

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 625

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CHANGING DEFINITIONS IN THE NEW MEXICO MINING ACT; REQUIRING
THE MINING COMMISSION TO ISSUE REGULATIONS REGARDING STATUTORY
CHANGES IN STANDBY STATUS, RESUMPTION OF MINING OPERATIONS AND
FINANCIAL ASSURANCE REQUIREMENTS; ALLOWING THE EXPANSION OF
PREVIOUSLY APPROVED OPEN PIT OR WASTE UNITS IN CLOSEOUT PLANS;
CHANGING MINING OPERATION PERMIT REQUIREMENTS.

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
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1 and air resources are impacted by mining operations within the
2 permit area;

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

5 C. "director" means the director of the division or
6 ~~[his]~~ the director's designee;

7 D. "division" means the mining and minerals
8 division of the energy, minerals and natural resources
9 department;

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

14 F. "exploration" means the act of searching for or
15 investigating a mineral deposit, including sinking shafts,
16 tunneling, drilling core and bore holes, digging pits, making
17 cuts and other works for the purpose of extracting samples
18 prior to commencement of development or extraction operations
19 and the building of roads, access ways and other facilities
20 related to such work; however, activities that cause no or very
21 little surface disturbance, such as airborne surveys and
22 photographs, use of instruments or devices that are hand
23 carried or otherwise transported over the surface to perform
24 magnetic, radioactive or other tests and measurements, boundary
25 or claim surveying, location work or other work that causes no

1 greater disturbance than is caused by ordinary lawful use of
2 the area by persons not engaged in exploration, are excluded
3 from the meaning of "exploration";

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

15 H. "mining" means the process of obtaining useful
16 minerals from the earth's crust or from previously disposed or
17 abandoned mining wastes, including exploration, open-cut mining
18 and surface operation, the disposal of refuse from underground
19 and in situ mining, mineral transportation, concentrating,
20 milling, evaporation, leaching and other processing. "Mining"
21 does not mean the exploration and extraction of potash, sand,
22 gravel, caliche, borrow dirt ~~[and]~~ or quarry rock used as
23 aggregate in construction or reclamation; the exploration and
24 extraction of natural petroleum in a liquid or gaseous state by
25 means of wells or pipes; the development or extraction of coal;

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1 the extraction of geothermal resources; smelting, refining,
2 cleaning, preparation, transportation or other off-site
3 operations not conducted on permit areas; or the extraction,
4 processing or disposal of commodities, byproduct materials or
5 wastes or other activities regulated by the federal nuclear
6 regulatory commission;

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

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

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

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

24 "69-36-7. COMMISSION--DUTIES.--The commission shall:

25 A. before June 18, 1994, adopt and file reasonable

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1 regulations consistent with the purposes and intent of the New
2 Mexico Mining Act necessary to implement the provisions of the
3 New Mexico Mining Act, including regulations that:

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

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

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

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

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

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

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

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

24 C. adopt regulations that require and provide for
25 the issuance and renewal of permits for new and existing mining

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

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

24 (1) comply with the regulations regarding
25 permit modifications;

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

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

6 E. adopt regulations that require new and existing
7 mining operations to obtain and maintain permits for standby
8 status. A permit for standby status shall be issued for a
9 maximum term of five years; provided that, upon application,
10 the director may renew a permit for standby status for no more
11 than three additional consecutive five-year terms. The
12 regulations shall provide that a mining operation in standby
13 status may leave standby status and resume mining operations by
14 providing written notice to the director, effective on the date
15 upon which the director receives the notice; provided that the
16 mining operation is in compliance with all permit conditions as
17 of the date of the notice and has financial assurance in place
18 that has been reviewed by the director and, if required,
19 updated through a permit modification or revision within the
20 five years prior to the date of notice. The regulations shall
21 identify the conditions under which a mining operation that has
22 terminated standby status and resumed mining and production in
23 commercial quantities may reapply for a new period of standby
24 status. The regulations shall require that, before a permit
25 for standby status is issued or renewed, an owner or operator

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shall:

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

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

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

(4) stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status consistent with future resumption of operations;

