

ASSEMBLY BILL NO. 29—ASSEMBLYMAN CARPENTER

PREFILED JANUARY 22, 2001

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 40-21)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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:

Section 1. Chapter 445A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, before determining whether to issue an order, commence a civil action, seek injunctive relief or request that the attorney general institute a criminal prosecution pursuant to NRS 445A.675, 445A.680, 445A.690 or 445A.695, the director shall, if possible, conduct an independent investigation of the alleged act or practice for which he is making the determination.

2. The director is not required to conduct an independent investigation pursuant to subsection 1 if:

(a) His determination to take any action specified in that subsection is based on information that is provided to him by the holder of a permit issued pursuant to NRS 445A.300 to 445A.730, inclusive; or

(b) The alleged act or practice:

(1) Occurs on land that is managed or controlled by the United States Department of Defense or Department of Energy; or

(2) *Creates an imminent and substantial danger to the public health or the environment.*

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

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

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

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

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

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

(c) Request *that* the attorney general ~~[to]~~ institute by indictment or information a criminal prosecution pursuant to NRS 445A.705 and 445A.710.

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

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

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

1. Issue an order:

(a) Specifying the provision or provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1 of this act*, or the regulation or order alleged to be violated or about to be violated;

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

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

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

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

445A.690 1. ~~[Whenever]~~ *Except as otherwise provided in section 1 of this act, if* the director finds that any person is engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1 of this act*, or of any rule, regulation or standard promulgated by the commission, or of any permit or order issued by the department ~~[under]~~

1 *pursuant to* NRS 445A.300 to 445A.730, inclusive, *and section 1 of this*
2 *act*, the director may issue an order:

3 (a) Specifying the provision or provisions of NRS 445A.300 to
4 445A.730, inclusive, *and section 1 of this act*, or the regulation or order
5 alleged to be violated or about to be violated;

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

7 (c) Prescribing the necessary corrective action to be taken and a
8 reasonable ~~time~~ *period* for completing that corrective action.

9 2. Any compliance order is final and is not subject to review unless the
10 person ~~for persons~~ against whom ~~such~~ *the* order is issued, within 30 days
11 after the date ~~such~~ *on which the* order is served, ~~request~~ *requests* by
12 written petition a hearing before the commission.

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

14 445A.695 1. ~~The~~ *Except as otherwise provided in section 1 of this*
15 *act, the* director may seek injunctive relief in the appropriate court to
16 prevent the continuance or occurrence of any act or practice which violates
17 any provision of NRS 445A.300 to 445A.730, inclusive, *and section 1 of*
18 *this act*, or any permit, rule, regulation or order issued pursuant thereto.

19 2. On a showing by the director that a person is engaged, or is about to
20 engage, in any act or any practice which violates or will violate any of the
21 provisions of NRS 445A.300 to 445A.730, inclusive, *and section 1 of this*
22 *act*, or any rule, regulation, standard, permit or order issued ~~thereunder,~~
23 *pursuant to those provisions*, the court may issue, without bond ~~such~~ ,
24 *any* prohibitory and mandatory injunctions ~~as~~ *that* the facts may warrant,
25 including temporary restraining orders issued ex parte or, after notice and
26 hearing, preliminary injunctions or permanent injunctions.

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

30 4. The court may require the posting of a sufficient performance bond
31 or other security to ~~assure~~ *ensure* compliance with the court order within
32 the ~~time~~ *period* prescribed.

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