

# CHAPTER 69

## Mines

### ARTICLE 1

### Creation of Bureaus Relating to Geology and Mines

#### 69-1-1. Bureau of geology and mineral resources; creation; director.

A. There is established a "bureau of geology and mineral resources" of the state that is a division of the New Mexico institute of mining and technology and under the direction of its board of regents. The board shall appoint, as a director, a suitable person to be known as the director of the bureau of geology and mineral resources and, upon his nomination, such assistants and employees as the board deems necessary. The board may also determine the compensation of all persons employed by the bureau of geology and mineral resources, including the director, and may remove them in accordance with established personnel procedures.

B. The director of the bureau of geology and mineral resources shall be known as the state geologist.

**History:** Laws 1927, ch. 115, § 1; C.S. 1929, § 88-501; 1941 Comp., § 67-101; 1953 Comp., § 63-1-1; Laws 1989, ch. 17, § 1; 2001, ch. 246, § 3.

#### ANNOTATIONS

**Cross references.** — For the New Mexico institute of mining and technology, see 21-11-1 NMSA 1978 et seq.

**The 2001 amendment,** effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" throughout the section; in Subsection A, substituted "division" for "department", and substituted "in accordance with established personnel procedures" for "at will".

**The 1989 amendment,** effective June 16, 1989, designated the formerly undesignated provisions as Subsection A, while substituting "institute of mining and technology" for "School of Mines" in the first sentence and making minor stylistic changes throughout the subsection, and added Subsection B.

**Law reviews.** — For article, "Turgot's Brief on Mines and Quarries: An Early Economic Analysis of Mineral Land Tenure," see 25 Nat. Resources J. 267 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 255, 256, 257.

58 C.J.S. Mines and Minerals § 11.

## **69-1-2. Purposes and functions.**

The objects and duties of the bureau of geology and mineral resources are as follows:

A. to collect, compile and publish information relative to New Mexico, geology, mining, milling, metallurgy and oil and natural gas and the refining thereof;

B. to collect typical geological and mineral specimens and samples of products; to collect photographs, models and drawings related to mines, mills, smelters, oil wells, natural gas wells and the refineries of oil and natural gas in New Mexico;

C. to collect a library and bibliography of literature pertaining to the progress of geology, hydrogeology, mining, milling, smelting and oil and natural gas production and refining in New Mexico;

D. to map and study the geological formations of the state with special reference to their economic mineral resources, both metallic and nonmetallic, and to their location and physical and chemical characteristics pertinent to ground water resources;

E. to examine the topography and physical features of the state with reference to their practical bearing upon the citizens of New Mexico, as well as potential risks to them, including geologic hazards such as landslides, soil instabilities, earthquakes and volcanic eruptions;

F. to study the mining, milling, smelting operations and oil and natural gas production and the refining of the same carried on in the state with special reference to their improvement;

G. to prepare and publish bulletins and reports with the necessary illustrations and maps, which shall embrace both a general and detailed description of the natural resources and geology, mines, mineral deposits, both metallic and nonmetallic, ground water resources, oil wells, natural gas wells, smelters, mills, oil refineries and natural gas refineries;

H. to make qualitative and quantitative examinations of rocks and mineral samples and specimens;

I. to assist in the education of miners, industries and the general public through lectures, publications and other means of information dissemination;

J. to consider such other scientific and economic problems and questions as in the judgment of the board of regents of New Mexico institute of mining and technology shall be deemed of value to the people of the state;

K. to communicate special information on New Mexico geology, ground water hydrology, mining, both metallic and nonmetallic, oil and natural gas and to serve as a bureau of exchange and information on the mineral, oil and natural gas and ground water resources of New Mexico;

L. to cooperate with other universities in New Mexico, the state mine inspector, the state engineer and other departments of state government as may be mutually beneficial and to cooperate with the United States geological survey and with other federal agencies in accordance with the regulations of those institutions;

M. to coordinate with the mining and minerals division and the secretary of energy, minerals and natural resources in the formulation of overall policy in the area of mining and minerals;

N. to assist the secretary of energy, minerals and natural resources with those projects that come within the expertise and jurisdiction of the bureau of geology and mineral resources; and

O. to assist the state engineer in refining understanding of the stratigraphy, structure and aquifer characteristics of geological formations in ground water basins.

