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HOUSE BILL 449

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JEANNETTE WALLACE

AN ACT

RELATING TO THE NEW MEXICO MINING ACT; LIMITING THE AUTHORITY OF THE MINING COMMISSION TO APPROVE PERMIT MODIFICATIONS FOR NEW EXCAVATION UNITS UNDER CERTAIN CIRCUMSTANCES.

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

Section 1. Section 69-36-7 NMSA 1978 (being Laws 1993, Chapter 315, Section 7, as amended) is amended to read:

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

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

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

(2) require permitting of all new and

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1 existing mining operations and exploration; and

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

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

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

10 (2) recommend to the director additional
11 baseline data that may be necessary in the review of the
12 proposed mining activity;

13 (3) recommend to the director methodology
14 guidelines to be followed in the collection of all baseline
15 data; and

16 (4) review and comment on the permit
17 application;

18 C. adopt regulations that require and provide for
19 the issuance and renewal of permits for new and existing
20 mining operations and exploration and that establish schedules
21 to bring existing mining operations into compliance with the
22 requirements of the New Mexico Mining Act; provided the term
23 of a permit for a new mining operation shall not exceed twenty
24 years and the term of renewals of permits for new mining
25 operations shall not exceed ten years;

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

18 (1) comply with the regulations regarding
19 permit modifications;

20 (2) incorporate the requirements of
21 Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this
22 section; [~~and~~]

23 (3) be sited and constructed in a manner that
24 facilitates, to the maximum extent practicable,
25 contemporaneous reclamation consistent with the closeout plan;

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1 and

2 (4) comply with the regulations adopted
3 pursuant to the Subsections H, I and P of this section if the
4 modification is for a new surface excavation unit located more
5 than the maximum new mining unit distance from an existing
6 surface excavation. As used in this paragraph, "the maximum
7 new mining unit distance" means the distance calculated by
8 multiplying the average diameter of the existing surface
9 excavation by five;

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
15 than 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, the formation of acid and other toxic drainage to
22 prevent releases that cause federal or state environmental
23 standards to be exceeded;

24 (3) meet applicable federal and state
25 environmental standards and regulations during the period of

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1 standby status;

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

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

8 (6) 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
20 permit shall describe the permit area of the existing mining
21 operation and the design limits of units of the existing
22 mining operation based upon the site assessment submitted by
23 the operator. The permit shall contain a schedule for
24 completion of a closeout plan. The permit shall thereafter be
25 modified to incorporate the approved closeout plan or portions

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

6 H. establish by regulation permit and reclamation
7 requirements for new mining operations that incorporate site-
8 specific characteristics. These requirements shall, at a
9 minimum:

10 (1) require that new mining operations be
11 designed and operated using the most appropriate technology
12 and the best management practices;

13 (2) ~~[assure]~~ ensure protection of human
14 health and safety, the environment, wildlife and domestic
15 animals;

16 (3) include backfilling or partial
17 backfilling only when necessary to achieve reclamation
18 objectives that cannot be accomplished through other
19 mitigation measures;

20 (4) require approval by the director that the
21 permit area will achieve a self-sustaining ecosystem
22 appropriate for the life zone of the surrounding areas
23 following closure unless conflicting with the approved post-
24 mining land use;

25 (5) require that new mining operations be

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1 designed in a manner that incorporates measures to reduce, to
2 the extent practicable, the formation of acid and other toxic
3 drainage that may otherwise occur following closure to prevent
4 releases that cause federal or state standards to be exceeded;

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

8 (7) require that all waste, waste management
9 units, pits, heaps, pads and any other storage piles are
10 designed, sited and constructed in a manner that [facilitates]
11 facilitate, to the maximum extent practicable, contemporaneous
12 reclamation and are consistent with the new mining operation's
13 approved reclamation plan; and

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

18 I. adopt regulations that establish a permit
19 application process for new mining operations that includes:

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

24 (2) a statement of all mining operations
25 within the United States owned, operated or directly

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1 controlled by the applicant, owner or operator and by persons
2 or entities that directly control the applicant and the names
3 and the addresses of regulatory agencies with jurisdiction
4 over the environmental aspects of those operations and that
5 could provide a compliance history for those operations [and]
6 over the preceding ten years. The operator shall assist the
7 applicant in obtaining compliance history information;

8 (3) a description of the type and method of
9 mining and the engineering techniques proposed;

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

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

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

25 (7) cross sections or plans of the permit

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1 area depicting:

2 (a) the nature and depth of the various
3 formations of overburden;

4 (b) the location of subsurface water,
5 if encountered, and its quality;

6 (c) the nature and location of any ore
7 body to be mined;

8 (d) the location of aquifers and
9 springs;

10 (e) the estimated position and flow of
11 the water table;

12 (f) the proposed location of waste
13 rock, tailings, stockpiles, heaps, pads and topsoil
14 preservation areas; and

15 (g) premining vegetation and wildlife
16 habitat features present at the site;

17 (8) the potential for geochemical alteration
18 of overburden, the ore body and other materials present within
19 the permit area;

20 (9) a reclamation plan that includes a
21 detailed description of the proposed post-mining land use and
22 how that use is to be achieved; and

23 (10) premining baseline data as required by
24 regulations adopted by the commission;

25 J. adopt regulations to coordinate the roles of

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1 permitting agencies involved in regulating activities related
2 to new and existing mining operations and exploration,
3 including regulatory requirements, to avoid duplicative and
4 conflicting administration of the permitting process and other
5 requirements;

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

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1 regulations shall require at a minimum that the applicant for
2 issuance, renewal or revisions of a permit or a variance or an
3 application for release of financial assurance and any
4 inspection prior to release of financial assurance shall
5 provide to the director at the time of filing the application
6 with the director proof that notice of the application and of
7 the procedure for requesting a public hearing has been:

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

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

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

24 (4) posted in at least four publicly
25 accessible and conspicuous places, including the entrance to

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1 the new or existing mining operation if that entrance is
2 publicly accessible and conspicuous;

3 (5) mailed to all persons who have made a
4 written request to the director for notice of this
5 application; and

6 (6) mailed by certified mail to all persons
7 on a list maintained by the director of individuals and
8 organizations who have requested notice of applications under
9 [~~this~~] the New Mexico Mining Act. If the application is
10 determined to be administratively complete by the director,
11 the applicant shall provide to the director timely proof that
12 notice of that determination has been provided by first class
13 mail to everyone who has indicated to the applicant in writing
14 that they desire information regarding the application and to
15 a list maintained by the director of individuals and
16 organizations who have requested notice of applications under
17 [~~this~~] that act;

18 L. adopt regulations to provide for permits,
19 without notice and hearing, to address mining operations that
20 have minimal impact on the environment; provided that such
21 permits shall require general plans and shall otherwise reduce
22 the permitting requirements of the New Mexico Mining Act;

23 M establish by regulation a schedule of annual
24 administrative and permit fees, which shall equal and not
25 exceed the estimated costs of administration, implementation,

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1 enforcement, investigation and permitting pursuant to the
2 provisions of the New Mexico Mining Act. The size of the
3 operation, anticipated inspection frequency and other factors
4 deemed relevant by the commission shall be considered in the
5 determination of the fees. The fees established pursuant to
6 this subsection shall be deposited in the mining act fund;

7 N. establish by regulation a continuing process of
8 review of mining and reclamation practices in New Mexico that
9 provides for periodic review and amendment of regulations and
10 procedures to provide for the protection of the environment
11 and consider the economic effects of the regulations;

12 O. adopt regulations governing the provision of
13 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
16 variance will be operative and the limitations on provision of
17 variances, and requiring the petitioner to present sufficient
18 evidence to prove that failure to grant a variance will impose
19 an undue economic burden and that granting the variance will
20 not result in a significant threat to human health, safety or
21 the environment;

22 P. 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 permit
25 applicant or operator:

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

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

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

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1 include any type or variety of self-guarantee or self-
2 insurance;

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

18 (1) The director may release in whole or in
19 part the financial assurance if the reclamation covered by the
20 financial assurance has been accomplished as required by the
21 New Mexico Mining Act; provided that the director shall retain
22 financial assurance at least equal to the approved estimated
23 costs of completing reclamation measures that have not been
24 completed; and provided further that for revegetated areas,
25 the director shall retain the amount of financial assurance

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1 necessary for a third party to reestablish vegetation for a
2 period of twelve years after the last year of augmented
3 seeding, fertilizing, irrigation or other work, unless a post-
4 mining land use is achieved that is inconsistent with the
5 further need for revegetation. For new mining operations
6 only, no part of the financial assurance necessary for a third
7 party to reestablish vegetation shall be released so long as
8 the lands to which the release would be applicable are
9 contributing suspended solids above background levels to that
10 streamflow of intermittent and perennial streams.

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

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1 of hearings shall be provided notice at least thirty days
2 prior to the hearing;

3 S. establish coordinated procedures that avoid
4 duplication for the inspection, monitoring and sampling of
5 air, soil and water and enforcement of applicable requirements
6 of the New Mexico Mining Act, regulations adopted pursuant to
7 that act and permit conditions for new and existing mining
8 operations and exploration. The regulations shall require, at
9 a minimum:

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

12 (a) at least one inspection per month
13 when the mining operation is conducting significant
14 reclamation activities;

15 (b) at least two inspections per year
16 for active mining operations;

17 (c) at least one inspection per year on
18 inactive sites;

19 (d) at least one inspection per year
20 following completion of all significant reclamation activities
21 but prior to release of financial assurance; and

22 (e) mining operations having a minimal
23 impact on the environment and exploration operations will be
24 inspected on a schedule to be established by the commission;

25 (2) inspections shall occur without prior

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1 notice to the permittee or his agents or employees except for
2 necessary on-site meetings with the permittee;

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

17 (4) when the director determines that an
18 owner or operator is in violation of a requirement of the New
19 Mexico Mining Act, a regulation adopted pursuant to that act
20 or a permit issued pursuant to that act but the violation does
21 not create an imminent danger to the health or safety of the
22 public or will not cause significant imminent environmental
23 harm, the director shall issue a notice to the owner or
24 operator fixing a reasonable time, not to exceed sixty days,
25 for the abatement of the violation. If, upon expiration of

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1 the period of time as originally fixed or subsequently
2 extended for good cause shown, the director finds that the
3 violation has not been abated, he shall immediately order a
4 cessation of new or existing mining operations or exploration
5 operations or the portion thereof relevant to the violation.
6 The cessation order shall remain in effect until the director
7 determines that the violation has been abated; and

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

19 T. provide for the transfer of a permit to a
20 successor operator, providing for release of the first
21 operator from obligations under the permit, including
22 financial assurance, following the approved assumption of such
23 obligations and financial assurance by the successor operator;

24 U. adopt regulations providing that the owner or
25 operator of an existing mining operation or a new mining

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1 operation who has completed some reclamation measures prior to
2 the effective date of the regulations adopted pursuant to the
3 New Mexico Mining Act may apply for an inspection of those
4 reclamation measures and a release from further requirements
5 pursuant to that act for the reclaimed areas if, after an
6 inspection, the director determines that the reclamation
7 measures satisfy the requirements of that act and the
8 substantive requirements for reclamation pursuant to the
9 applicable regulatory standards; and

10 V. develop and adopt other regulations necessary
11 and appropriate to carry out the purposes and provisions of
12 the New Mexico Mining Act. "