

Opinion No. 67-109

September 21, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: John R. Wright, P.E., Chief Water and Liquid Waste Division as Chairman of the Water Quality Control Commission Department of Public Health 408 Galisteo St. Santa Fe, New Mexico

QUESTION

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1. Does the Water Quality Control Commission have legal authority to adopt water quality standards?
2. Does the Water Quality Control Commission have legal authority to enforce water quality standards?
3. Has the Water Quality Control Commission taken action, by resolution or otherwise, to adopt and provide for the enforcement of water quality standards?

CONCLUSIONS

1. Yes.
2. See analysis.
3. See analysis.

OPINION

{*158} ANALYSIS

The Water Quality Control Commission was created within the Water Quality Act passed by the Legislature. This Act is compiled as Sections 75-39-1 through 75-39-12, N.M.S.A., 1953 Comp. (P.S.). Section 75-39-4 outlines the duties and powers of the Commission. Subsection C of 75-39-4 provides that the Commission "shall adopt water quality standards as a guide {*159} to water pollution control." Clearly then, the answer to your first question is "yes".

You will note that the standards are to be used as a guide to water pollution control. You will also note that Section 75-39-9, the enforcement section, refers only to violations of regulations. Subsection D of Section 75-39-4 provides that the Commission shall adopt regulations under certain guidelines. Because of these facts it is our opinion that the

Commission does not have the authority to enforce standards per se but can through its regulations see that the waters under its jurisdiction meet the standards adopted. It is also our opinion that enforcement in this manner is consistent with the requirements of the Federal Water Pollution Control Act. Once the Commission standards have been approved under that Act, they become applicable to interstate waters and they are enforceable either through the Commission's implementation and enforcement plan or by the provisions of the Act itself which calls for action by the Federal Government. Therefore, in conclusion, as to your second question, it is our opinion that the standards adopted by the Commission are enforceable through regulations adopted pursuant to the Water Quality Act.

We understand that the Commission has adopted water quality standards and a plan of implementation and enforcement for all interstate streams. We also understand that as of this date no regulations have been promulgated. If this statement of the facts is correct, then we can say that action has been taken which is necessary to the enforcement of your water quality standards. However, until such time as the Commission adopts regulations which can be enforced under Section 75-39-9, the final action for enforcement of those standards has not been taken.

By: Roy G. Hill

Assistant Attorney General