**History:** Laws 1927, ch. 115, § 2; C.S. 1929, § 88-502; 1941 Comp., § 67-102; 1953 Comp., § 63-1-2; Laws 1977, ch. 255, § 17; 1987, ch. 234, § 47; 2001, ch. 246, § 4.

## ANNOTATIONS

**The 2001 amendment**, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" throughout the section; substituted "information" for "statistics" in Subsection A; substituted "related to mines" for "of appliances used in mines" in Subsection B; inserted "hydrogeology" in Subsection C; inserted "map and" and the language beginning "and to their location" in Subsection D; substituted the language beginning "citizens of New Mexico" for "occupation of the people" in Subsection E; in Subsection G, inserted "ground water resources" and deleted "reduction plants" preceding "smelters"; inserted "and quantitative" in Subsection H; in Subsection I, substituted "industries and the general public" for "and prospectors" and inserted "and other means of information dissemination"; inserted "of regents of New Mexico institute of mining and technology" in Subsection J; in Subsection K, inserted "ground water hydrology" and "and ground water"; in Subsection L, substituted "other universities in New Mexico" for "the university of New Mexico", inserted "the state engineer" and substituted "other federal agencies" for "the United State bureau of mines"; inserted "of geology and mineral resources" in Subsection N; and added Subsection O.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals §§ 229, 230.

**69-1-3 to 69-1-5. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1979, ch. 68, § 4, repealed 69-1-3 to 69-1-5 NMSA 1978, relating to the bureau of geology and the bureau of mine inspection. For present provisions, see 9-5A-7 NMSA 1978.

### **69-1-6. State mine inspector duties; status.**

A. The state mine inspector is assigned to the New Mexico institute of mining and technology.

B. The board of regents of the New Mexico institute of mining and technology and the mining safety board may recommend the names of qualified individuals to the governor for appointment as the state mine inspector.

C. In addition to those duties assigned to the state mine inspector by the board of regents of the New Mexico institute of mining and technology, by the mining safety board and by statute, the state mine inspector shall cooperate with the director of the mining and minerals division of the energy, minerals and natural resources department to assist the director in the performance of the director's duties.

History: 1978 Comp., § 69-1-6, enacted by Laws 1979, ch. 68, § 3; 1987, ch. 234, § 48; 1989, ch. 193, § 1; 2007, ch. 301, § 1; 2007, ch. 302, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1979, ch. 68, § 3, repealed former 69-1-6 NMSA 1978, relating to the designation of the chief of the bureau of mine inspection as the state mine inspector, and enacted a new 69-1-6 NMSA 1978.

**Cross references.** — For the duties of the state mine inspector, see 69-5-7 NMSA 1978.

**The 2007 amendment,** effective June 20, 2007, added the references to the mining safety board.

Laws 2007, ch. 301, § 1 and Laws 2007, ch. 302, § 1, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 1. See 12-1-8 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection A substituted "New Mexico institute of mining and technology" for "energy, minerals and natural resources department and is an assistant to the director of the mining and minerals department"; substituted the present language of Subsection B for "In addition to those duties assigned to the inspector by the secretary of energy, minerals and natural resources or the director of the mining and minerals division, the state mine inspector shall act on

behalf of the division when exercising those powers and fulfilling those duties assigned by statute to the state mining inspector"; and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 237.

### **69-1-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 68, § 5 repealed 69-1-7 NMSA 1978, as enacted by Laws 1977, ch. 255, § 16, relating to the mining safety advisory board, effective April 1, 1985. For present provisions relating to the mining safety advisory board and its duties, see 69-8-3 and 69-8-4 NMSA 1978.

## **ARTICLE 2**

### **Other Functions of the Bureau of Geology and Mineral Resources**

#### **69-2-1. Annual reports of progress and condition.**

A. The board of regents of the New Mexico institute of mining and technology shall prepare an annual report showing the progress and condition of the bureau of geology and mineral resources, together with such other information as it deems necessary or useful or as the board may require.

B. The board of regents of the New Mexico institute of mining and technology shall provide the secretary of energy, minerals and natural resources with a copy of the annual report.

