

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 473

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO MINES; PROVIDING FOR THE ESTABLISHMENT OF MINING DISTRICTS; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO MINING ACT; AMENDING THE WATER QUALITY ACT.

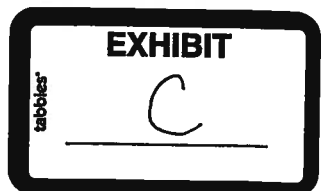
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-36-3 NMSA 1978 (being Laws 1993, Chapter 315, Section 3) is amended to read:

"69-36-3. DEFINITIONS. -- As used in the New Mexico Mining Act:

A. "affected area" means the area outside of the permit area where the land surface, surface water, ground water and air resources are impacted by mining operations within the permit area;

B. "commission" means the mining commission established in the New Mexico Mining Act;



underscored material = new
[bracketed material] = delete

1 C. "director" means the director of the division or
2 his designee;

3 D. "division" means the mining and minerals
4 division of the energy, minerals and natural resources
5 department;

6 E. "existing mining operation" means an extraction
7 operation that produced marketable minerals for a total of at
8 least two years between January 1, 1970 and [~~the effective date~~
9 ~~of the New Mexico Mining Act~~] June 18, 1993;

10 F. "exploration" means the act of searching for or
11 investigating a mineral deposit, including sinking shafts,
12 tunneling, drilling core and bore holes, digging pits, making
13 cuts and other works for the purpose of extracting samples
14 prior to commencement of development or extraction operations
15 and the building of roads, access ways and other facilities
16 related to such work; however, activities that cause no or very
17 little surface disturbance, such as airborne surveys and
18 photographs, use of instruments or devices that are hand
19 carried or otherwise transported over the surface to perform
20 magnetic, radioactive or other tests and measurements, boundary
21 or claim surveying, location work or other work that causes no
22 greater disturbance than is caused by ordinary lawful use of
23 the area by persons not engaged in exploration, are excluded
24 from the meaning of "exploration";

25 G. "mineral" means a nonliving commodity that is

underscored material = new
[bracketed material] = delete

1 extracted from the earth for use or conversion into a saleable
2 or usable product, but does not include clays, adobe,
3 flagstone, potash, sand, gravel, caliche, borrow dirt, quarry
4 rock used as aggregate for construction, coal, surface water or
5 subsurface water, geothermal resources, oil and natural gas
6 together with other chemicals recovered with them, commodities,
7 byproduct materials and wastes that are regulated by the
8 nuclear regulatory commission or waste regulated under Subtitle
9 C of the federal Resource Conservation and Recovery Act of
10 1976;

11 H. "mi ning" means the process of obtaining useful
12 minerals from the earth's crust or from previously disposed or
13 abandoned mi ning wastes, including exploration, open-cut mi ning
14 and surface operation, the disposal of refuse from underground
15 and in situ mi ning, mineral transportation, concentrating,
16 milling, evaporation, leaching and other processing. "Mining"
17 does not mean the exploration and extraction of potash, sand,
18 gravel, caliche, borrow dirt [~~and~~] or quarry rock used as
19 aggregate in construction; the exploration and extraction of
20 natural petroleum in a liquid or gaseous state by means of
21 wells or pipes; the development or extraction of coal; the
22 extraction of geothermal resources; smelting, refining,
23 cleaning, preparation, transportation or other off-site
24 operations not conducted on permit areas; or the extraction,
25 processing or disposal of commodities, byproduct materials or

underscored material = new
[bracketed material] = delete

1 wastes or other activities regulated by the federal nuclear
2 regulatory commission;

3 I. "mining district" means the geographical area
4 designated by the director as a mining district, including
5 privately owned land that is owned or leased by one or more
6 owners or operators of mining operations. "Mining district"
7 does not include land used for residential purposes;

8 [~~I.~~] J. "new mining operation" means a mining
9 operation that engages in a development or extraction operation
10 after [the effective date of the New Mexico Mining Act] June
11 18, 1993 and that is not an existing mining operation;

12 [~~J.~~] K. "permit area" means the geographical area
13 defined in the permit for a new mining operation or for an
14 existing mining operation on which mining operations are
15 conducted or cause disturbance; and

16 [~~K.~~] L. "reclamation" means the employment during
17 and after a mining operation of measures designed to mitigate
18 the disturbance of affected areas and permit areas and, to the
19 extent practicable, provide for the stabilization of a permit
20 area following closure that will minimize future impact to the
21 environment from the mining operation and protect air and water
22 resources. "

23 Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993,
24 Chapter 315, Section 7, as amended) is amended to read:

25 "69-36-7. COMMISSION--DUTIES.--The commission shall:

underscored material = new
[bracketed material] = delete

1 A. before June 18, 1994, adopt and file reasonable
2 regulations consistent with the purposes and intent of the New
3 Mexico Mining Act necessary to implement the provisions of the
4 New Mexico Mining Act, including regulations that:

5 (1) consider the economic and environmental
6 effects of their implementation;

7 (2) require permitting of all new and existing
8 mining operations and exploration; and

9 (3) require annual reporting of production
10 information to the commission, which shall be kept confidential
11 if otherwise required by law;

12 B. adopt regulations for new mining operations that
13 allow the director to select a qualified expert who may:

14 (1) review and comment to the director on the
15 adequacy of baseline data gathered prior to submission of the
16 permit application for use in the permit application process;

17 (2) recommend to the director additional
18 baseline data that may be necessary in the review of the
19 proposed mining activity;

20 (3) recommend to the director methodology
21 guidelines to be followed in the collection of all baseline
22 data; and

23 (4) review and comment on the permit
24 application;

25 C. adopt regulations that require and provide for

underscored material = new
~~[bracketed material]~~ = delete

1 the issuance and renewal of permits for new and existing mining
2 operations and exploration and that establish schedules to
3 bring existing mining operations into compliance with the
4 requirements of the New Mexico Mining Act; provided the term of
5 a permit for a new mining operation shall not exceed twenty
6 years and the term of renewals of permits for new mining
7 operations shall not exceed ten years;

