

ARTICLE 36

Mining

69-36-1. Short title.

Chapter 69, Article 36 NMSA 1978 may be cited as the "New Mexico Mining Act".

History: Laws 1993, ch. 315, § 1; 2014, ch. 32, § 1.

ANNOTATIONS

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

The 2014 amendment, effective March 7, 2014, added the NMSA chapter and article for the New Mexico Mining Act; and at the beginning of the sentence, changed "This Act" to "Chapter 69, Article 36 NMSA 1978".

County regulatory authority not preempted. — A county ordinance containing permit requirements for mines was not expressly or completely preempted by the New Mexico Mining Act or the adoption of regulations thereunder and, to the extent its ordinance did not conflict with the act or the regulations, the county could require compliance

therewith. *San Pedro Mining Corp. v. Board of Cnty. Comm'rs*, 1996-NMCA-002, 121 N.M. 194, 909 P.2d 754, cert. denied, 121 N.M. 57, 908 P.2d 750.

69-36-2. Purposes.

The purposes of the New Mexico Mining Act include promoting responsible utilization and reclamation of lands affected by exploration, mining or the extraction of minerals that are vital to the welfare of New Mexico.

History: Laws 1993, ch. 315, § 2.

69-36-3. Definitions.

As used in the New Mexico Mining Act:

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

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

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

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

E. "existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and the effective date of the New Mexico Mining Act;

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

G. "mineral" means a nonliving commodity that is extracted from the earth for use or conversion into a saleable or usable product, but does not include clays, adobe, flagstone, potash, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for

construction, coal, surfacewater or subsurfacewater, geothermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are regulated by the nuclear regulatory commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act;

H. "mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission;

I. "new mining operation" means a mining operation that engages in a development or extraction operation after the effective date of the New Mexico Mining Act and that is not an existing mining operation;

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

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

History: Laws 1993, ch. 315, § 3.

ANNOTATIONS

Compiler's notes. — The effective date of the New Mexico Mining Act, was the effective date of Laws 1993, ch. 315, which was June 18, 1993.

Cross references. — For the federal Resource Conservation and Recovery Act, see 42 U.S.C. § 6901 et seq.

Regulation defining "affected area". — A regulation changing the "and" to "or" in the statutory definition of "affected area" avoided an absurd interpretation since it must have been intended that such area be one where either the air, surface, water, ground water

or land surface was impacted. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

"Mineral". — Uranium ore, at the time of its extraction from the earth by conventional mining techniques, is not regulated by the nuclear regulatory commission and, therefore, meets the statutory definition of mineral in Subsection G, placing supervision of the mining sites under the supervision of the New Mexico mining commission. *N.M. Mining Comm'n v. United Nuclear Corp.*, 2002-NMCA-108, 133 N.M. 8, 57 P.3d 862, cert. denied, 133 N.M. 8, 57 P.3d 861.

New mining operation. — New Mexico mining commission acted within its discretion in ruling that the El Cajete mine was a new mining unit of the Las Conchas mine, rather than a new mining operation; the mines were owned by the same mining company and were substantially interrelated. *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

69-36-4. Interim program; limitations.

A. Nothing in the New Mexico Mining Act shall supersede current or future requirements and standards of any other applicable federal or state law.

B. After the effective date of the New Mexico Mining Act and until the commission adopts regulations necessary to carry out the provisions of the New Mexico Mining Act, county mining laws or ordinances shall apply to mining within their jurisdictions in New Mexico.

History: Laws 1993, ch. 315, § 4.

ANNOTATIONS

Compiler's notes. — The effective date of the New Mexico Mining Act, was the effective date of Laws 1993, ch. 315, which was June 18, 1993.

County regulatory authority not preempted. — A county ordinance containing permit requirements for mines was not expressly or completely preempted by the New Mexico Mining Act or the adoption of regulations thereunder and, to the extent its ordinance did not conflict with the Act or the regulations, the county could require compliance therewith. *San Pedro Mining Corp. v. Board of Cnty. Comm'rs*, 1996-NMCA-002, 121 N.M. 194, 909 P.2d 754, cert. denied, 121 N.M. 57, 908 P.2d 750.

69-36-5. Mining operation site assessment.