**History:** Laws 1927, ch. 115, § 3; C.S. 1929, § 88-503; 1941 Comp., § 67-103; 1953 Comp., § 63-1-3; Laws 1977, ch. 255, § 18; 1987, ch. 234, § 49; 2001, ch. 246, § 5.

#### **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, inserted "of regents of the New Mexico institute of mining and technology" in Subsections A and B; and substituted "bureau of geology" for "bureau of mines" in Subsection A.

#### **69-2-2. Publication of mining laws and regulations.**

The board may, in its discretion, cause to be prepared and published a compilation of the mining laws and regulations of the state and is authorized to update and reprint the same at such intervals as it deems advisable to reflect any substantial changes in the law or regulations. The book shall be sold at such price as the board may determine.

**History:** 1953 Comp., § 63-1-3.1, enacted by Laws 1967, ch. 171, § 1.

### **69-2-3. Bureau reports; printing and sale.**

The regular and special reports of the bureau of geology and mineral resources shall be printed as the board of regents of the New Mexico institute of mining and technology may direct, and the reports may be distributed or sold by the board as the interests of the state or science may demand. The money now in the possession of the bureau that has been obtained and that is hereafter obtained from the sale of the reports shall be used in such manner as the board may direct.

**History:** Laws 1927, ch. 115, § 4; C.S. 1929, § 88-504; Laws 1935, ch. 19, § 1; 1941 Comp., § 67-104; 1953 Comp., § 63-1-4; 2001, ch. 246, § 6.

## **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, added the section heading; substituted "bureau of geology" for "bureau of mines"; inserted "of regents of the New Mexico institute of mining and technology"; and deleted "of regents of the New Mexico School of Mines" preceding "may direct".

### **69-2-4. [Materials distributed to educational institutions.]**

All materials collected after having served the purpose of the bureau shall be distributed by the board to such educational institutions of the state as the board may direct.

**History:** Laws 1927, ch. 115, § 5; C.S. 1929, § 88-505; 1941 Comp., § 67-105; 1953 Comp., § 63-1-5.

### **69-2-5. [Funds for maintenance of bureau.]**

The board may use of the funds appropriated for the maintenance of the New Mexico school of mines [New Mexico institute of mining and technology] such sums as may be necessary for the maintenance of the bureau hereby created, not to exceed, however, such sums as may be appropriated for the New Mexico school of mines [New Mexico institute of mining and technology] from the fund provided by Section 35 of Senate Bill No. 2775 United States congress. (Public - No. 146 - 66th congress.)

**History:** Laws 1927, ch. 115, § 6; C.S. 1929, § 88-506; 1941 Comp., § 67-106; 1953 Comp., § 63-1-6.

### ANNOTATIONS

**Cross references.** — For Section 35 of Senate Bill No. 2775, see 30 U.S.C. § 191.

For school of mines, see 69-2-3 NMSA 1978 and notes thereto.

### **69-2-6. Appropriation; cooperative survey.**

There is appropriated for the bureau of geology and mineral resources twenty thousand dollars (\$20,000) annually of the money received by the state from the mineral leasing land act fund, pursuant to Title 30 U.S.C., Section 191. The money appropriated hereunder shall be used to pay the expenses incurred in matching federal funds in connection with a cooperative geologic and ground water survey of the state.

**History:** Laws 1947, ch. 218, § 1; 1941 Comp., § 67-107; 1953 Comp., § 63-1-7; 2001, ch. 246, § 7.

### ANNOTATIONS

**The 2001 amendment**, effective June 15, 2001, added the section heading; substituted "bureau of geology" for "New Mexico bureau of mines"; and substituted "pursuant to Title" for "created by Section 35 of the Act of Congress approved February 25th, 1920, being Public Act No. 146, 66th Congress".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 48.

### **69-2-7. Geothermal energy source; reports.**

A. Any person drilling a hole on state lands to a depth of ten feet or more who encounters or whose drill cuts into a geothermal energy source of one hundred degrees centigrade or more shall, within ninety days from the date of the penetration, report in writing to the director the depth, location and nature of the geothermal energy source.

