assure that the committee,
23 in the exercise of any of its powers or duties, shall act with
24 independent legal advice. The manner in which such advice is
25 provided shall be determined by the committee from among one of

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1 the following:

2 (a) the office of the attorney general;

3 (b) an independent counsel hired by the

4 board; or

5 (c) another state agency whose function

6 is sufficiently distinct from the department to assure

7 independent, impartial advice; and

8 (3) the committee with all the laboratory test

9 results, records of problems, notices of violation and any

10 other relevant information in the possession of the department

11 concerning any product being reviewed by the committee. The

12 department shall provide this information at least fourteen

13 days prior to the meeting at which the product will be

14 evaluated or re-evaluated.

15 E. The committee shall:

16 (1) establish procedures, practices and
17 policies governing the committee's activities, including:

18 (a) selecting from its membership a

19 chair and a vice chair who shall serve nonconsecutive terms of

20 one year. The chair, or the vice chair in the absence of the

21 chair, shall preside over the meetings and set the agenda. The

22 chair shall report all decisions of the committee directly to

23 the secretary within ten days of final action by the committee;

24 (b) establishing the minimum

25 standardized criteria for submittals of documents and materials

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1 necessary for the committee to objectively evaluate wastewater
2 treatment and disposal technologies;

3 (c) standardizing the procedures to be
4 used in hearings for effective presentation of evidence and
5 points of view, including those of the department on the same
6 basis as any other person and those of members of the general
7 public, and assuring that committee hearings are conducted in a
8 fair and equitable manner;

9 (d) providing that any person who
10 testifies at a hearing under oath and is subject to
11 cross-examination on the subject matter of that person's direct
12 testimony and matters affecting the person's credibility. Any
13 member of the committee is entitled to conduct such
14 cross-examination as may be required for a full and true
15 disclosure of matters at issue in the hearing;

16 (e) establishing procedures for the
17 recusal of any member from any action in which the member's
18 impartiality or fairness might reasonably be questioned;

19 (f) establishing a rule that at no time,
20 after the initiation and before the conclusion of a proceeding
21 pursuant to this section, shall the department or any other
22 party or interested participant, or their representatives,
23 discuss ex parte the merits of the evaluation proceeding with
24 any member; and

25 (g) providing in its findings the

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1 permissible uses and any conditions that apply to the use of a
2 product;

3 (2) provide standardized objective evaluation
4 of new wastewater treatment and disposal technologies for both
5 large- and small-flow domestic, commercial and agricultural
6 wastewater systems and submit its findings to the secretary
7 [~~for final approval by the secretary~~], who shall add the
8 wastewater treatment and disposal technologies to the list of
9 approved technologies maintained by the department, including
10 the ground water quality bureau and the liquid waste program of
11 the field operations division of the department of environment
12 and their constituent agencies. The committee shall
13 periodically reevaluate the existing technologies; and

14 (3) maintain a current list of approved
15 wastewater technologies accessible by the public on the
16 department's internet site.

17 F. No wastewater treatment and disposal technology
18 that does not appear on the list pursuant to Paragraph (3) of
19 Subsection E of this section may be legally sold in the state
20 of New Mexico.

21 G. The secretary may overturn or alter wastewater
22 technical advisory committee recommendations only if the
23 secretary finds the recommendations of the committee to be
24 arbitrary, capricious or contrary to law.

25 H. Appeals from any action governed by this section