A. After the effective date of the New Mexico Mining Act, the operator of a new mining operation may operate that new mining operation until the operator is either granted or denied a permit for a new mining operation provided that the operator submits to the director on or before June 30, 1994 a site assessment pursuant to the

New Mexico Mining Act or a notice of intent to close. On or before June 30, 1994, an existing mining operation shall submit to the director a site assessment pursuant to the New Mexico Mining Act.

B. The mining operation site assessment for new and existing mining operations shall describe in detail the mining operation's existing permits and regulatory requirements pursuant to the standards for mining operations pursuant to existing state and federal environmental standards and regulations. To the extent that they are applicable, the permit applicant may incorporate documents on file with state agencies. The mining operation site assessment shall include:

- (1) identification of a proposed permit area for the mining operation;
- (2) a description of the location and quality of surface and ground water at or adjacent to the mining operation and an analysis of the mining operation's impact on that surface and ground water;
- (3) a description of the geologic regime beneath and adjacent to the mining operation;
- (4) a description of the piles and other accumulations of waste, tailings and other materials and an analysis of their impact on the hydrologic balance, drainages and air quality;
- (5) an analysis of the mining operation's impact on local communities;
- (6) a description of wildlife and wildlife habitat at and surrounding the mining operation and an analysis of the mining operation's impact on that wildlife and wildlife habitat; and
- (7) for existing mining operations, a description of the design limits for each unit, including waste units, impoundments and stockpiles and leach piles.

C. A new mining operation that files a notice of intent to close shall comply with the requirements for reclamation of new mining operations established in the New Mexico Mining Act and regulations adopted pursuant to that act.

D. The operator or owner of a new or existing mining operation or exploration shall submit to the director, within thirty days of the effective date of the New Mexico Mining Act, written information stating the name and business address of the operator and owner of the new or existing mining operation or exploration, the address where official notices and other documents may be served and an agent for service of process. The operator or owner shall provide notification to the director of any change in the information required by this subsection. Updated information shall be provided promptly by the operator or owner to the director.

E. In lieu of a site assessment under this section, following adoption of the regulations, the operator or owner of an existing mining operation that has completed all reclamation measures may apply to the director for an inspection of the reclaimed areas to determine whether the completed reclamation satisfies the requirements of the New Mexico Mining Act and the substantive requirements for reclamation pursuant to the applicable regulatory standards. If the director determines that those requirements are met, the operator or owner shall be released from further requirements under the New Mexico Mining Act.

History: Laws 1993, ch. 315, § 5.

ANNOTATIONS

Compiler's notes. — The effective date of the New Mexico Mining Act, was the effective date of Laws 1993, ch. 315, which was June 18, 1993.

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

69-36-6. Mining commission; created; members.

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of geology and mineral resources of the New Mexico institute of mining and technology or his designee;

(2) the secretary of environment or his designee;

(3) the state engineer or his designee;

(4) the commissioner of public lands or his designee;

(5) the director of the department of game and fish or his designee; and

(6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and his alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom he is the alternate.

B. The chairman of the soil and water conservation commission and the director of the agricultural experiment station of New Mexico state university or their designees shall be nonvoting members of the commission.

C. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

D. The commission shall convene upon the call of the chairman or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business. However, no action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and his alternate, shall receive, or shall have received during the previous two years, more than ten percent of his income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state stating:

(1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;

(2) the identity of the source of money or other valuable consideration; and

(3) whether the money or other valuable consideration was in excess of ten percent of his gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action.

History: Laws 1993, ch. 315, § 6; 1997, ch. 88, § 1; 2001, ch. 246, § 12.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, in Paragraph A(1), substituted "bureau of geology" for "bureau of mines."

The 1997 amendment, effective June 20, 1997, in Subsection A, substituted "his designee" for "an academic from a mining-related field to be appointed for a four-year term by the governor with the advice and consent of the senate" at the end of Paragraph (1); and, in Subsection B, substituted "members of" for "ex officio members to".

