

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 255

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATED TO MINING; ADDRESSING MINING PERMIT APPLICATIONS;
PROHIBITING CERTAIN CORPORATE GUARANTEES THAT ASSURE THE
PERFORMANCE REQUIREMENTS OF A MINING PERMIT.

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 existing

1 mining operations and exploration; and

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

5 B. adopt regulations for new mining operations that
6 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 mining
20 operations and exploration and that establish schedules to
21 bring existing mining operations into compliance with the
22 requirements of the New Mexico Mining Act and time limits for
23 the director to review and act upon each permit application;
24 provided that the term of a permit for a new mining operation
25 shall not exceed twenty years and the term of renewals of

.214184.2

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1 permits for new mining operations shall not exceed ten years;

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

22 (1) comply with the regulations regarding
 23 permit modifications;

24 (2) incorporate the requirements of Paragraphs
 25 (1), (2), (4), (5) and (6) of Subsection H of this section; and

.214184.2

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

4 E. adopt regulations that require new and existing
5 mining operations to [~~obtain and maintain permits~~] modify a
6 permit for standby status. A permit modification for standby
7 status shall be issued for a maximum term of five years while
8 no mining is being conducted; provided that, upon application,
9 the director may renew a permit for standby status for no more
10 than three additional five-year terms. The regulations shall
11 require that, before a permit for standby status is issued or
12 renewed, an owner or operator shall:

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

15 (2) take measures that reduce, to the extent
16 practicable, the formation of acid and other toxic drainage to
17 prevent releases that cause federal or state environmental
18 standards to be exceeded;

19 (3) meet applicable federal and state
20 environmental standards and regulations during the period of
21 standby status;

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

24 (5) comply with applicable requirements of the
25 New Mexico Mining Act and the regulations adopted pursuant to

1 that act; and

2 (6) ~~[provide an analysis of the economic~~
3 ~~viability of]~~ show that there is a reasonable likelihood that
4 mining may resume in the future at each unit proposed for
5 standby status;

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

11 G. establish by regulation a procedure ~~[for the~~
12 ~~issuance of a permit for an existing mining operation and for~~
13 ~~modifications of that permit to incorporate]~~ to modify approved
14 closeout plans or portions of closeout plans and financial
15 assurance requirements for performance of the closeout plans,
16 ~~[The permit shall describe the permit area of the existing~~
17 ~~mining operation and the design limits of units of the existing~~
18 ~~mining operation based upon the site assessment submitted by~~
19 ~~the operator. The permit shall contain a schedule for~~
20 ~~completion of a closeout plan. The permit shall thereafter be~~
21 ~~modified to incorporate the approved closeout plan or portions~~
22 ~~of the closeout plan once financial assurance has been provided~~
23 ~~for completion of the closeout plan or the approved portions of~~
24 ~~the closeout plan. The permit may be modified for new mining~~
25 ~~units, expansions beyond the design limits of a unit at an~~

.214184.2

1 ~~existing mining operation or standby status]~~ including time
2 limits for the director to review and act upon each permit
3 application;

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

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

11 (2) ensure protection of human health and
12 safety, the environment, wildlife and domestic animals;

13 (3) include backfilling or partial backfilling
14 only when necessary to achieve reclamation objectives that
15 cannot be accomplished through other mitigation measures;

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

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

.214184.2

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,
7 to the maximum extent practicable, contemporaneous reclamation
8 and are consistent with the new mining operation's approved
9 reclamation plan; and

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

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

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

20 (2) a statement of all mining operations
21 within the United States owned, operated or directly controlled
22 by the applicant, owner or operator and by persons or entities
23 that directly control the applicant and the names and the
24 addresses of regulatory agencies with jurisdiction over the
25 environmental aspects of those operations and that could

.214184.2

1 provide a compliance history for those operations over the
2 preceding ten years. The operator shall assist the applicant
3 in obtaining compliance history information;

4 (3) a description of the type and method of
5 mining and the engineering techniques proposed;

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

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

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

21 (7) cross-sections or plans of the permit area
22 depicting:

23 (a) the nature and depth of the various
24 formations of overburden;

25 (b) the location of subsurface water, if

.214184.2

1 encountered, and its quality;