8 D. adopt regulations that provide for permit
9 modifications. The commission shall establish criteria to
10 determine which permit modifications may have significant
11 environmental impact. Modifications that the director
12 determines will have significant environmental impact shall
13 require public notice and an opportunity for public hearing
14 pursuant to Subsection K of this section. A ~~[permit]~~
15 modification to the permit for an existing mining operation
16 shall be obtained for each new discrete processing, leaching,
17 excavation, storage or stockpile unit located within the permit
18 area of an existing mining operation and not identified in the
19 permit of an existing mining operation; and for each expansion
20 of ~~[such]~~ a discrete processing, leaching, excavation, storage
21 or stockpile unit identified in the permit for an existing
22 mining operation that exceeds the design limits for that unit
23 specified in the permit. The regulations shall require that
24 permit modifications for ~~[such]~~ new units be approved if the
25 director determines that the unit will:

. 142791. 3

underscored material = new
[bracketed material] = delete

1 (1) comply with the regulations regarding
2 permit modifications;

3 (2) incorporate the requirements of Paragraphs
4 (1), (2), (4), (5) and (6) of Subsection [H] I of this section;
5 and

6 (3) be [~~sited and~~] constructed in a manner
7 that facilitates, to the maximum extent practicable,
8 [~~contemporaneous~~] reclamation consistent with the closeout
9 plan;

10 E. adopt regulations that require new and existing
11 mining operations to obtain and maintain permits for standby
12 status. A permit for standby status shall be issued for a
13 maximum term of five years; provided that upon application the
14 director may renew a permit for standby status for no more than
15 three additional five-year terms. The regulations shall
16 require that, before a permit for standby status is issued or
17 renewed, an owner or operator shall:

18 (1) identify the projected term of standby
19 status for each unit of the new or existing mining operation;

20 (2) take measures that reduce to the extent
21 practicable, considering the intended future resumption of
22 operations, the formation of acid and other toxic drainage to
23 prevent releases that cause federal or state environmental
24 standards to be exceeded;

25 (3) meet applicable federal and state

underscored material = new
[bracketed material] = delete

1 environmental standards and regulations during the period of
2 standby status;

3 [~~(4)~~ stabilize waste and storage units, leach
4 piles, impoundments and pits during the term of standby status;

5 ~~(5)~~ (4) comply with applicable requirements
6 of the New Mexico Mining Act and the regulations adopted
7 pursuant to that act; and

8 [~~(6)~~ (5) provide an analysis of the economic
9 viability of each unit proposed for standby status;

10 F. establish by regulation closeout plan
11 requirements for existing mining operations that incorporate
12 site-specific characteristics, including consideration of
13 disturbances from previous mining operations, and that take
14 into account the mining method utilized;

15 G. establish by regulation a procedure for the
16 issuance of a permit for an existing mining operation and for
17 modifications of that permit to incorporate approved closeout
18 plans or portions of closeout plans and financial assurance
19 requirements for performance of the closeout plans. The permit
20 shall describe the permit area of the existing mining operation
21 and the design limits of units of the existing mining operation
22 based upon the site assessment submitted by the operator. The
23 permit shall contain a schedule for completion of a closeout
24 plan. The permit shall thereafter be modified to incorporate
25 the approved closeout plan or portions of the closeout plan

underscored material = new
[bracketed material] = delete

1 once financial assurance has been provided for completion of
2 the closeout plan or the approved portions of the closeout plan
3 The permit may be modified for new mining units, expansions
4 beyond the design limits of a unit at an existing mining
5 operation or standby status;

6 H. by June 30, 2004, establish by regulation
7 requirements for mining operations within a mining district
8 that include:

9 (1) assurance that the mining operations will
10 employ measures to ensure that the operations do not cause or
11 contribute to water pollution outside of the mining district;

12 (2) requirements for the mine operator to
13 demonstrate that no discharge of water contaminants from its
14 mining operations within the mining district will cause or
15 contribute to a violation of water quality standards
16 promulgated by the water quality control commission under the
17 Water Quality Act at any point outside of the mining district;
18 and

19 (3) requirements that measures necessary to
20 comply with the requirements of this paragraph, including
21 appropriate monitoring and reporting requirements, be
22 incorporated into each mining operation's permit issued under
23 the New Mexico Mining Act;

24 [H-] I. establish by regulation permit and
25 reclamation requirements for new mining operations that

underscored material = new
[bracketed material] = delete

1 incorporate site-specific characteristics. These requirements
2 shall, at a minimum

3 (1) require that new mining operations be
4 designed and operated using the most appropriate technology and
5 the, best management practices, considering the nature of the
6 mining operation, technical and economic feasibility and
7 standard industry practices;

8 (2) assure protection of human health and
9 safety, the environment, wildlife and domestic animals;

10 (3) include backfilling or partial backfilling
11 only when necessary to achieve reclamation objectives that
12 cannot be accomplished through other mitigation measures;

13 (4) require approval by the director that the
14 permit area will achieve a self-sustaining ecosystem
15 appropriate for the life zone of the surrounding areas
16 following closure, unless conflicting with the approved post-
17 mining land use or unless the new mining operation is located
18 within a mining district;

19 (5) require that new mining operations be
20 designed in a manner that incorporates measures to reduce to
21 the extent practicable, considering the nature of the mining
22 operation and the role of acid in mineral production, the
23 formation of acid and other toxic drainage that may otherwise
24 occur following closure to prevent releases that cause federal
25 or state standards to be exceeded;

underscored material = new
[bracketed material] = delete

1 (6) require that nonpoint source surface
2 releases of acid or other toxic substances shall be contained
3 within the permit area;

4 (7) require that all waste, waste management
5 units, pits, heaps, pads and any other storage piles are
6 designed, sited and constructed in a manner that facilitates to
7 the maximum extent practicable, considering the nature of the
8 mining operation, technical and economic feasibility and
9 standard industry practices, contemporaneous reclamation and
10 are consistent with the new mining operation's approved
11 reclamation plan; and

12 (8) where sufficient topsoil is present, take
13 measures to preserve it from erosion or contamination and
14 assure that it is in a usable condition for sustaining
15 vegetation when needed;

16 [~~I~~] J. adopt regulations that establish a permit
17 application process for new mining operations that includes:

18 (1) disclosure of ownership and controlling
19 interests in the new mining operation or submission of the
20 applicant's most recent form 10K required by the federal
21 securities exchange commission;