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 mining operations and exploration; and
- (3) require annual reporting of production information to the commission, which shall be kept confidential if otherwise required by law;

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

- (1) review and comment to the director on the adequacy of baseline data gathered prior to submission of the permit application for use in the permit application process;
- (2) recommend to the director additional baseline data that may be necessary in the review of the proposed mining activity;
- (3) recommend to the director methodology guidelines to be followed in the collection of all baseline data; and
- (4) review and comment on the permit application;

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

D. adopt regulations that provide for permit modifications. The commission shall establish criteria to determine which permit modifications may have significant environmental impact. Modifications that the director determines will have significant environmental impact shall require public notice and an opportunity for public hearing pursuant to Subsection K of this section. A permit modification to the permit for an existing mining operation shall be obtained for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation and for each

expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit. The regulations shall require that permit modifications for such units be approved if the director determines that the unit will:

- (1) comply with the regulations regarding permit modifications;
- (2) incorporate the requirements of Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this section; and
- (3) be sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation consistent with the closeout plan;

E. adopt regulations that require new and existing mining operations to obtain and maintain permits for standby status. A permit for standby status shall be issued for a maximum term of five years; provided that, upon application, the director may renew a permit for standby status for no more than three additional five-year terms. The regulations shall require that, before a permit for standby status is issued or renewed, an owner or operator 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;
- (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 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 issuance of a permit for an existing mining operation and for modifications of that permit to incorporate approved closeout plans or portions of closeout plans and financial assurance requirements for

performance of the closeout plans. The permit shall describe the permit area of the existing mining operation and the design limits of units of the existing mining operation based upon the site assessment submitted by the operator. The permit shall contain a schedule for completion of a closeout plan. The permit shall thereafter be modified to incorporate the approved closeout plan or portions of the closeout plan once financial assurance has been provided for completion of the closeout plan or the approved portions of the closeout plan. The permit may be modified for new mining units, expansions beyond the design limits of a unit at an existing mining operation or standby status;

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

- (1) require that new mining operations be designed and operated using the most appropriate technology and the best management practices;
- (2) ensure protection of human health and safety, the environment, wildlife and domestic animals;
- (3) include backfilling or partial backfilling 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;

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

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

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

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

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

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

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

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

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

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

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

(d) the location of aquifers and springs;

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

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

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

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

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

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

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

K. except for regulations enacted pursuant to Subsection L of this section, adopt regulations that ensure that the public and permitting agencies receive notice of each application for issuance, renewal or revision of a permit for a new or existing mining operation, for standby status, or exploration, a variance or an application for release of financial assurance and any inspection prior to the release of financial assurance, including a provision that no action shall be taken on any application until an opportunity for a public hearing, held in the locality of the operation, is provided and that all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. An additional opportunity for a public hearing may be provided if the applicant makes substantial changes in the proposed action, if there are significant new circumstances or information bearing on the proposed action or if the applicant proposes to substantially increase the scale or substantially change the nature of the proposed action and there is public interest and a request for a public hearing. These regulations shall require at a minimum that the applicant for issuance, renewal or revisions of a permit or a variance or an application for release of financial assurance and any inspection prior to release of financial assurance shall provide to the director at the time of filing the application with the director proof that notice of the application and of the procedure for requesting a public hearing has been:

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

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

(3) published once in a newspaper of general circulation in each county in which the property on which the mining operation is or will be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general

public the most effective notice and, when appropriate, shall be printed in both English and Spanish;

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

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

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

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

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

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

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

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

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

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

Q. require by regulation that the applicant file with the director, prior to the issuance of a permit, financial assurance. The amount of the financial assurance shall be sufficient to assure the completion of the performance requirements of the permit, including closure and reclamation, if the work has to be performed by the director or a third-party contractor and shall include periodic review to account for any inflationary increases and anticipated changes in reclamation or closure costs. The regulations shall specify that financial requirements shall neither duplicate nor be less comprehensive than the federal financial requirements. The form and amount of the financial assurance shall be subject to the approval of the director as part of the permit application; provided that financial assurance does not include any type or variety of self-guarantee or self-insurance;

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

(1) The director may release in whole or in part the financial assurance if the reclamation covered by the financial assurance has been accomplished as required by the New Mexico Mining Act; provided that the director shall retain financial assurance at least equal to the approved estimated costs of completing reclamation measures that have not been completed; and provided further that for revegetated areas, the director shall retain the amount of financial assurance necessary for a third party to reestablish vegetation for a period of twelve years after the last year of augmented seeding, fertilizing, irrigation or other work, unless a post-mining land use is achieved that is inconsistent with the further need for revegetation. For new mining operations only, no part of the financial assurance necessary for a third party to reestablish vegetation shall be released so long as the lands to which the release would be applicable are

contributing suspended solids above background levels to streamflow of intermittent and perennial streams.

