

ASSEMBLY BILL NO. 41—ASSEMBLYMAN CARPENTER

PREFILED JANUARY 12, 1999

Referred to Committee on Natural Resources, Agriculture and Mining

SUMMARY—Requires director of state department of conservation and natural resources to conduct independent investigation before making certain determinations concerning control of water pollution under certain circumstances. (BDR 40-725)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to water pollution; requiring the director of the state department of conservation and natural resources to conduct an independent investigation before making certain determinations concerning the control of water pollution under certain circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 445A of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 ***1. Except as otherwise provided in subsection 2, before determining***
4 ***whether to issue an order, commence a civil action, seek injunctive relief***
5 ***or request the attorney general to institute a criminal prosecution***
6 ***pursuant to the provisions of NRS 445A.675, 445A.680, 445A.690 or***
7 ***445A.695, the director shall, if possible, conduct an independent***
8 ***investigation of the alleged act or practice for which he is making the***
9 ***determination.***
10 ***2. The director is not required to conduct an independent***
11 ***investigation pursuant to the provisions of subsection 1 if:***
12 ***(a) His determination to take any action specified in that subsection is***
13 ***based upon information that is provided to him by the holder of a permit***
14 ***pursuant to the provisions of NRS 445A.300 to 445A.730; or***
15 ***(b) The alleged act or practice:***

1 ***(1) Occurs on land that is managed or controlled by the United***
2 ***States Department of Defense or Department of Energy; or***
3 ***(2) Creates an imminent and substantial danger to the public health***
4 ***or the environment.***

5 **Sec. 2.** NRS 445A.310 is hereby amended to read as follows:

6 445A.310 As used in NRS 445A.300 to 445A.730, inclusive, ***and***
7 ***section 1 of this act,*** unless the context otherwise requires, the ***words and***
8 terms defined in NRS 445A.315 to 445A.420, inclusive, have the meanings
9 ascribed to them in those sections.

10 **Sec. 3.** NRS 445A.675 is hereby amended to read as follows:

11 445A.675 1. ~~***Whenever***~~ ***Except as otherwise provided in section 1***
12 ***of this act, if*** the director finds that any person is engaged or is about to
13 engage in any act or practice which violates any provision of NRS
14 445A.300 to 445A.730, inclusive, any standard or other regulation adopted
15 by the commission pursuant to those sections, or any permit issued by the
16 department pursuant to those sections, except for any violation of a
17 provision concerning a diffuse source, the director may:

18 (a) Issue an order pursuant to NRS 445A.690;

19 (b) Commence a civil action pursuant to NRS 445A.695 or 445A.700;

20 or

21 (c) Request the attorney general to institute by indictment or information
22 a criminal prosecution pursuant to NRS 445A.705 and 445A.710.

23 2. ~~***Such***~~ ***The*** remedies and sanctions ***specified in subsection 1*** are
24 cumulative, and the institution of any proceeding or action seeking any one
25 of the remedies or sanctions does not bar any simultaneous or subsequent
26 action or proceeding seeking any other of the remedies or sanctions.

27 **Sec. 4.** NRS 445A.680 is hereby amended to read as follows:

28 445A.680 ~~***Whenever***~~ ***Except as otherwise provided in section 1 of***
29 ***this act, if*** the director finds that any person is engaged or about to engage
30 in any act or practice which violates any provision ~~***in***~~ ***of*** NRS 445A.335,
31 445A.565 and 445A.570, ***or*** any standard or other regulation adopted
32 pursuant thereto, with respect to a diffuse source, the director may:

33 1. Issue an order:

34 (a) Specifying the provision or provisions of NRS 445A.300 to
35 445A.730, inclusive, or the regulation or order alleged to be violated or
36 about to be violated;

37 (b) Indicating the facts alleged which constitute a violation thereof; and

38 (c) Prescribing the necessary corrective action to be taken and a
39 reasonable ~~***time***~~ ***period*** for completing that corrective action,
40 but no civil or criminal penalty may be imposed for failure to obey the
41 order.

1 2. If the corrective action is not taken or completed, or without first
2 issuing an order, commence a civil action pursuant to *the provisions of*
3 NRS 445A.695.

4 **Sec. 5.** NRS 445A.690 is hereby amended to read as follows:

5 445A.690 1. ~~{Whenever}~~ *Except as otherwise provided in section 1*
6 *of this act, if* the director finds that any person is engaged or is about to
7 engage in any act or practice which constitutes or will constitute a violation
8 of any provision of NRS 445A.300 to 445A.730, inclusive, or of any rule,
9 regulation or standard promulgated by the commission, or of any permit or
10 order issued by the department under NRS 445A.300 to 445A.730,
11 inclusive, the director may issue an order:

12 (a) Specifying the provision or provisions of NRS 445A.300 to
13 445A.730, inclusive, or the regulation or order alleged to be violated or
14 about to be violated;

15 (b) Indicating the facts alleged which constitute a violation thereof; and

16 (c) Prescribing the necessary corrective action to be taken and a
17 reasonable ~~{time}~~ *period* for completing that corrective action.

18 2. Any compliance order is final and is not subject to review unless the
19 person ~~{or persons}~~ against whom ~~{such}~~ *the* order is issued, within 30 days
20 after the date ~~{such}~~ *the* order is served, ~~{request}~~ *requests* by written
21 petition a hearing before the commission.

22 **Sec. 6.** NRS 445A.695 is hereby amended to read as follows:

23 445A.695 1. ~~{The}~~ *Except as otherwise provided in section 1 of this*
24 *act, the* director may seek injunctive relief in the appropriate court to
25 prevent the continuance or occurrence of any act or practice which violates
26 any provision of NRS 445A.300 to 445A.730, inclusive, or any permit,
27 rule, regulation or order issued pursuant thereto.

28 2. On a showing by the director that a person is engaged, or is about to
29 engage, in any act or any practice which violates or will violate any of the
30 provisions of NRS 445A.300 to 445A.730, inclusive, or any rule,
31 regulation, standard, permit or order issued ~~{thereunder,}~~ *pursuant to those*
32 *provisions*, the court may issue, without bond ~~{such}~~ *, any* prohibitory and
33 mandatory injunctions as the facts may warrant, including temporary
34 restraining orders issued ex parte or, after notice and hearing, preliminary
35 injunctions or permanent injunctions.

36 3. Failure to establish lack of an adequate remedy at law or irreparable
37 harm is not a ground for denying a request for a temporary restraining order
38 or injunction.

39 4. The court may require the posting of a sufficient performance bond
40 or other security to ~~{assure}~~ *ensure* compliance with the court order within
41 the ~~{time}~~ *period* prescribed.

