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SENATE BILL 231

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

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; COMBINING THE MINING
COMMISSION AND THE COAL SURFACE MINING COMMISSION; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 69-25A-3 NMSA 1978 (being Laws 1979,
Chapter 291, Section 3, as amended) is amended to read:

"69-25A-3. DEFINITIONS.--As used in the Surface Mining
Act:

A. "commission" means the [~~coal surface~~] mining
commission;

B. "director", when used without further
qualification, means the director of the mining and minerals
division of the energy, minerals and natural resources
department or [~~his~~] the director's designee;

underscored material = new
[bracketed material] = delete

1 C. "alluvial valley floors" means the
2 unconsolidated stream-laid deposits holding streams where water
3 availability is sufficient for subirrigation or flood
4 irrigation agricultural activities, but does not include upland
5 areas [~~which~~] that are generally overlain by a thin veneer of
6 colluvial deposits composed chiefly of debris from sheet
7 erosion, deposits by unconcentrated runoff or slope wash,
8 together with talus, other mass movement accumulation and
9 windblown deposits;

10 D. "approximate original contour" means that
11 surface configuration achieved by backfilling and grading of
12 the mined area so that the reclaimed area, including any
13 terracing or access roads, closely resembles the general
14 surface configuration of the land prior to mining and blends
15 into and complements the drainage pattern of the surrounding
16 terrain with all highwalls and spoil piles eliminated; water
17 impoundments may be permitted where the director determines
18 that they are in compliance with Paragraph (8) of Subsection B
19 of Section 69-25A-19 NMSA 1978;

20 E. "imminent danger to the health and safety of the
21 public" means the existence of any condition or practice, or
22 any violation of a permit or other requirement of the Surface
23 Mining Act, in a surface coal mining and reclamation operation,
24 which condition, practice or violation could reasonably be
25 expected to cause substantial physical harm to persons outside

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1 the permit area before the condition, practice or violation can
2 be abated. A reasonable expectation of death or serious injury
3 before abatement exists if a rational person, subjected to the
4 same conditions or practices giving rise to the peril, would
5 not [~~expose himself~~] agree to be exposed to the danger during
6 the time necessary for abatement;

7 F. "operator" means any person engaged in coal
8 mining who removes or intends to remove more than two hundred
9 fifty tons of coal from the earth by coal mining within twelve
10 consecutive calendar months in any one location;

11 G. "other minerals" means clay, stone, sand,
12 gravel, metalliferous and nonmetalliferous ores and any other
13 solid material or substances of commercial value excavated in
14 solid form from natural deposits on or in the earth, exclusive
15 of coal, and those minerals [~~which~~] that occur naturally in
16 liquid or gaseous form;

17 H. "permit" means a permit to conduct surface coal
18 mining and reclamation operations issued by the director
19 pursuant to the Surface Mining Act;

20 I. "permit applicant" or "applicant" means a person
21 applying for a permit;

22 J. "permit area" means the area of land indicated
23 on the approved map submitted by the operator with [~~his~~] the
24 operator's application, which area of land is to be covered by
25 the operator's bond as required by Section 69-25A-13 NMSA 1978

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1 and shall be readily identifiable by appropriate markers on the
2 site;

3 K. "permittee" means a person holding a permit;

4 L. "person" means an individual, partnership,
5 association, society, joint stock company, firm, company,
6 corporation or other business organization;

7 M. the term "prime farmland" is to be defined by
8 [~~regulation~~] rule of the commission after considering such
9 factors as moisture availability, temperature regime, chemical
10 balance, permeability, surface layer composition,
11 susceptibility to flooding, erosion characteristics, history of
12 use for intensive agricultural purposes and regulations issued
13 by the United States secretary of agriculture;

14 N. "reclamation plan" means a plan submitted by an
15 applicant for a permit [~~which~~] that sets forth a plan for
16 reclamation of the proposed surface coal mining operations
17 pursuant to Section 69-25A-12 NMSA 1978;

18 O. "surface coal mining and reclamation operations"
19 means surface coal mining operations and all activities
20 necessary and incident to the reclamation of those operations
21 after the date of enactment of the Surface Mining Act;