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

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

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

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

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

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

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

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

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

(3) when the director determines that a condition or practice exists that violates a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued under that act, which condition, practice or violation also creates an imminent danger to the health or safety of the public or will cause significant

imminent environmental harm, that the director shall immediately order a cessation of the new or existing mining operation or the exploration operation or the portion of that operation relevant to the condition, practice or violation. The cessation order shall remain in effect until the director determines that the condition, practice or violation has been abated or until modified, vacated or terminated by the director or the commission;

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

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

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

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

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

History: Laws 1993, ch. 315, § 7; 1997, ch. 88, § 2; 2014, ch. 32, § 2.

ANNOTATIONS

The 2014 amendment, effective March 7, 2014, eliminated the restriction on the release of financial assurances; in Subsection H, Paragraph (2), at the beginning of the sentence, deleted "assure" and added "ensure"; in Subsection H, Paragraph (8), after "contamination and", deleted "assure" and added "ensure"; and in Subsection R, deleted the former second sentence which provided that a permittee could not apply for release of financial assurance more than once per year for each mining operation.

The 1997 amendment, effective June 20, 1997, in the introductory language of Subsection A, substituted "before June 18, 1994" for "within one year of the effective date of the New Mexico Mining Act" at the beginning and "the provisions of the New Mexico Mining Act" for "that Act" near the end; in Subsection K, in the introductory language, added the second sentence and inserted "at the time of the filing of the application with the director" and "and of the procedure for requesting a public hearing" in the last sentence, made a minor stylistic change in Paragraph (4), added "of this application; and" in Paragraph (5), and added Paragraph (6); and, in Subsection S, rewrote Paragraph (1).

Constitutionality of regulations. — Regulations that did not establish a schedule of fees but provided that almost all fees be set on a case-by-case basis were invalid insofar as they did not set a determinate fee. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

Regulations were not impermissibly vague and could not delegate an unbridled discretion in the director, in view of the provisions for both administrative and judicial review of actions of the director, and therefore did not violate due process. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

Regulations granting power to the director, an employee of the commission, were not violative of the separation of powers doctrine. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

The provision authorizing the imposition of fees by the commission did not violate the constitutional prohibition against the imposition of fees by a nonelective body, since the commission is not a political subdivision. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

A definition of "mining" that classified mining operations into different categories did not violate the dictates of equal protection. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

Rulemaking authority. — The commission had authority to adopt a rule imposing a surcharge on certain fees promulgated by it in order to partially reimburse the

department of game and fish for assistance in implementing the State Mining Act. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, 122 N.M. 332, 924 P.2d 741.

Fee not a tax. — A surcharge imposed on certain fees for the purpose of reimbursing the department of game and fish for assisting in implementing the State Mining Act was a fee, not a tax. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, 122 N.M. 332, 924 P.2d 741.

Transfer of funds. — Nothing in the Mining Act, the Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978), or other state laws prohibit the transfer of funds derived from fees imposed by the commission to the department of game and fish to assist in implementing the Mining Act. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, 122 N.M. 332, 924 P.2d 741.

Discretion. — New Mexico mining commission acted within its discretion in ruling that the El Cajete mine was a new mining unit of the Las Conchas mine, rather than a new mining operation; the mines were owned by the same mining company and were substantially interrelated. *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

69-36-8. Regulations; adoption process.

A. No regulation shall be adopted, amended or repealed without a public hearing before the commission or a hearing officer appointed by the commission.

B. Any person may recommend or propose regulations to the commission for adoption, amendment or repeal. The commission shall determine within sixty days of submission of a proposed regulation whether to hold a hearing. If the commission determines not to hold a hearing, the determination shall be subject to review under Section 16 [69-36-16 NMSA 1978] of the New Mexico Mining Act.

C. The public hearing shall be held in Santa Fe, and a verbatim record shall be maintained of all proceedings. Notice of the subject, time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation or amendment may be obtained shall be:

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

(2) mailed at least thirty days prior to the hearing date to all persons who have made a written request to the commission for advance notice of hearings.

D. The commission shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

E. A person appearing or represented at the hearing shall, upon a written request, be given written notice of the commission's action on the proposed adoption, amendment or repeal of regulation.

F. No regulation, its amendment or repeal shall be effective except as provided by the Public Records Act [Chapter 14, Article 3 NMSA 1978].