22 (2) a statement of all mining operations
23 within the United States owned, operated or directly controlled
24 by the applicant, owner or operator and by persons or entities
25 that directly control the applicant and the names and the

underscored material = new
~~[bracketed material] = delete~~

1 addresses of regulatory agencies with jurisdiction over the
2 environmental aspects of those operations and that could
3 provide a compliance history for those operations [and] over
4 the preceding ten years. The operator shall assist the
5 applicant in obtaining compliance history information;

6 (3) a description of the type and method of
7 mining and the engineering techniques proposed;

8 (4) the anticipated starting and termination
9 dates of each phase of the new mining operation and the number
10 of acres of land to be affected;

11 (5) the names of all affected watersheds, the
12 location of any perennial, ephemeral or intermittent surface
13 stream or tributary into which surface or pit drainage will be
14 discharged or may possibly be expected to reach and the
15 location of any spring within the permit area and the affected
16 area;

17 (6) a determination of the probable hydrologic
18 consequences of the new mining operation and reclamation, both
19 on and off the permit area, with respect to the hydrologic
20 regime, quantity and quality of surface and ground water
21 systems, including the dissolved and suspended solids under
22 seasonal flow conditions;

23 (7) cross-sections or plans of the permit area
24 depicting:

25 (a) the nature and depth of the various

underscored material = new
~~[bracketed material] = delete~~

- 1 formations of overburden;
- 2 (b) the location of subsurface water, if
3 encountered, and its quality;
- 4 (c) the nature and location of any ore
5 body to be mined;
- 6 (d) the location of aquifers and
7 springs;
- 8 (e) the estimated position and flow of
9 the water table;
- 10 (f) the proposed location of waste rock,
11 tailings, stockpiles, heaps, pads and topsoil preservation
12 areas; and
- 13 (g) premining vegetation and wildlife
14 habitat features present at the site;
- 15 (8) the potential for geochemical alteration
16 of overburden, the ore body and other materials present within
17 the permit area;
- 18 (9) a reclamation plan that includes a
19 detailed description of the proposed post-mining land use and
20 how that use is to be achieved; and
- 21 (10) premining baseline data as required by
22 regulations adopted by the commission;
- 23 [J-] K. adopt regulations to coordinate the roles
24 of permitting agencies involved in regulating activities
25 related to new and existing mining operations and exploration,

underscored material = new
[bracketed material] = delete

1 including regulatory requirements, to avoid duplicative and
2 conflicting administration of the permitting process and other
3 requirements;

4 ~~[K-]~~ L. except for regulations enacted pursuant to
5 Subsection ~~[L]~~ M of this section, adopt regulations that ensure
6 that the public and permitting agencies receive notice of each
7 application for issuance, renewal or revision of a permit for a
8 new or existing mining operation, for standby status, or
9 exploration, a variance or an application for release of
10 financial assurance and any inspection prior to the release of
11 financial assurance, including a provision that no action shall
12 be taken on any application until an opportunity for a public
13 hearing, held in the locality of the operation, is provided and
14 that all interested persons shall be given a reasonable chance
15 to submit data, views or arguments orally or in writing and to
16 examine witnesses testifying at the hearing. An additional
17 opportunity for a public hearing may be provided if the
18 applicant makes substantial changes in the proposed action, if
19 there are significant new circumstances or information bearing
20 on the proposed action or if the applicant proposes to
21 substantially increase the scale or substantially change the
22 nature of the proposed action and there is public interest and
23 a request for a public hearing. These regulations shall
24 require at a minimum that the applicant for issuance, renewal
25 or revisions of a permit or a variance or an application for

. 142791. 3

underscored material = new
[bracketed material] = delete

1 release of financial assurance and any inspection prior to
2 release of financial assurance shall provide to the director,
3 at the time of filing the application with the director, proof
4 that notice of the application and of the procedure for
5 requesting a public hearing has been:

6 (1) provided by certified mail to the owners
7 of record, as shown by the most recent property tax schedule,
8 of all properties within one-half mile of the property on which
9 the mining operation is located or is proposed to be located;

10 (2) provided by certified mail to all
11 municipalities and counties within a ten-mile radius of the
12 property on which the mining operation is or will be located;

13 (3) published once in a newspaper of general
14 circulation in each county in which the property on which the
15 mining operation is or will be located; provided that this
16 notice shall appear in either the classified or legal
17 advertisements section of the newspaper and at one other place
18 in the newspaper calculated to give the general public the most
19 effective notice and, when appropriate, shall be printed in
20 both English and Spanish;

21 (4) posted in at least four publicly
22 accessible and conspicuous places, including the entrance to
23 the new or existing mining operation if that entrance is
24 publicly accessible and conspicuous;

25 (5) mailed to all persons who have made a

underscored material = new
[bracketed material] = delete

1 written request to the director for notice of this application;
2 and

3 (6) mailed by certified mail to all persons on
4 a list, maintained by the director, of individuals and
5 organizations who have requested notice of applications under
6 ~~[this]~~ the New Mexico Mining Act.

7 If the application is determined to be administratively
8 complete by the director, the applicant shall provide to the
9 director timely proof that notice of that determination has
10 been provided by first class mail to everyone who has indicated
11 to the applicant in writing that they desire information
12 regarding the application and to a list, maintained by the
13 director, of individuals and organizations who have requested
14 notice of applications under this act;

15 ~~[L-]~~ M adopt regulations to provide for permits,
16 without notice and hearing, to address mining operations that
17 have minimal impact on the environment; provided that such
18 permits shall require general plans and shall otherwise reduce
19 the permitting requirements of the New Mexico Mining Act;

20 ~~[M-]~~ N. establish by regulation a schedule of
21 annual administrative and permit fees, which shall ~~[equal and]~~
22 not exceed the estimated costs of administration,
23 implementation, enforcement, investigation and permitting
24 pursuant to the provisions of the New Mexico Mining Act. The
25 size of the operation, anticipated inspection frequency and

underscored material = new
[bracketed material] = delete

1 other factors deemed relevant by the commission shall be
2 considered in the determination of the fees. The fees
3 established pursuant to this subsection shall be deposited in
4 the mining act fund;

