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HOUSE BILL 84

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

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AN ACT

RELATING TO MINING; IMPOSING STRICT LIABILITY ON URANIUM MINING OPERATIONS.

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

Section 1. URANIUM MINING OPERATIONS--STRICT LIABILITY-- DEFENSES--INDEMNIFICATION.--

A. As used in this section:

(1) "contaminant" means any substance from a uranium mining operation that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of any part of the environment, including water.

"Contaminant" does not mean source, special nuclear or byproduct material as those terms are defined in the federal Atomic Energy Act of 1954;

(2) "costs" means all costs of removal or

1 remedial action, including oversight costs, indirect costs,
2 legal costs and interest, incurred by the state of New Mexico
3 because of a release or threatened release resulting in the
4 incurring of those costs;

5 (3) "director" means the director of the
6 mining and minerals division of the energy, minerals and
7 natural resources department;

8 (4) "release" means the introduction or
9 allowance of the introduction into the environment, including
10 into water, either directly or indirectly, of one or more
11 contaminants in a quantity and duration that may, with
12 reasonable probability, injure human health, animal or plant
13 life or property or unreasonably interfere with the public
14 welfare or use of the property for a purpose other than a
15 uranium mining operation;

16 (5) "responsible party" means any person upon
17 whom liability is imposed pursuant to Subsection B of this
18 section;

19 (6) "secretary" means the secretary of
20 environment; and

21 (7) "uranium mining operation" means a
22 facility or a location where mining, milling or exploration
23 activities were conducted during or after 1900 for the purpose
24 of extracting, processing or exploring for radium, thorium or
25 uranium ore.

underscored material = new
[bracketed material] = delete

1 B. The following persons shall be strictly liable
2 for costs:

3 (1) the owner of a uranium mining operation;
4 (2) the operator of a uranium mining
5 operation;

6 (3) any person having a permit issued pursuant
7 to the New Mexico Mining Act or Water Quality Act that covers a
8 uranium mining operation;

9 (4) any person who, at the time of
10 construction or operation of a uranium mining operation, or
11 thereafter, owned, operated or had a permit to operate a
12 uranium mining operation;

13 (5) subject to Paragraph (2) of Subsection C
14 of this section, any person who owned the real property upon
15 which a uranium mining operation was conducted at the time of,
16 or after the conduct of, a uranium mining operation;

17 (6) a successor-in-interest to the uranium
18 mining operation or the real property upon which it is or was
19 situate; and

20 (7) a successor-in-interest to any of the
21 persons identified in Paragraphs (1) through (6) of this
22 subsection, whether as a result of merger, assets purchase,
23 stock transfer or any other transfer whatsoever or any series
24 or combination of such transactions. In order for a
25 successor-in-interest to be liable pursuant to this section, it

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1 is not necessary that it own, operate or be permitted to
2 operate a uranium mining operation or the real property upon
3 which the operation is or was situate.

4 C. A person otherwise liable pursuant to Subsection
5 B of this section shall not be liable if that person can
6 establish by a preponderance of the evidence that:

7 (1) the release of contaminants and the
8 damages resulting therefrom were caused solely by an act of
9 God; or

10 (2) that person is an owner who:

11 (a) at the time that person acquired the
12 property, after making reasonable inquiry, did not know and had
13 no reason to know that the property had been used for a uranium
14 mining operation;

15 (b) is a governmental entity that
16 acquired the property by escheat, or through any other
17 involuntary transfer or acquisition, or through the exercise of
18 eminent domain authority;

19 (c) acquired the property by inheritance
20 or devise;

21 (d) is a surface estate owner who did
22 not participate in the management of the uranium mining
23 operation; or

24 (e) did not participate in the
25 management of the uranium mining operation and: 1) whose only

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1 interest in the uranium mining operation is as a royalty
2 interest holder by virtue of ownership and a duly executed
3 lease; 2) holds indicia of ownership primarily to protect a
4 security interest in the facility; or 3) foreclosed such a
5 security interest after the occurrence of the release.

6 D. Whenever, on the basis of any information, the
7 director determines that there has been any release or the
8 secretary determines that there has been a release from a
9 uranium mining operation that has the potential to affect
10 water, public health or the environment, the director or the
11 secretary may:

12 (1) issue an order to any responsible party
13 requiring removal or remedial action, including removal or
14 remedial action beyond a uranium mining operation's boundaries,
15 or such other response measure as the director or the secretary
16 deems necessary to protect human health or the environment; or

17 (2) commence an action in district court for
18 appropriate relief, including a temporary or permanent
19 injunction.

20 E. If any responsible party liable for a release or
21 threatened release fails without sufficient cause to undertake
22 removal or remedial action properly upon order of the director
23 or the secretary, that person shall be liable to the state for
24 punitive damages in an amount at least equal to but not more
25 than three times the amount of costs incurred as a result of

1 that person's failure to take proper action. The director or
2 the secretary is authorized to commence a civil action against
3 any person that fails without sufficient cause to undertake
4 removal or remedial action properly to recover punitive
5 damages, which damages shall be in addition to any costs
6 imposed against that person.

7 F. The court, in accordance with joint and several
8 liability, may award costs or damages, or both.

9 G. No state agency shall be liable pursuant to this
10 section for costs or damages as a result of actions taken in
11 response to an emergency created by the release or threatened
12 release by or from a uranium mining operation.

13 H. No indemnification or similar agreement shall be
14 effective to transfer, from a responsible party pursuant to
15 this section to any other person, the liability imposed
16 pursuant to this section. Nothing in this subsection bars any
17 agreement to insure, hold harmless or indemnify a party to that
18 agreement for any liability pursuant to this section.

19 I. Nothing in this section bars or replaces any
20 cause of action available to any person that existed before the
21 enactment of this section. The causes of action established
22 pursuant to this section are in addition to other causes of
23 action.