History: Laws 1993, ch. 315, § 8.

ANNOTATIONS

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

69-36-9. Director; duties.

The director shall:

A. exercise all powers of enforcement and administration arising under the New Mexico Mining Act not otherwise expressly delegated to the commission, execute and administer the commission's regulations and coordinate the review and issuance of permits for new and existing mining operations and exploration with all other state or federal permit processes applicable to the proposed operations;

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

C. create an advisory committee, the membership of which shall balance the interests of affected government entities, the mining industry, environmental groups, regulatory agencies and other persons as determined by the director to represent a constituency that will be affected by the provisions of the New Mexico Mining Act;

D. confer and cooperate with the secretary of environment in administering the New Mexico Mining Act, in developing proposed regulations and obtain the concurrence of the secretary of environment regarding areas of the regulations that have an impact upon programs administered by the department of environment;

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

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

G. prepare an environmental evaluation, before a permit for a new mining operation is approved or denied, which shall include an analysis of the reasonably foreseeable impacts of proposed activities on the premining and post-mining environment and the local community, including other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action or whether the actions are on private, state or federal land. The director may contract with, and the applicant shall pay for, a third party to prepare the analysis and assessment.

History: Laws 1993, ch. 315, § 9.

ANNOTATIONS

Temporary provisions. — Laws 2014, ch. 32, § 3 provided that on or before January 13, 2015, the director of the mining and minerals division of the energy, minerals and natural resources department shall propose amendments to the New Mexico Mining Act rules to address the frequency for the intervals at which permittees under that act can request release of their financial assurances.

69-36-10. Confidentiality.

If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the director shall maintain the information as confidential and not subject to public records or disclosure laws; provided that if a request is made for public review of the information, the director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim of confidentiality is not substantiated to the satisfaction of the director, the information shall be released.

History: Laws 1993, ch. 315, § 10.

69-36-11. Existing mining operations; closeout plan required.

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

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

- (1) the closeout plan and permit application is complete;
- (2) the closeout plan permit fee has been paid and the financial assurance is adequate and has been provided;
- (3) the closeout plan specifies incremental work to be done within specific time frames that, if followed, will reclaim the physical environment of the permit area to a condition that allows for the reestablishment of a self-sustaining ecosystem on the permit area following closure, appropriate for the life zone of the surrounding areas unless conflicting with the approved post-mining land use; provided that for purposes of this section, upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surfacewater and ground water protection following closure and will not pose a current or future hazard to public health or safety; and
- (4) the secretary of environment has provided a written determination in the form prescribed in Paragraph (2) of Subsection P of Section 7 [69-36-7 NMSA 1978] of the New Mexico Mining Act.

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

History: Laws 1993, ch. 315, § 11.

ANNOTATIONS

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

69-36-12. New mining operations; mining operation permit required.

A. After the effective date of the New Mexico Mining Act, except as provided in Section 5 [69-36-5 NMSA 1978] of that act, 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 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 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 and the financial assurance is adequate and has been provided;
- (3) reclamation in accordance with the proposed reclamation plan is economically and technically feasible;
- (4) the mining operation is designed to meet without perpetual care all applicable environmental requirements imposed by the New Mexico Mining Act and regulations adopted pursuant to that act and other laws following closure; and
- (5) the applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

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

(b) have not demonstrated a pattern of willful violations of the New Mexico Mining Act or other New Mexico environmental statutes; provided that a violation that occurred prior to the initiation of a legal relationship between the permit applicant and the violator shall not be considered for purposes of this paragraph.

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

History: Laws 1993, ch. 315, § 12.

ANNOTATIONS

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

Compiler's notes. — The effective date of the New Mexico Mining Act, was the effective date of Laws 1993, ch. 315, which was June 18, 1993.

69-36-13. Exploration permit.

A. After December 31, 1994, a person shall not engage in exploration operations in New Mexico without first obtaining a permit to conduct exploration from the director. In order to be approved by December 31, 1994, the application for a permit to conduct exploration shall be submitted by September 1, 1994. A permit to conduct exploration shall not be issued for a period of more than one year from the date of issue and is renewable from year to year upon application. An application for renewal of a permit to conduct exploration shall be filed within thirty days preceding the expiration of the current permit. A permit to conduct exploration shall not be renewed if the applicant for renewal is in violation of any provision of the New Mexico Mining Act.