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

(6) provide ~~[an analysis of the economic viability of]~~ information supporting the future use of each unit proposed for standby status;

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

G. establish by regulation a procedure for the

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1 issuance of a permit for an existing mining operation and for
2 modifications of that permit to incorporate approved closeout
3 plans or portions of closeout plans and financial assurance
4 requirements for performance of the closeout plans. The permit
5 shall describe the permit area of the existing mining operation
6 and the design limits of units of the existing mining operation
7 based upon the site assessment submitted by the operator. The
8 permit shall contain a schedule for completion of a closeout
9 plan. The permit shall thereafter be modified to incorporate
10 the approved closeout plan or portions of the closeout plan
11 once financial assurance has been provided for completion of
12 the closeout plan or the approved portions of the closeout
13 plan. The permit may be modified for new mining units,
14 expansions beyond the design limits of a unit at an existing
15 mining operation or standby status;

16 H. establish by regulation permit and reclamation
17 requirements for new mining operations that incorporate
18 site-specific characteristics. These requirements shall, at a
19 minimum:

20 (1) require that new mining operations be
21 designed and operated using the most appropriate technology and
22 the best management practices;

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

25 (3) include backfilling or partial backfilling

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only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures;

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

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

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

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

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

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

3 (1) disclosure of ownership and controlling
4 interests in the new mining operation or submission of the
5 applicant's most recent form 10K required by the federal
6 securities and exchange commission;

7 (2) a statement of all mining operations
8 within the United States owned, operated or directly controlled
9 by the applicant, owner or operator and by persons or entities
10 that directly control the applicant and the names and the
11 addresses of regulatory agencies with jurisdiction over the
12 environmental aspects of those operations and that could
13 provide a compliance history for those operations over the
14 preceding ten years. The operator shall assist the applicant
15 in obtaining compliance history information;

16 (3) a description of the type and method of
17 mining and the engineering techniques proposed;

18 (4) the anticipated starting and termination
19 dates of each phase of the new mining operation and the number
20 of acres of land to be affected;

21 (5) the names of all affected watersheds, the
22 location of any perennial, ephemeral or intermittent surface
23 stream or tributary into which surface or pit drainage will be
24 discharged or may possibly be expected to reach and the
25 location of any spring within the permit area and the affected

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1 area;

2 (6) a determination of the probable hydrologic
3 consequences of the new mining operation and reclamation, both
4 on and off the permit area, with respect to the hydrologic
5 regime, quantity and quality of surface and ground water
6 systems, including the dissolved and suspended solids under
7 seasonal flow conditions;

8 (7) cross-sections or plans of the permit area
9 depicting:

10 (a) the nature and depth of the various
11 formations of overburden;

12 (b) the location of subsurface water, if
13 encountered, and its quality;

14 (c) the nature and location of any ore
15 body to be mined;

16 (d) the location of aquifers and
17 springs;

18 (e) the estimated position and flow of
19 the water table;

20 (f) the proposed location of waste rock,
21 tailings, stockpiles, heaps, pads and topsoil preservation
22 areas; and

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

25 (8) the potential for geochemical alteration

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1 of overburden, the ore body and other materials present within
2 the permit area;

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

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

8 J. adopt regulations to coordinate the roles of
9 permitting agencies involved in regulating activities related
10 to new and existing mining operations and exploration,
11 including regulatory requirements, to avoid duplicative and
12 conflicting administration of the permitting process and other
13 requirements;

14 K. except for regulations enacted pursuant to
15 Subsection L of this section, adopt regulations that ensure
16 that the public and permitting agencies receive notice of each
17 application for issuance, renewal or revision of a permit for a
18 new or existing mining operation, for standby status, or
19 exploration, a variance or an application for release of
20 financial assurance and any inspection prior to the release of
21 financial assurance, including a provision that no action shall
22 be taken on any application until an opportunity for a public
23 hearing, held in the locality of the operation, is provided and
24 that all interested persons shall be given a reasonable chance
25 to submit data, views or arguments orally or in writing and to