22 P. "surface coal mining operations" means:

23 (1) activities conducted on the surface of
24 lands in connection with a surface coal mine or activities
25 subject to the requirements of Section 69-25A-20 NMSA 1978

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1 relating to surface operations and surface impacts incident to
2 an underground coal mine. The activities include excavation
3 for the purpose of obtaining coal, including such common
4 methods as contour, strip, auger, mountaintop removal, box cut,
5 open pit and area mining. These activities also include uses
6 of explosives and blasting and in situ distillation or
7 retorting, leaching or other chemical or physical processing
8 and the cleaning, concentrating or other processing or
9 preparation, including loading of coal at or near the mine
10 site. [~~Provided~~] However, [~~that~~] such activities do not
11 include the extraction of coal incidental to the extraction of
12 other minerals where coal does not exceed sixteen and two-
13 thirds percent of the tonnage of minerals removed for purposes
14 of commercial use or sale or coal exploration subject to
15 Section 69-25A-16 NMSA 1978; and

16 (2) the areas upon which these activities
17 occur or where the activities disturb the natural land surface.
18 These areas also include any adjacent land, the use of which is
19 incidental to any of the activities, all lands affected by the
20 construction of new roads or the improvement or use of existing
21 roads to gain access to the site of these activities and for
22 haulage and excavations, workings, impoundments, dams,
23 ventilation shafts, entryways, refuse banks, dumps, stockpiles,
24 overburden piles, spoil banks, culm banks, tailings, holes or
25 depressions, repair areas, storage areas, processing areas,

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1 shipping areas and other areas upon which are sited structures,
2 facilities or other property or materials on the surface,
3 resulting from or incident to these activities;

4 Q. "unwarranted failure to comply" means the
5 failure of a permittee to prevent the occurrence of any
6 violation of [~~his~~] the permittee's permit or any requirement of
7 the Surface Mining Act due to indifference, lack of diligence
8 or lack of reasonable care, or the failure to abate any
9 violation of the permit or the Surface Mining Act due to
10 indifference, lack of diligence or lack of reasonable care; and

11 R. "lignite coal" means consolidated lignitic coal
12 [~~having~~] that has less than eight thousand three hundred BTUs
13 per pound and that is moisture- and mineral-matter-free."

14 Section 2. A new section of the Surface Mining Act is
15 enacted to read:

16 "[NEW MATERIAL] DUTIES OF COAL SURFACE MINING COMMISSION
17 TO MINING COMMISSION.--Beginning July 1, 2010, the mining
18 commission shall assume the duties of the coal surface mining
19 commission. All rules of the coal surface mining commission
20 shall remain in force unless the mining commission repeals or
21 amends them."

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

24 "69-36-3. DEFINITIONS.--As used in the New Mexico Mining
25 Act:

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1 A. "affected area" means the area outside of the
2 permit area where the land surface, surface water, ground water
3 and air resources are [~~impacted~~] affected by mining operations
4 within the permit area;

5 B. "commission" means the mining commission
6 [~~established in the New Mexico Mining Act~~];

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

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

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

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

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1 magnetic, radioactive or other tests and measurements, boundary
2 or claim surveying, location work or other work that causes no
3 greater disturbance than is caused by ordinary lawful use of
4 the area by persons not engaged in exploration, are excluded
5 from the meaning of "exploration";

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

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

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1 natural petroleum in a liquid or gaseous state by means of
2 wells or pipes; the development or extraction of coal; the
3 extraction of geothermal resources; smelting, refining,
4 cleaning, preparation, transportation or other off-site
5 operations not conducted on permit areas; or the extraction,
6 processing or disposal of commodities, byproduct materials or
7 wastes or other activities regulated by the federal nuclear
8 regulatory commission;

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

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

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

24 Section 4. TEMPORARY PROVISION--TRANSFER--CONTRACTUAL
25 OBLIGATIONS--STATUTORY REFERENCES.--

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A. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the coal surface mining commission shall be transferred to the mining commission.

B. On the effective date of this act, all contractual obligations of the coal surface mining commission shall be binding on the mining commission.

C. On the effective date of this act, all references in law to the coal surface mining commission shall be deemed to be references to the mining commission.

Section 5. REPEAL.--Section 69-25A-4 NMSA 1978 (being Laws 1979, Chapter 291, Section 4, as amended) is repealed.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.