B. A person shall not be issued a permit to conduct exploration if that person's failure to comply with the provisions of the New Mexico Mining Act, the regulations adopted pursuant to that act or a permit issued under that act has resulted in the forfeiture of financial assurance.

C. An applicant for a permit to conduct exploration shall not be issued a permit to conduct exploration until he:

- (1) pays a permit fee for exploration;
- (2) agrees to reclaim any surface area damaged by the applicant during exploration operations in accordance with a reclamation plan submitted to and approved by the director; and
- (3) certifies that he is not in violation of any other obligation under the New Mexico Mining Act or the regulations adopted pursuant to that act.

D. The application for a permit to conduct exploration shall include an exploration map in sufficient detail to locate the area to be explored and to determine whether environmental problems would be encountered. The commission shall establish regulations to determine the precise nature of and requirements for the exploration map. The application shall state what type of exploration and excavation techniques will be employed in disturbing the land during exploration operations.

E. Prior to the issuance of a permit to conduct exploration, the applicant shall provide to the division financial assurance in a form and amount as determined by the director pursuant to Section 7 [69-36-7 NMSA 1978] of the New Mexico Mining Act. The financial assurance shall be released only in accordance with the provisions of that act.

F. In the event that the holder of a permit to conduct exploration desires to mine the permit area to conduct exploration and he has fulfilled all of the requirements for a permit for new mining operations, the director shall allow postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a permit for a new mining operation.

Land affected by exploration or excavation under a permit for exploration and not covered by the reclamation plan shall be reclaimed in a manner acceptable to the director within two years after the completion of exploration or abandonment of the site.

History: Laws 1993, ch. 315, § 13.

ANNOTATIONS

Cross references. — For regulation of lands affected by coal surface mining, see Chapter 69, Article 25A NMSA 1978.

69-36-14. Citizens suits.

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

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

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

(3) the department of environment, the energy, minerals and natural resources department or the commission alleging a failure to perform any nondiscretionary act or duty required by the New Mexico Mining Act; provided, however, that no action pursuant to this section shall be commenced if the department of environment, the energy, minerals and natural resources department or the commission has commenced and is diligently prosecuting a civil action in a court of this state or an administrative enforcement proceeding to require compliance with that act. In an administrative or court action commenced by the department of environment, the energy, minerals and natural resources department or the commission, a person whose interest may be adversely affected and who has provided notice pursuant to Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

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

C. Except as otherwise provided herein, suits against the department of environment, the energy, minerals and natural resources department or the commission shall be brought in the district court of Santa Fe county. Suits only against one or more owners or operators of one or more mining operations shall be brought in the district court where one of the mining operations is located. If an action is brought against the department of environment, the energy, minerals and natural resources department or the commission and the owner or operator of a mining operation, such owner or operator may apply for a change of venue to the judicial district in which the mining operation is located. If not already a party, an owner or operator may intervene, upon a showing that the action relates primarily to a dispute regarding the single mining operation and apply for such a change of venue. The district court shall grant a change of venue upon a showing that the action relates primarily to a dispute regarding the subject single mining operation and a showing that a forum non conveniens analysis suggests that the location of the mining operation is a superior venue.

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

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

History: Laws 1993, ch. 315, § 14; 1997, ch. 88, § 3.

ANNOTATIONS

The 1997 amendment, June 20, 1997, in Subsection A, substituted "duty required by" for "duty under" in the first sentence in Paragraph (3); rewrote Subsection C; and, in Subsection E, substituted "attorney" for "attorneys".

Administrative review. — A challenge to the issuance of a permit must pursue an administrative review under 69-36-15 NMSA 1978 before proceeding with a "citizen suit" under this section. *Pueblo of Picuris v. N.M. Energy, Minerals & Natural Res. Dep't*, 2001-NMCA-084, 131 N.M. 166, 33 P.3d 916, cert. denied, 131 N.M. 221, 34 P.3d 610 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Requirement that there be continuing violation to maintain citizen suit under federal environmental protection statutes - post-*Gwaltney* cases, 158 A.L.R. Fed. 519.

69-36-15. Administrative review.