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1 examine witnesses testifying at the hearing. An additional
 2 opportunity for a public hearing may be provided if the
 3 applicant makes substantial changes in the proposed action, if
 4 there are significant new circumstances or information bearing
 5 on the proposed action or if the applicant proposes to
 6 substantially increase the scale or substantially change the
 7 nature of the proposed action and there is public interest and
 8 a request for a public hearing. These regulations shall
 9 require at a minimum that the applicant for issuance, renewal
 10 or revisions of a permit or a variance or an application for
 11 release of financial assurance and any inspection prior to
 12 release of financial assurance shall provide to the director at
 13 the time of filing the application with the director proof that
 14 notice of the application and of the procedure for requesting a
 15 public hearing has been:

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

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

23 (3) published once in a newspaper of general
 24 circulation in each county in which the property on which the
 25 mining operation is or will be located; provided that this

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1 notice shall appear in either the classified or legal
2 advertisements section of the newspaper and at one other place
3 in the newspaper calculated to give the general public the most
4 effective notice and, when appropriate, shall be printed in
5 both English and Spanish;

6 (4) posted in at least four publicly
7 accessible and conspicuous places, including the entrance to
8 the new or existing mining operation if that entrance is
9 publicly accessible and conspicuous;

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

13 (6) mailed by certified mail to all persons on
14 a list maintained by the director of individuals and
15 organizations who have requested notice of applications under
16 the New Mexico Mining Act. If the application is determined to
17 be administratively complete by the director, the applicant
18 shall provide to the director timely proof that notice of that
19 determination has been provided by first class mail to everyone
20 who has indicated to the applicant in writing that they desire
21 information regarding the application and to a list maintained
22 by the director of individuals and organizations who have
23 requested notice of applications under the New Mexico Mining
24 Act;

25 L. adopt regulations to provide for permits,

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1 without notice and hearing, to address mining operations that
2 have minimal impact on the environment; provided that such
3 permits shall require general plans and shall otherwise reduce
4 the permitting requirements of the New Mexico Mining Act;

5 M. establish by regulation a schedule of annual
6 administrative and permit fees, which shall equal and not
7 exceed the estimated costs of administration, implementation,
8 enforcement, investigation and permitting pursuant to the
9 provisions of the New Mexico Mining Act. The size of the
10 operation, anticipated inspection frequency and other factors
11 deemed relevant by the commission shall be considered in the
12 determination of the fees. The fees established pursuant to
13 this subsection shall be deposited in the mining act fund;

14 N. establish by regulation a continuing process of
15 review of mining and reclamation practices in New Mexico that
16 provides for periodic review and amendment of regulations and
17 procedures to provide for the protection of the environment and
18 consider the economic effects of the regulations;

19 O. adopt regulations governing the provision of
20 variances issued by the director, stating the procedures for
21 seeking a variance, including provisions for public notice and
22 an opportunity for a hearing in the locality where the variance
23 will be operative, the limitations on provision of variances,
24 requiring the petitioner to present sufficient evidence to
25 prove that failure to grant a variance will impose an undue

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1 economic burden and that granting the variance will not result
2 in a significant threat to human health, safety or the
3 environment;

4 P. provide by regulation that, prior to the
5 issuance of any permit for a new mining operation pursuant to
6 the provisions of the New Mexico Mining Act, the permit
7 applicant or operator:

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

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

19 Q. require by regulation that the applicant file
20 with the director, prior to the issuance of a permit, financial
21 assurance. The amount of the financial assurance shall be
22 sufficient to assure the completion of the performance
23 requirements of the permit, including closure and reclamation,
24 if the work has to be performed by the director or a third-
25 party contractor. ~~[and]~~ The director shall ~~[include periodic]~~

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1 periodically review each financial assurance to account for any
2 inflationary increases and anticipated changes in reclamation
3 or closure costs, may require a permit holder by written notice
4 to update the financial assurance through an application for a
5 permit modification or revision and shall promptly act upon
6 such an application. The regulations shall specify that
7 ~~[financial requirements shall neither duplicate nor be less~~
8 ~~comprehensive than the federal financial requirements]~~ the
9 director shall coordinate with other state and federal agencies
10 so that the financial assurance requirements are administered
11 to avoid duplication of financial assurance required by those
12 state and federal agencies and shall authorize the director to
13 enter into agreements with other agencies specifying which
14 agency or agencies shall hold the financial assurances;
15 provided that the total amount of financial assurances held by
16 the agencies is sufficient to comply with this subsection. The
17 form and amount of the financial assurance shall be subject to
18 the approval of the director as part of the permit application;
19 provided that financial assurance does not include any type or
20 variety of self-guarantee or self-insurance;