2 (c) the nature and location of any ore
3 body to be mined;

4 (d) the location of aquifers and
5 springs;

6 (e) the estimated position and flow of
7 the water table;

8 (f) the proposed location of waste rock,
9 tailings, stockpiles, heaps, pads and topsoil preservation
10 areas; and

11 (g) pre-mining vegetation and wildlife
12 habitat features present at the site;

13 (8) the potential for geochemical alteration
14 of overburden, the ore body and other materials present within
15 the permit area;

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

19 (10) pre-mining baseline data as required by
20 regulations adopted by the commission;

21 J. adopt regulations to coordinate the roles of
22 permitting agencies involved in regulating activities related
23 to new and existing mining operations and exploration,
24 including regulatory requirements, to avoid duplicative and
25 conflicting administration of the permitting process and other

.214184.2

1 requirements;

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

.214184.2

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1 the time of filing the application with the director proof that
2 notice of the application and of the procedure for requesting a
3 public hearing has been:

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

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

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

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

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

.214184.2

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

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

18 M. establish by regulation a schedule of annual
19 administrative and permit fees, which shall equal and not
20 exceed the estimated costs of administration, implementation,
21 enforcement, investigation and permitting pursuant to the
22 provisions of the New Mexico Mining Act. The size of the
23 operation, anticipated inspection frequency and other factors
24 deemed relevant by the commission shall be considered in the
25 determination of the fees. The fees established pursuant to

.214184.2

1 this subsection shall be deposited in the mining act fund;

2 N. establish by regulation a continuing process of
3 review of mining and reclamation practices in New Mexico that
4 provides for periodic review and amendment of regulations and
5 procedures to provide for the protection of the environment and
6 consider the economic effects of the regulations;

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

17 P. provide by regulation that, prior to the
18 issuance of any permit for a new mining operation pursuant to
19 the provisions of the New Mexico Mining Act, the permit
20 applicant or operator:

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

.214184.2

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

7 Q. require by regulation that the applicant file
8 with the director, prior to the issuance of a permit, financial
9 assurance. The amount of the financial assurance shall be
10 sufficient to assure the completion of the performance
11 requirements of the permit, including closure and reclamation,
12 if the work has to be performed by the director or a third-
13 party contractor and shall include periodic review to account
14 for any inflationary increases and anticipated changes in
15 reclamation or closure costs. The regulations shall specify
16 that financial requirements shall neither duplicate nor be less
17 comprehensive than the federal financial requirements. The
18 form and amount of the financial assurance shall be subject to
19 the approval of the director as part of the permit application;
20 provided that financial assurance does not include any type or
21 variety of self-guarantee [~~or~~], self-insurance or guarantee of
22 an affiliated corporation or other affiliated person unless the
23 director determines that the guarantor has sufficient assets to
24 make good on the guarantee while it is in effect. The
25 regulations shall state the financial criteria to be met by a

.214184.2

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1 guarantor and shall require replacement of a guarantee with
2 other financial assurance within ninety days after the director
3 notifies the guarantor that the financial criteria have not
4 been met;

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

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

.214184.2

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

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

.214184.2

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

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

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

13 (b) at least two inspections per year
14 for active mining operations;

15 (c) at least one inspection per year on
16 inactive sites;

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

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

23 (2) that inspections shall occur without prior
24 notice to the permittee or the permittee's agents or employees
25 except for necessary on-site meetings with the permittee;

.214184.2

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

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

.214184.2

1 abated, the director shall immediately order a cessation of new
2 or existing mining operations or exploration operations or the
3 portion thereof relevant to the violation. The cessation order
4 shall remain in effect until the director determines that the
5 violation has been abated; and

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

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

22 U. adopt regulations providing that the owner or
23 operator of an existing mining operation or a new mining
24 operation who has completed some reclamation measures prior to
25 the effective date of the regulations adopted pursuant to the

.214184.2

1 New Mexico Mining Act may apply for an inspection of those
2 reclamation measures and a release from further requirements
3 pursuant to that act for the reclaimed areas if, after an
4 inspection, the director determines that the reclamation
5 measures satisfy the requirements of that act and the
6 substantive requirements for reclamation pursuant to the
7 applicable regulatory standards; and

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

11 SECTION 2. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2019.