A. Any order, penalty assessment or issuance or denial of a permit by the director pursuant to the New Mexico Mining Act shall become final unless a person who is or may be adversely affected by the order, penalty assessment or issuance or denial of a permit files, within sixty days from the date of notice of the order, penalty assessment or issuance or denial of a permit, a written petition to the commission for review of the order, penalty assessment or issuance or denial of a permit by the director.

B. The commission shall set a hearing no sooner than thirty days and no later than sixty days from the date of receipt of the petition.

C. Evidence in support of, or to challenge, the action of the director shall be heard by the commission or by a hearing officer appointed by the commission.

D. A verbatim record of the hearing shall be made and preserved by the commission or the hearing officer.

E. A recommendation based on the record shall be made by the hearing officer and presented to the commission. The commission shall issue findings of fact and a final decision in the proceedings.

F. The chairman of the commission may issue subpoenas to compel attendance of witnesses and for documents relevant to the action to be heard before the commission. The Rules of Civil Procedure for the District Courts shall govern discovery procedures in commission hearings.

History: Laws 1993, ch. 315, § 15.

ANNOTATIONS

Administrative review. — A challenge to the issuance of a permit must pursue an administrative review under this section before proceeding with a "citizen suit" under 69-36-14 NMSA 1978. *Pueblo of Picuris v. N.M. Energy, Minerals & Natural Res. Dep't*, 2001-NMCA-084, 131 N.M. 166, 33 P.3d 916, cert. denied, 131 N.M. 221, 34 P.3d 610 (2002).

69-36-16. Judicial review.

A. A person who is or may be affected by a rule of the commission may appeal the action of the commission by filing a notice of appeal with the court of appeals within thirty days from the filing date of the rule with the state records center. All appeals of rules shall be taken on the record made at the public hearing on the rule.

B. A party, intervenor or any other person upon a showing of good cause for not appearing at the public hearing on a rule may appeal a decision of the commission adopting, amending or repealing the rule by filing a written notice of appeal with the court of appeals within forty-five days after entry of the commission's decision. Copies of

the notice of appeal shall be served at the time of filing, either personally or by certified mail, upon all parties to the proceeding before the commission.

C. A person who is or may be affected by a final action of the commission other than a rule may appeal the action of the commission by filing a notice of appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1993, ch. 315, § 16; 1998, ch. 55, § 84; 1999, ch. 265, § 86.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection C.

The 1998 amendment, effective September 1, 1998, substituted "rule" for "regulation" and "rules" for "regulations" throughout the section; rewrote Subsection C; deleted former Subsections D through F relating to procedures on appeal; and made minor stylistic changes throughout the section.

Authority of court of appeals. — Even though the commission had taken no action against miners under the challenged regulations, the court of appeals had the power and authority to review the regulations. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

The court of appeals was without authority to review the constitutionality of the New Mexico Mining Act (69-36-1 to 69-36-20 NMSA 1978) in the case of an appeal challenging regulations on their face. *Old Abe Co. v. N.M. Mining Comm'n*, 1995-NMCA-134, 121 N.M. 83, 908 P.2d 776, 120 N.M. 828, 907 P.2d 1009.

Discretion of commission. — New Mexico mining commission acted within its discretion in ruling that the El Cajete mine was a new mining unit of the Las Conchas mine, rather than a new mining operation; the mines were owned by the same mining company and were substantially interrelated. *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806.

69-36-17. Civil penalties.

A. Civil penalties may be assessed by the director or the commission for violations of the New Mexico Mining Act, including a violation of a regulation of the commission, an order of the director, a permit condition and the order resulting from a hearing.

B. Civil penalties assessed by the director or the commission shall be imposed pursuant to regulations adopted by the commission. Any penalty assessed shall not exceed ten thousand dollars (\$10,000) per day of noncompliance for each violation.

C. Circumstances to be considered by the commission or the director in determining the amount of the penalty to be assessed shall be the seriousness of the violation, efforts to comply with the requirements of the New Mexico Mining Act, recent history of violations and other relevant factors as determined by the commission and regulations adopted by the commission.

D. Any penalty imposed by the director may be appealed to the commission, and any order of the commission concerning a penalty may be appealed de novo to the district court within thirty days from issuance of the order imposing the penalty.

History: Laws 1993, ch. 315, § 17.

69-36-18. Criminal penalties.