21 R. require by regulation that the permittee may
22 file an application with the director for the release of all or
23 part of the permittee's financial assurance. The application
24 shall describe the reclamation measures completed and shall
25 contain an estimate of the costs of reclamation measures that

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1 have not been completed. Prior to release of any portion of
2 the permittee's financial assurance, the director shall conduct
3 an inspection and evaluation of the reclamation work involved.
4 The director shall notify persons who have requested advance
5 notice of the inspection. Interested members of the public
6 shall be allowed to be present at the inspection of the
7 reclamation work by the director.

8 (1) The director may release in whole or in
9 part the financial assurance if the reclamation covered by the
10 financial assurance has been accomplished as required by the
11 New Mexico Mining Act; provided that the director shall retain
12 financial assurance at least equal to the approved estimated
13 costs of completing reclamation measures that have not been
14 completed; and provided further that for revegetated areas, the
15 director shall retain the amount of financial assurance
16 necessary for a third party to reestablish vegetation for a
17 period of twelve years after the last year of augmented
18 seeding, fertilizing, irrigation or other work, unless a post-
19 mining land use is achieved that is inconsistent with the
20 further need for revegetation. For new mining operations only,
21 no part of the financial assurance necessary for a third party
22 to reestablish vegetation shall be released so long as the
23 lands to which the release would be applicable are contributing
24 suspended solids above background levels to streamflow of
25 intermittent and perennial streams.

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

17 S. establish coordinated procedures that avoid
18 duplication for the inspection, monitoring and sampling of air,
19 soil and water and enforcement of applicable requirements of
20 the New Mexico Mining Act, regulations adopted pursuant to that
21 act and permit conditions for new and existing mining
22 operations and exploration. The regulations shall require, at
23 a minimum:

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

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1 (a) at least one inspection per month
2 when the mining operation is conducting significant reclamation
3 activities;

4 (b) at least two inspections per year
5 for active mining operations;

6 (c) at least one inspection per year on
7 inactive sites;

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

11 (e) mining operations having a minimal
12 impact on the environment and exploration operations will be
13 inspected on a schedule to be established by the commission;

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

17 (3) when the director determines that a
18 condition or practice exists that violates a requirement of the
19 New Mexico Mining Act, a regulation adopted pursuant to that
20 act or a permit issued under that act, which condition,
21 practice or violation also creates an imminent danger to the
22 health or safety of the public or will cause significant
23 imminent environmental harm, that the director shall
24 immediately order a cessation of the new or existing mining
25 operation or the exploration operation or the portion of that

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1 operation relevant to the condition, practice or violation.
2 The cessation order shall remain in effect until the director
3 determines that the condition, practice or violation has been
4 abated or until modified, vacated or terminated by the director
5 or the commission;

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

22 (5) when the director determines that a
23 pattern of violations of the requirements of the New Mexico
24 Mining Act or of the regulations adopted pursuant to that act
25 or the permit required by that act exists or has existed and,

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1 if the director also finds that such violations are caused by
2 the unwarranted failure of the owner or operator to comply with
3 the requirements of that act, regulation or permit or that such
4 violations are willfully caused by the owner or operator, that
5 the director shall immediately issue an order to the owner or
6 operator to show cause as to why the permit should not be
7 suspended or revoked;

8 T. provide for the transfer of a permit to a
9 successor operator, providing for release of the first operator
10 from obligations under the permit, including financial
11 assurance, following the approved assumption of such
12 obligations and financial assurance by the successor operator;

13 U. adopt regulations providing that the owner or
14 operator of an existing mining operation or a new mining
15 operation who has completed some reclamation measures prior to
16 the effective date of the regulations adopted pursuant to the
17 New Mexico Mining Act may apply for an inspection of those
18 reclamation measures and a release from further requirements
19 pursuant to that act for the reclaimed areas if, after an
20 inspection, the director determines that the reclamation
21 measures satisfy the requirements of that act and the
22 substantive requirements for reclamation pursuant to the
23 applicable regulatory standards; and

24 V. develop and adopt other regulations necessary
25 and appropriate to carry out the purposes and provisions of the

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1 New Mexico Mining Act."