5 ~~[N-]~~ O. establish by regulation a ~~[continuing]~~
6 process of review of mining and reclamation practices in New
7 Mexico that provides for ~~[periodic]~~, not less than every five
8 years, review and amendment of regulations and procedures to
9 provide for the protection of the environment ~~[and]~~. The
10 commission shall consider the economic effects of the
11 regulations;

12 ~~[O-]~~ P. adopt regulations governing the provision
13 of variances issued by the director, stating the procedures for
14 seeking a variance, including provisions for public notice and
15 an opportunity for a hearing in the locality where the variance
16 will be operative, the limitations on provision of variances,
17 requiring the petitioner to present sufficient evidence to
18 prove that failure to grant a variance will impose an undue
19 economic burden and that granting the variance will not result
20 in a significant threat to human health, safety or the
21 environment;

22 ~~[P-]~~ Q. provide by regulation that, prior to the
23 issuance of any permit for a new mining operation pursuant to
24 the provisions of the New Mexico Mining Act, ~~[the]~~ a permit
25 applicant or operator ~~[(1)]~~ shall provide evidence to the

underscored material = new
[bracketed material] = delete

1 director that other applicable state and federal permits
2 required to be obtained by the new or existing mining operation
3 either have been or will be issued before the activities
4 subject to those permits begin [and

5 ~~(2) shall provide to the director a written~~
6 ~~determination from the secretary of environment stating that~~
7 ~~the permit applicant has demonstrated that the activities to be~~
8 ~~permitted or authorized will be expected to achieve compliance~~
9 ~~with all applicable air, water quality and other environmental~~
10 ~~standards if carried out as described];~~

11 [Q-] R. require by regulation that [the] an
12 applicant file with the director, prior to the issuance of a
13 permit, financial assurance. The amount of the financial
14 assurance shall be sufficient to assure the completion of the
15 performance requirements of the permit, including closure and
16 reclamation, if the work had to be performed by the director or
17 a third party contractor and shall include periodic review to
18 account for any inflationary increases and anticipated changes
19 in reclamation or closure costs. The regulations shall specify
20 that financial requirements shall neither duplicate nor be less
21 comprehensive than the federal financial requirements. The
22 form and amount of the financial assurance shall be subject to
23 the approval of the director as part of the permit application
24 [~~provided, financial assurance does not include any type or~~
25 ~~variety of self-guarantee or self-insurance];~~

underscored material = new
[bracketed material] = delete

1 ~~[R.]~~ S. require by regulation that ~~[the]~~ a
2 permittee ~~may~~ file an application with the director for the
3 release of all or part of the permittee's financial assurance.
4 The permittee shall not file an application for release of
5 financial assurance more than once per year for each mining
6 operation. The application shall describe the reclamation
7 measures completed and shall contain an estimate of the costs
8 of reclamation measures that have not been completed. Prior to
9 release of any portion of the permittee's financial assurance,
10 the director shall conduct an inspection and evaluation of the
11 reclamation work involved. The director shall notify persons
12 who have requested advance notice of the inspection.
13 Interested ~~members~~ of the public shall be allowed to be present
14 at the inspection of the reclamation work by the director.

15 (1) The director ~~[may]~~ shall release in whole
16 or in part the financial assurance if the reclamation covered
17 by the financial assurance has been accomplished as required by
18 the New Mexico Mining Act; provided that the director shall
19 retain financial assurance at least equal to the approved
20 estimated costs of completing reclamation measures that have
21 not been completed; and provided further that, for revegetated
22 areas, the director shall retain the amount of financial
23 assurance necessary for a third party to reestablish vegetation
24 for a period of twelve years after the last year of augmented
25 seeding, fertilizing, irrigation or other work, unless a post-

underscored material = new
[bracketed material] = delete

1 mining land use is achieved that is inconsistent with the
2 further need for revegetation. For new mining operations only,
3 no part of the financial assurance necessary for a third party
4 to reestablish vegetation shall be released so long as the
5 lands to which the release would be applicable are contributing
6 suspended solids above background levels to streamflow of
7 intermittent and perennial streams.

8 (2) A person with an interest that is or will
9 be adversely affected by release of the financial assurance may
10 file with the director, within thirty days of the date of the
11 inspection, written objections to the proposed release from
12 financial assurance. If written objections are filed and a
13 hearing is requested, the director shall inform all the
14 interested parties of the time and place of the hearing at
15 least thirty days in advance of the public hearing, and hold a
16 public hearing in the locality of the new or existing mining
17 operation or exploration operation proposed for release from
18 financial assurance. The date, time and location of the public
19 hearing shall be advertised by the director in a newspaper of
20 general circulation in the locality for two consecutive weeks,
21 and all persons who have submitted a written request in advance
22 to the director to receive notices of hearings shall be
23 provided notice at least thirty days prior to the hearing;

24 [S-] T. establish coordinated procedures that avoid
25 duplication for the inspection, monitoring and sampling of air,

underscored material = new
[bracketed material] = delete

1 soil and water and enforcement of applicable requirements of
2 the New Mexico Mining Act, regulations adopted pursuant to that
3 act and permit conditions for new and existing mining
4 operations and exploration. The regulations shall require, at
5 a minimum:

6 (1) inspections by the director occurring on
7 an irregular basis according to the following schedule:

8 (a) at least one inspection per month
9 when the mining operation is conducting significant reclamation
10 activities;

11 (b) at least two inspections per year
12 for active mining operations;

13 (c) at least one inspection per year on
14 inactive sites;

15 (d) at least one inspection per year
16 following completion of all significant reclamation activities,
17 but prior to release of financial assurance; and

18 (e) mining operations having a minimal
19 impact on the environment and exploration operations will be
20 inspected on a schedule to be established by the commission;

21 (2) inspections shall occur without prior
22 notice to the permittee or his agents or employees except for
23 necessary on-site meetings with the permittee;

24 (3) when the director determines that a
25 condition or practice exists that violates a requirement of the

underscored material = new
~~[bracketed material] = delete~~

1 New Mexico Mining Act, a regulation adopted pursuant to that
2 act or a permit issued under that act, which condition,
3 practice or violation also creates an imminent danger to the
4 health or safety of the public or will cause significant
5 imminent environmental harm, the director shall immediately
6 order a cessation of the new or existing mining operation or
7 the exploration operation or the portion of that operation
8 relevant to the condition, practice or violation. The
9 cessation order shall remain in effect until the director
10 determines that the condition, practice or violation has been
11 abated or until modified, vacated or terminated by the director
12 or the commission;