B. As used in this section:

(1) "geothermal energy" means the natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from or created by or that may be extracted from, this natural heat;

(2) "state lands" includes all land owned by the state, all land owned by school districts, beds of navigable rivers and lakes, submerged lands and lands in which mineral rights or geothermal resources have been reserved to the state; and

(3) "director" means the director of the bureau of geology and mineral resources.

**History:** 1953 Comp., § 63-1-8, enacted by Laws 1967, ch. 143, § 1; 2001, ch. 246, § 8.

## **ANNOTATIONS**

**The 2001 amendment**, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Paragraph B(3).

## **ARTICLE 3**

### **Mining Locations and Operations**

#### **69-3-1. Mining claim location and posting notice.**

A. Any person or persons desiring to locate a mining claim upon a vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposit must distinctly mark the location on the ground by four substantial posts or monuments, one at each corner of the claim, so that its boundaries may be readily traced, and post in some conspicuous place on such location, a notice in writing stating thereon the name or names of the locator or locators and his or their intention to locate the mining claim, giving a description thereof by reference to some natural object or permanent monument as will identify the claim.

B. The locator shall, at the time of making location of any placer mining claim, cause a notice of the location to be placed at a designated corner of the claim so located, stating the name of the claim, the purpose and the kind of material for which the claim is located, the name of the person locating same, and, if located upon surveyed lands, the notice shall contain a description of the claim by its legal subdivision. If upon unsurveyed lands, the notice shall contain a description of the claim by metes and bounds, with reference to some known object or monument. And whether upon surveyed or unsurveyed lands, each corner of the claim shall be marked by a post at least four feet high, securely set in the ground, or by a substantial stone monument.

C. The date of posting of written notice on the location pursuant to Subsection A or B of this section is deemed to be the date of location. Within ninety days after the date of location, the locator of a lode or placer claim shall file for record in the office of the clerk of the county in which the claim is located, a written notice of location for the claim containing:

- (1) the name of the claim;
- (2) the name and current mailing address of the owner of the claim;
- (3) an identification of the claim as either lode or placer;



(4) the date of location;

(5) a description reciting, to the extent possible, the section in which the claim is located and the approximate location of all or any part of the claim by quarter section. In addition, there shall be furnished the section, township and range; and

(6) either a topographic map published by the U.S. geological survey or copy of such map on which there shall be depicted the location of the claim, or a narrative or sketch describing the claim with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim with such accuracy as will allow the claim to be identified and located on the ground and shall be no larger than eight and one-half inches by fourteen inches. More than one claim may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims are clearly identified.

D. Nothing in the requirement for a map or description found in this section shall require the locator or locators of a claim to employ a professional surveyor or engineer.

**History:** Laws 1876, ch. 38, § 1; C.L. 1884, § 1566; C.L. 1897, § 2286; Code 1915, § 3445; C.S. 1929, § 88-101; 1941 Comp., § 67-201; 1953 Comp., § 63-2-1; Laws 1981, ch. 310, § 1.

## ANNOTATIONS

**Cross references.** — For recording unacknowledged mine location notices, see 14-8-5 NMSA 1978.

For ejectment from mining claim, see 42-4-21 NMSA 1978.

For mechanics lien on a mining claim, see 48-2-2 NMSA 1978 et seq.

For recording royalty assignments, see 70-1-1 NMSA 1978 et seq.

For mining rights in Lincoln National Forest, see 16 U.S.C. §§ 482e to 482g; in Santa Fe National Forest, see 16 U.S.C. §§ 482j to 482l.

**Record must conform to federal requirements.** — As a preliminary or discovery notice of location is unknown to laws of New Mexico, a locator, as against a subsequent locator who enters peaceably, must post such a notice, as when a copy thereof is recorded, the record will meet the requirements of 30 U.S.C. § 28 as to location notice. *Deeney v. Mineral Creek Milling Co.*, 1902-NMSC-005, 11 N.M. 279, 67 P. 724.

**Compliance prerequisite to maintenance of claim absent possession.** — If a person has complied with the requirements of this section and federal law, his claim is protected from intrusion by others, but he cannot deprive another of the right to locate

upon the same ground unless he has complied with this section or is in actual possession of the land. *Blake v. Cavins*, 1919-NMSC-047, 25 N.M. 574, 185 P. 374.