2 SECTION 3. Section 69-36-11 NMSA 1978 (being Laws 1993,
3 Chapter 315, Section 11) is amended to read:

4 "69-36-11. EXISTING MINING OPERATIONS--CLOSEOUT PLAN
5 REQUIRED.--

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

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

22 (1) the closeout plan and permit application
23 ~~[is]~~ are complete;

24 (2) the closeout plan permit fee has been paid
25 and the financial assurance is adequate and has been provided;

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

20 (4) the secretary of environment has provided
 21 a written determination in the form prescribed in Paragraph (2)
 22 of Subsection P of Section ~~[7 of the New Mexico Mining Act]~~
 23 69-36-7 NMSA 1978.

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

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

SECTION 4. Section 69-36-12 NMSA 1978 (being Laws 1993, Chapter 315, Section 12) is amended to read:

"69-36-12. NEW MINING OPERATIONS--MINING OPERATION PERMIT REQUIRED.--

A. After ~~[the effective date of the New Mexico Mining Act]~~ June 18, 1993, except as provided in Section ~~[5 of that act]~~ 69-36-5 NMSA 1978, no person shall conduct a new mining operation without a permit issued by the director. Applications for permits for new mining operations operating pursuant to Section ~~[5 of the New Mexico Mining Act]~~ 69-36-5 NMSA 1978 shall be received by the director by December 31, 1995. The director may grant one extension for the submission of a permit application for a new mining operation for six months for good cause shown. Prior to receiving a permit for a new mining operation, an applicant shall submit an application that complies with the New Mexico Mining Act and ~~[regulation]~~ regulations of the commission, including, at a minimum, one year of baseline data as required by regulation.

B. The director shall issue the permit for a new mining operation if the director finds that:

- (1) the permit application is complete;
- (2) the permit application fee has been paid

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1 and the financial assurance is adequate and has been provided;

2 (3) reclamation in accordance with the
3 proposed reclamation plan is economically and technically
4 feasible;

5 (4) the mining operation is designed to meet
6 ~~[without perpetual care]~~ all applicable environmental
7 requirements imposed by the New Mexico Mining Act and
8 regulations adopted pursuant to that act and other laws
9 following closure; and

10 (5) the applicant, the operator or owner or
11 any persons or entities directly controlled by the applicant,
12 operator or owner or any persons or entities that directly
13 control the applicant, operator or owner:

14 (a) are not currently in violation of
15 the terms of another permit issued by the division or in
16 violation of any substantial environmental law or substantive
17 environmental regulation at a mining operation in the United
18 States, which violation is unabated and is not the subject of
19 appeal, and have not forfeited or had forfeited financial
20 assurance required for any mining, reclamation or exploration
21 permit in the United States; provided that a violation that
22 occurred prior to the initiation of a legal relationship
23 between the permit applicant and the violator shall not be
24 considered for purposes of this paragraph; and

25 (b) have not demonstrated a pattern of

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1 willful violations of the New Mexico Mining Act or other New
2 Mexico environmental statutes; provided that a violation that
3 occurred prior to the initiation of a legal relationship
4 between the permit applicant and the violator shall not be
5 considered for purposes of this paragraph.

6 C. The permit for a new mining operation may be
7 revoked or suspended by order of the director for violation of
8 its terms or conditions, a regulation of the commission or a
9 provision of the New Mexico Mining Act."

10 SECTION 5. TEMPORARY PROVISION.--The director of the
11 mining and minerals division of the energy, minerals and
12 natural resources department shall propose amendments to the
13 rules consistent with the amendatory provisions of this act for
14 consideration by the mining commission on or before December
15 31, 2015. The mining commission shall adopt rules consistent
16 with the amendatory provisions of this act on or before July 1,
17 2016.

18 SECTION 6. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2015.

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