13 (4) when the director determines that an owner
14 or operator is in violation of a requirement of the New Mexico
15 Mining Act, a regulation adopted pursuant to that act or a
16 permit issued pursuant to that act but the violation does not
17 create an imminent danger to the health or safety of the public
18 or will not cause significant imminent environmental harm, the
19 director shall issue a notice to the owner or operator fixing a
20 reasonable time, not to exceed sixty days, for the abatement of
21 the violation. If, upon expiration of the period of time as
22 originally fixed or subsequently extended for good cause shown,
23 the director finds that the violation has not been abated, he
24 shall immediately order a cessation of new or existing mining
25 operations or exploration operations or the portion thereof

underscored material = new
[bracketed material] = delete

1 relevant to the violation. The cessation order shall remain in
2 effect until the director determines that the violation has
3 been abated; and

4 (5) when the director determines that a
5 pattern of violations of the requirements of the New Mexico
6 Mining Act or of the regulations adopted pursuant to that act
7 or the permit required by that act exists or has existed and,
8 if the director also finds that such violations are caused by
9 the unwarranted failure of the owner or operator to comply with
10 the requirements of that act, regulation or permit or that such
11 violations are willfully caused by the owner or operator, the
12 director shall immediately issue an order to the owner or
13 operator to show cause as to why the permit should not be
14 suspended or revoked;

15 [~~F-~~] U. provide for the transfer of a permit to a
16 successor operator, providing for release of the first operator
17 from obligations under the permit, including financial
18 assurance, following the approved assumption of such
19 obligations and financial assurance by the successor operator;

20 [~~U-~~] V. adopt regulations providing that the owner
21 or operator of an existing mining operation or a new mining
22 operation who has completed some reclamation measures prior to
23 the effective date of the regulations adopted pursuant to the
24 New Mexico Mining Act may apply for an inspection of those
25 reclamation measures and a release from further requirements

underscored material = new
[bracketed material] = delete

1 pursuant to that act for the reclaimed areas if, after an
2 inspection, the director determines that the reclamation
3 measures satisfy the requirements of that act and the
4 substantive requirements for reclamation pursuant to the
5 applicable regulatory standards; and

6 [V.] W develop and adopt other regulations
7 necessary and appropriate to carry out the purposes and
8 provisions of the New Mexico Mining Act. "

9 Section 3. Section 69-36-9 NMSA 1978 (being Laws 1993,
10 Chapter 315, Section 9) is amended to read:

11 "69-36-9. DIRECTOR--DUTIES.--The director shall:

12 A. exercise all powers of enforcement and
13 administration [~~arising under~~] authorized by the New Mexico
14 Mining Act not otherwise expressly delegated to the commission,
15 execute and administer the commission's regulations and
16 coordinate the review and issuance of permits for new and
17 existing mining operations and exploration with all other state
18 or federal permit processes applicable to the proposed
19 operations;

20 B. enter into agreements with appropriate federal
21 and state agencies for coordinating the review and issuance of
22 all necessary permits to conduct new and existing mining
23 operations and exploration in New Mexico;

24 C. create an advisory committee, the membership of
25 which shall balance the interests of affected government

underscored material = new
[bracketed material] = delete

1 entities, the mining industry, environmental groups, regulatory
2 agencies and other persons as determined by the director to
3 represent a constituency that will be affected by the
4 provisions of the New Mexico Mining Act;

5 D. confer and cooperate with the secretary of
6 environment [~~in administering the New Mexico Mining Act, in~~
7 ~~developing proposed regulations and obtain the concurrence of~~
8 ~~the secretary of environment~~] regarding areas of the
9 regulations that have an impact upon programs administered by
10 the department of environment;

11 E. approve a permit area and design limits for new
12 and existing mining operations and exploration following
13 submission of the site assessment, where applicable and prior
14 to issuing a permit. The director shall incorporate the permit
15 area and design limits into the permit issued;

16 F. review at least twelve months of baseline data
17 and other information submitted by the applicant for a permit
18 for a new mining operation, before the permit is approved or
19 denied; and

20 G. prepare an environmental evaluation, before a
21 permit for a new mining operation is approved or denied,
22 [~~which~~] that shall include an analysis of the reasonably
23 foreseeable impacts of proposed activities on the premining and
24 post-mining environment and the local community, including
25 other past, present and reasonably foreseeable future actions,

underscored material = new
[bracketed material] = delete

1 regardless of the agency or persons that undertake the other
2 action or whether the actions are on private, state or federal
3 land. The director may contract with, and the applicant shall
4 pay for, a third party to prepare the analysis and assessment."

5 Section 4. A new section of the New Mexico Mining Act is
6 enacted to read:

7 "[NEW MATERIAL] MINING DISTRICTS--DESIGNATION--DIRECTOR'S
8 DUTIES.--In designation of mining districts, the director
9 shall:

10 A. by January 1, 2004, designate mining districts.
11 A district shall include all lands for which mining is the
12 highest and best use of the land and that meet at least one of
13 the following criteria:

14 (1) the lands have been historically used for
15 exploration, mining and uses ancillary to mining;

16 (2) the lands have mineral resources, the
17 recovery of which is either technically and economically
18 feasible now or reasonably likely to be in the future;

19 (3) the lands are affected in such a way that
20 designation as a mining district is necessary to protect human
21 health and safety or the environment outside the proposed
22 mining district due to exploration, mining and uses ancillary
23 to mining; or

24 (4) the lands are not needed for other
25 commercial or residential uses now or expected to be needed in

underscored material = new
[bracketed material] = delete

1 the future to meet local economic development needs;

2 B. approve or disapprove an application to designate
3 a new mining district or modify an existing mining district
4 within ninety days after one or more operators of mining
5 operations files an application pursuant to the New Mexico
6 Mining Act. The director shall approve an application for a
7 new mining district or a modification of an existing mining
8 district if:

9 (1) the application filed with the director
10 contains:

11 (a) the name and mailing address of and
12 the telephone number for the contact person of each mining
13 operation applying for modification of the mining district;

14 (b) a map and a description of the
15 geographical boundaries for the proposed modification;