A. Any person who knowingly or willfully violates the New Mexico Mining Act, regulations adopted by the commission or a condition of a permit issued pursuant to the New Mexico Mining Act or fails or refuses to comply with a final decision or order of the commission or the director is guilty of a misdemeanor and is subject to a fine not to exceed ten thousand dollars (\$10,000) per day of violation or imprisonment of up to one year, or both.

B. Cases seeking criminal penalties shall be brought in the district court in Santa Fe.

C. Circumstances to be considered by the district court in determining the sentence shall be the seriousness of the violation, the efforts taken to comply with the requirements of the New Mexico Mining Act and the recent history of violations of the defendant.

History: Laws 1993, ch. 315, § 18.

69-36-19. Funds created.

A. There is created within the state treasury the "mining act fund". All money received by the state from permit applicants, permit holders, the federal government, other state agencies or legislative appropriations shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources. Money in the fund is appropriated to the energy, minerals and natural resources department to carry out the purposes of the New Mexico Mining Act. Any unexpended or unencumbered balance

remaining in the mining act fund at the end of a fiscal year shall not revert to the general fund but shall remain and accrue to the benefit of the mining act fund.

B. There is created within the state treasury the "inactive or abandoned non-coal mine reclamation fund". All money received from administrative or court-imposed penalties shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources. Money in the fund is appropriated to the energy, minerals and natural resources department to conduct reclamation activities on abandoned or inactive non-coal mining areas. Any unexpended or unencumbered balance remaining in the inactive or abandoned non-coal mine reclamation fund at the end of a fiscal year shall not revert to the general fund but shall remain and accrue to the benefit of the inactive or abandoned non-coal mine reclamation fund.

C. There is created within the state treasury a nonreverting fund to be known as the "mining act forfeiture fund". All money received by the division from forfeitures of financial assurance as required by rules adopted pursuant to the New Mexico Mining Act shall be paid to the state treasurer for credit to the mining act forfeiture fund for the sole benefit of the specific reclamation project or closeout plan, or portion thereof, to which the forfeited financial assurance applies. Upon the forfeiture of some or all of the financial assurance attributable to a specific reclamation project or closeout plan, the director shall determine whether such reclamation project or closeout plan will exceed a duration of five years from the date of the forfeiture. Each amount credited to the mining act forfeiture fund for a reclamation project or closeout plan that exceeds five years pursuant to the director's determination shall be held in a separate account of the mining act forfeiture fund for the sole benefit of that reclamation project or closeout plan and may be invested by the state investment council with the advice of an independent investment advisor hired by the energy, minerals and natural resources department. Income from the mining act forfeiture fund shall be credited to the fund; provided that the income attributable to each source of forfeited financial assurance may be used only for the benefit of the specific reclamation project or closure plan, or portions thereof, to which the forfeited financial assurance applies. Disbursements from the mining act forfeiture fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources. Money in the mining act forfeiture fund is appropriated to the energy, minerals and natural resources department to complete, as provided by rules adopted pursuant to the New Mexico Mining Act, the approved reclamation projects or closeout plans, or portions thereof, on a permit area, affected area or increment to which the forfeited financial assurance applies and for which the reclamation project or closeout plan is necessary to mitigate an endangerment of life and property or constitutes a hazard to the public health and safety. Any funds remaining after a reclamation project or closeout plan is completed shall be returned to the appropriate person as provided by the rules adopted pursuant to the New Mexico Mining Act. Nothing in this subsection shall require the forfeiture and transfer of funds held in a trust established for the benefit

of the state of New Mexico and approved by the director in accordance with rules adopted pursuant to the New Mexico Mining Act.

History: Laws 1993, ch. 315, § 19; 2021, ch. 14, § 1.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, created the mining act forfeiture fund; and added Subsection C.

Transfer of funds. — Nothing in the Mining Act, the Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978), or other state laws prohibit the transfer of funds derived from fees imposed by the commission to the department of game and fish to assist in implementing the Mining Act. *N.M. Mining Ass'n v. N.M. Mining Comm'n*, 1996-NMCA-098, 122 N.M. 332, 924 P.2d 741.

69-36-20. Remedy.

Nothing in the New Mexico Mining Act shall limit any right that any person or class of persons may have pursuant to any statute or common law to seek enforcement of the New Mexico Mining Act and the regulations adopted pursuant to that act, or to seek any other relief.

History: Laws 1993, ch. 315, § 20.