16 (c) a description of the known mineral
17 resources in the proposed modification;

18 (d) a description of the historic use of
19 the land in the mining district for mining; and

20 (e) a statement describing why mining is
21 the highest and best use for the land included in the mining
22 district; and

23 (2) the application meets the requirements
24 specified in Subsection A of this section;

25 C. if the director does not approve an application

underscored material = new
[bracketed material] = delete

1 to designate or modify a mining district, provide a written
2 explanation stating the reasons for denial and including
3 recommendations for correcting the unacceptable parts of the
4 application;

5 D. hold a public hearing on the initial designation
6 of a mining district and on an application to designate a new
7 mining district or modify a mining district within sixty days
8 of the proposed designation or the submission of an
9 application. The public hearing shall be held at a location
10 within reasonable proximity to the mining district. A
11 representative of the applicant shall attend the hearing and
12 respond to questions;

13 E. give notice of the subject, time and place of a
14 hearing, the manner in which interested persons may present
15 their views and the method by which copies of an application to
16 establish or modify a mining district may be obtained:

17 (1) by publication at least thirty days prior
18 to the hearing date in a newspaper of general circulation in
19 the state and in the New Mexico register, if published; and

20 (2) by mail at least thirty days prior to the
21 hearing date to all persons who have made a written request to
22 the director for advance notice of hearings;

23 F. allow all interested persons a reasonable
24 opportunity to submit arguments on the initial designation or
25 modification of a mining district, including the effect of the

underscored material = new
[bracketed material] = delete

1 mining district on interests outside the district; and

2 G. provide to a person appearing or represented at a
3 hearing, upon a written request, a written notice of the
4 director's action on the initial designation or modification of
5 a mining district. "

6 Section 5. Section 69-36-11 NMSA 1978 (being Laws 1993,
7 Chapter 315, Section 11) is amended to read:

8 "69-36-11. EXISTING MINING OPERATIONS--CLOSEOUT PLAN
9 REQUIRED. --

10 A. An owner or operator of an existing mining
11 operation shall submit a permit application to the director by
12 December 31, 1994. The permit application shall contain all
13 information required by regulation of the commission, including
14 a proposed compliance schedule for submission of a closeout
15 plan within the shortest time practicable. The director shall
16 approve or deny the permit application within six months after
17 it has been deemed complete.

18 B. The owner or operator of an existing mining
19 operation shall submit a closeout plan in accordance with the
20 compliance schedule in the permit. The compliance schedule in
21 the permit shall require submission of a closeout plan by
22 December 31, 1995 unless the operator shows good cause for a
23 further extension of time. The director shall approve a
24 modification of a permit for an existing mining operation
25 incorporating a closeout plan or portion of a closeout plan if:

underscored material = new
[bracketed material] = delete

- 1 (1) the closeout plan and permit application
2 is complete;
- 3 (2) the closeout plan permit fee has been paid
4 and the financial assurance is adequate and has been provided;
5 and
- 6 (3) for an existing mining operation or
7 portion of an existing mining operation that is not within a
8 mining district, the closeout plan specifies incremental work
9 to be done within specific time frames that, if followed, will
10 reclaim the physical environment of the permit area to a
11 condition that allows for the reestablishment of a self-
12 sustaining ecosystem on the permit area following closure,
13 appropriate for the life zone of the surrounding areas unless
14 conflicting with the approved post-mining land use; provided
15 that for purposes of this section, upon a showing that
16 achieving a post-mining land use or self-sustaining ecosystem
17 is not technically or economically feasible or is
18 environmentally unsound, the director may waive the requirement
19 to achieve a self-sustaining ecosystem or post-mining land use
20 for an open pit or waste unit if measures will be taken to
21 ensure that the open pit or waste unit will meet all applicable
22 federal and state laws, regulations and standards for air,
23 surface water and ground water protection following closure and
24 will not pose a current or future hazard to public health or
25 safety [and]. For purposes of determining whether the

underscored material = new
[bracketed material] = delete

1 achievement of a self-sustaining ecosystem or a post-mining
2 land use is technically or economically feasible, the director
3 shall consider whether the probable cost of undertaking the
4 reclamation measures:

5 (a) outweighs the probable benefits of
6 those measures;

7 (b) imposes an undue burden on
8 exploration or mining industry operations as a whole, including
9 making exploration or mining operations economically infeasible
10 due to the probable cost of undertaking the reclamation
11 measures; or

12 (c) imposes an undue burden on the local
13 economy and communities; or

14 (4) [~~the secretary of environment has provided~~
15 ~~a written determination in the form prescribed in Paragraph (2)~~
16 ~~of Subsection P of Section 7 of the New Mexico Mining Act]~~ for
17 an existing mining operation or portion of an existing mining
18 operation that is within a mining district, the closeout plan
19 specifies measures that will be taken to reclaim the disturbed
20 area so that it will meet all applicable federal and state
21 laws, regulations and standards for air, surface water and
22 ground water protection following closure and will not pose a
23 current or future hazard to public health or safety.

24 C. An approval granted pursuant to this section may
25 be revoked or suspended by order of the director for violation

underscored material = new
[bracketed material] = delete

1 of a provision of the approved closeout plan or permit for the
2 existing mining operation, an approval condition, a regulation
3 of the commission or a provision of the New Mexico Mining Act.

4 D. An owner or operator of an existing mining
5 operation or a portion of an existing mining operation that is
6 included within a mining district may submit an application to
7 modify the applicable permit by submitting a revised closeout
8 plan that incorporates the reclamation measures pursuant to
9 this section for such operations or portions of operations.
10 Within ninety days after receiving a complete application to
11 modify the permit, the director shall notify the applicant in
12 writing whether the application is approvable or shall identify
13 in writing any deficiencies in the application. Within thirty
14 days after receiving an amended application responding to any
15 deficiencies, the director shall notify the applicant in
16 writing whether the application is approvable. Within thirty
17 days after receiving notice that the application is approvable,
18 the applicant shall submit a cost estimate for the approvable
19 closeout plan. The director shall notify the applicant in
20 writing that the closeout plan is approvable or identify any
21 deficiencies within thirty days after receiving the cost
22 estimate. Following approval of a cost estimate or revised
23 cost estimate, within thirty days after receiving a request to
24 adjust the financial assurance, the director shall adjust the
25 amount of financial assurance required for the mining

underscored material = new
[bracketed material] = delete

1 operation."

2 Section 6. Section 69-36-14 NMSA 1978 (being Laws 1993,
3 Chapter 315, Section 14, as amended) is amended to read:

4 "69-36-14. [~~CITIZENS~~] CITIZENS' SUITS.--

5 A. A person having an interest that is or may be
6 adversely affected may commence a civil action on his own
7 behalf to compel compliance with the New Mexico Mining Act.
8 Such action may be brought against:

9 (1) [~~the department of environment~~] the
10 energy, minerals and natural resources department or the
11 commission alleging a violation of the New Mexico Mining Act or
12 of a rule, regulation, order or permit issued pursuant to that
13 act;

14 (2) a person who is alleged to be in violation
15 of a rule, regulation, order or permit issued pursuant to the
16 New Mexico Mining Act; or

17 (3) [~~the department of environment~~] the
18 energy, minerals and natural resources department or the
19 commission alleging a failure to perform any nondiscretionary
20 act or duty required by the New Mexico Mining Act; provided,
21 however, that no action pursuant to this section shall be
22 commenced if [~~the department of environment~~] the energy,
23 minerals and natural resources department or the commission has
24 commenced and is diligently prosecuting a civil action in a
25 court of this state or an administrative enforcement proceeding

underscored material = new
[bracketed material] = delete

1 to require compliance with that act. In an administrative or
2 court action commenced by [~~the department of environment~~] the
3 energy, minerals and natural resources department or the
4 commission, a person whose interest may be adversely affected
5 and who has provided notice pursuant to Subsection B of this
6 section prior to the initiation of the action may intervene as
7 a matter of right.

8 B. No action shall be commenced pursuant to this
9 section prior to sixty days after the plaintiff has given
10 written notice to [~~the department of environment~~] the energy,
11 minerals and natural resources department, the commission, the
12 attorney general and the alleged violator of the New Mexico
13 Mining Act; provided, however, when the violation or order
14 complained of constitutes an immediate threat to the health or
15 safety of the plaintiff or would immediately and irreversibly
16 impair a legal interest of the plaintiff, an action pursuant to
17 this section may be brought immediately after notification of
18 the proper parties.

19 C. [~~Except as otherwise provided herein~~] Suits
20 against [~~the department of environment~~] the energy, minerals
21 and natural resources department or the commission shall be
22 brought in the district court of Santa Fe county. Suits [~~only~~
23 ~~against~~] in which only one or more owners or operators of one
24 or more mining operations are named as defendants shall be
25 brought in the district court where one of the mining

underscored material = new
[bracketed material] = delete

1 operations is located. If an action is brought against [~~the~~
2 ~~department of environment~~] the energy, minerals and natural
3 resources department or the commission and [~~the~~] an owner or
4 operator of a mining operation, [~~such~~] the owner or operator
5 may apply for a change of venue to the judicial district in
6 which the mining operation is located. If not already a party,
7 an owner or operator may intervene, upon a showing that the
8 action relates primarily to a dispute regarding [~~the~~] a single
9 mining operation, and apply for [~~such~~] a change of venue. The
10 district court shall grant a change of venue upon a showing
11 that the action relates primarily to a dispute regarding the
12 [~~subject~~] single mining operation and a showing that a forum
13 non conveniens analysis suggests that the location of the
14 mining operation is a superior venue.

15 D. In an action brought pursuant to this section,
16 [~~the department of environment~~] the energy, minerals and
17 natural resources department or the commission, if not a party,
18 may intervene.

19 E. The court, in issuing a final order in an action
20 brought pursuant to this section, may award costs of
21 litigation, including attorney and expert witness fees, to a
22 party whenever the court determines such award is appropriate.
23 The court may, if a temporary injunction or preliminary
24 injunction is sought, require the filing of a bond or
25 equivalent security in accordance with the rules of civil

underscored material = new
~~[bracketed material] = delete~~

1 procedure. "

2 Section 7. Section 74-6-4 NMSA 1978 (being Laws 1967,
3 Chapter 190, Section 4, as amended by Laws 2001, Chapter 240,
4 Section 1 and by Laws 2001, Chapter 281, Section 1) is amended
5 to read:

6 "74-6-4. DUTIES AND POWERS OF COMMISSION. -- The
7 commission:

8 A. may accept and supervise the administration of
9 loans and grants from the federal government and from other
10 sources, public or private, which loans and grants shall not be
11 expended for other than the purposes for which provided;

12 B. shall adopt a comprehensive water quality
13 management program and develop a continuing planning process;

14 C. shall adopt water quality standards for surface
15 and ground waters of the state based on credible scientific
16 data and other evidence appropriate under the Water Quality
17 Act. The standards shall include narrative standards and as
18 appropriate the designated uses of the waters and the water
19 quality criteria necessary to protect such uses. The standards
20 shall at a minimum protect the public health or welfare,
21 enhance the quality of water and serve the purposes of the
22 Water Quality Act. In making standards, the commission shall
23 give weight it deems appropriate to all facts and
24 circumstances, including the use and value of the water for
25 water supplies, propagation of fish and wildlife, recreational

. 142791. 3

underscored material = new
~~[bracketed material] = delete~~

1 purposes and agricultural, industrial and other purposes. The
2 standards for waters in a mining district established pursuant
3 to the New Mexico Mining Act shall be set at appropriate levels
4 to maintain the use of the land within the district for mining;

5 D. shall adopt, promulgate and publish regulations
6 to prevent or abate water pollution in the state or in any
7 specific geographic area, aquifer or watershed of the state or
8 in any part thereof, or for any class of waters, and to govern
9 the disposal of septage and sludge and the use of sludge for
10 various beneficial purposes. The regulations governing the
11 disposal of septage and sludge may include the use of tracking
12 and permitting systems or other reasonable means necessary to
13 assure that septage and sludge are designated for disposal in,
14 and arrive at, disposal facilities, other than facilities on
15 the premises where the septage and sludge is generated, for
16 which a permit or other authorization has been issued pursuant
17 to the federal act or the Water Quality Act. Regulations shall
18 not specify the method to be used to prevent or abate water
19 pollution but may specify a standard of performance for new
20 sources that reflects the greatest reduction in the
21 concentration of water contaminants that the commission
22 determines to be achievable through application of the best
23 available demonstrated control technology, processes, operating
24 methods or other alternatives, including where practicable a
25 standard permitting no discharge of pollutants. In making

underscored material = new
~~[bracketed material] = delete~~

1 regulations, the commission shall give weight it deems
2 appropriate to all relevant facts and circumstances, including:

3 (1) character and degree of injury to or
4 interference with health, welfare, environment and property;

5 (2) the public interest, including the social
6 and economic value of the sources of water contaminants;

7 (3) technical practicability and economic
8 reasonableness of reducing or eliminating water contaminants
9 from the sources involved and previous experience with
10 equipment and methods available to control the water
11 contaminants involved;

12 (4) successive uses, including but not limited
13 to domestic, commercial, industrial, pastoral, agricultural,
14 wildlife and recreational uses;

15 (5) feasibility of a user or a subsequent user
16 treating the water before a subsequent use;

17 (6) property rights and accustomed uses; and

18 (7) federal water quality requirements;

19 E. shall assign responsibility for administering its
20 regulations to constituent agencies so as to assure adequate
21 coverage and prevent duplication of effort. To this end, the
22 commission may make such classification of waters and sources
23 of water contaminants as will facilitate the assignment of
24 administrative responsibilities to constituent agencies. The
25 commission shall also hear and decide disputes between

underscored material = new
[bracketed material] = delete

1 constituent agencies as to jurisdiction concerning any matters
2 within the purpose of the Water Quality Act. In assigning
3 responsibilities to constituent agencies, the commission shall
4 give priority to the primary interests of the constituent
5 agencies. The department of environment shall provide
6 technical services, including certification of permits pursuant
7 to the federal act, and shall maintain a repository of the
8 scientific data required by this act;

9 F. may enter into or authorize constituent agencies
10 to enter into agreements with the federal government or other
11 state governments for purposes consistent with the Water
12 Quality Act and receive and allocate to constituent agencies
13 funds made available to the commission;

14 G. may grant an individual variance from any
15 regulation of the commission whenever it is found that
16 compliance with the regulation will impose an unreasonable
17 burden upon any lawful business, occupation or activity. The
18 commission may only grant a variance conditioned upon a person
19 effecting a particular abatement of water pollution within a
20 reasonable period of time. Any variance shall be granted for
21 the period of time specified by the commission. The commission
22 shall adopt regulations specifying the procedure under which
23 variances may be sought, which regulations shall provide for
24 the holding of a public hearing before any variance may be
25 granted;

underscored material = new
[bracketed material] = delete

1 H. may adopt regulations to require the filing with
2 it or a constituent agency of proposed plans and specifications
3 for the construction and operation of new sewer systems,
4 treatment works or sewerage systems or extensions,
5 modifications of or additions to new or existing sewer systems,
6 treatment works or sewerage systems. Filing with and approval
7 by the federal housing administration of plans for an extension
8 to an existing or construction of a new sewerage system
9 intended to serve a subdivision solely residential in nature
10 shall be deemed compliance with all provisions of this
11 subsection;

12 I. may adopt regulations requiring notice to it or a
13 constituent agency of intent to introduce or allow the
14 introduction of water contaminants into waters of the state;

15 J. may adopt regulations establishing pretreatment
16 standards that prohibit or control the introduction into
17 publicly owned sewerage systems of water contaminants that are
18 not susceptible to treatment by the treatment works or that
19 would interfere with the operation of the treatment works;

20 K. shall not require a permit respecting the use of
21 water in irrigated agriculture, except in the case of the
22 employment of a specific practice in connection with such
23 irrigation that documentation or actual case history has shown
24 to be hazardous to public health or the environment; and

25 L. shall coordinate application procedures and

underscored material = new
~~[bracketed material] = delete~~

1 funding cycles for loans and grants from the federal
2 government and from other sources, public or private, with
3 the local government division of the department of finance
4 and administration pursuant to the New Mexico Community
5 Assistance Act. "

6 Section 8. Section 74-6-12 NMSA 1978 (being Laws 1967,
7 Chapter 190, Section 11, as amended) is amended to read:

8 "74-6-12. **LIMITATIONS. - -**

9 A. The Water Quality Act does not grant to the
10 commission or to any other entity the power to take away or
11 modify the property rights in water, nor is it the intention of
12 the Water Quality Act to take away or modify such rights.

13 B. The Water Quality Act does not apply to any
14 activity or condition subject to the authority of the
15 environmental improvement board pursuant to the Hazardous Waste
16 Act, the Ground Water Protection Act or the Solid Waste Act
17 except to abate water pollution or to control the disposal or
18 use of septage and sludge.

19 C. The Water Quality Act does not authorize the
20 commission to adopt any regulation with respect to any
21 condition or quality of water if the water pollution and its
22 effects are confined entirely within the boundaries of property
23 within which the water pollution occurs when the water does not
24 combine with other waters.

25 D. The Water Quality Act does not grant to the

underscored material = new
[bracketed material] = delete

1 commission any jurisdiction or authority affecting the relation
2 between employers and employees with respect to or arising out
3 of any condition of water quality.

4 E. The Water Quality Act does not supersede or limit
5 the applicability of any law relating to industrial health,
6 safety or sanitation.

7 F. Except as required by federal law, in the
8 adoption of regulations and water quality standards and in an
9 action for enforcement of the Water Quality Act and regulations
10 adopted pursuant to that act, reasonable degradation of water
11 quality resulting from beneficial use shall be allowed. Such
12 degradation shall not result in impairment of water quality to
13 the extent that water quality standards are exceeded.

14 G. The Water Quality Act does not apply to any
15 activity or condition subject to the authority of the oil
16 conservation commission pursuant to provisions of the Oil and
17 Gas Act [~~Section 70-2-12 NMSA 1978~~] and other laws conferring
18 power on the oil conservation commission to prevent or abate
19 water pollution.

20 H. The Water Quality Act does not apply to any
21 activity or condition subject to the authority of the mining
22 commission pursuant to provisions of the New Mexico Mining Act.
23 This subsection shall not affect the authority of a constituent
24 agency to require abatement of water pollution at any location
25 outside of an approved mining district in accordance with the