**Noncompliance renders location void.** — This section is supplemental to and not inconsistent with the federal mining laws and is valid, and a failure to comply substantially therewith renders the location void. *Upton v. Santa Rita Mining Co.*, 1907-NMSC-017, 14 N.M. 96, 89 P. 275.

**Failure to record notice of claim does not work forfeiture** of the claim, or make it subject to relocation, and title is good as against one trying to locate the claim, and filing record, with knowledge of prior claim and work done. *Johnson v. Ryan*, 1939-NMSC-002, 43 N.M. 127, 86 P.2d 1040; *Cravens v. Degner*, 1929-NMSC-073, 34 N.M. 323, 281 P. 22.

**Peaceable entry allowed on invalid location.** — No right can be initiated on the public domain by a forcible or fraudulent entry even if the person in possession has an invalid claim. But this rule does not prevent a peaceable entry by a prospector when the first occupant has not made a valid location. *Adams v. Benedict*, 1958-NMSC-051, 64 N.M. 234, 327 P.2d 308.

**Possession dependent on diligent operation.** — A prospector taking possession of land may hold it only for such time as he is diligently and persistently conducting his operations in good faith with the intent to make a discovery of mineral. *Adams v. Benedict*, 1958-NMSC-051, 64 N.M. 234, 327 P.2d 308.

**Work stoppage by locator cuts off partner's legal title.** — Ejectment to recover mining property in territory of New Mexico cannot be based on fact that relocators had acquired such property by a relocation pursuant to a conspiracy with partner of locator, whereby that partner, who was not a locator, stopped necessary work on mine and abandoned possession thereof, as such facts do not give locator legal title thereto or any part thereof. *Lockhart v. Johnson*, 181 U.S. 516, 21 S. Ct. 665, 45 L. Ed. 979 (1901), modifying *Lockhart v. Wills*, 1898-NMSC-007, 9 N.M. 344, 54 P. 336, appeal dismissed, 19 S. Ct. 878, 43 L. Ed. 1186 (1899).

**Possessory title strength of all weighed.** — The court must consider the strength of the possessory title of each of the adverse parties in an action to recover possession of a mining claim. *Winslow v. Burns*, 1943-NMSC-001, 47 N.M. 29, 132 P.2d 1048.

**Proof of superior title required.** — In an action of ejectment to recover possession of a mine, on the ground of an alleged prior location, made under an Act of Congress of May 10, 1872 (30 U.S.C. § 23 et seq.) where relocators claim under a notice of relocation, and the only question was as to the performance by the locators of the annual labor required by said congressional act, an instruction to the jury that before locators can recover they must prove some title and right to possession, by a preponderance of the evidence, and that such right must be superior to that of

relocators, is a proper instruction. *Wills v. Blain*, 1889-NMSC-021, 5 N.M. 238, 20 P. 798.

**Notice sufficient which with reasonable certainty identifies extent of claim.** — In ejectment to recover possession of a mining claim, a location notice is sufficient which refers to certain natural objects and monuments with sufficient certainty to identify the claim, although it does not indicate whether such objects and monuments are of a permanent nature, when this can be shown by parol evidence, for the object of the notice is to advise the public with reasonable certainty of the location and extent of the claim and identify it. *Seidler v. LaFave*, 1889-NMSC-005, 5 N.M. 44, 20 P. 789.

**Relocation notice admits validity of original location.** — The recitals in a notice of relocation of a mining claim may be construed as solemnly admitting the validity of an original location. *Wills v. Blain*, 1889-NMSC-021, 5 N.M. 238, 20 P. 798.

**Boundary marking relates back to posting of notice.** — If the locator of a mining claim, after making his discovery and posting notice, marks the boundaries of his location within a reasonable time, the marking relates back to the time he posted a sufficient notice. *Winslow v. Burns*, 1943-NMSC-001, 47 N.M. 29, 132 P.2d 1048.

**Recording of names of locators of contiguous mines owned in common not required.** — That names of the locators of mining claims must be recorded is a requirement of the statute which is of no significance, as they cannot modify congressional legislation as to a holding in common of all mines, which, if contiguous, may be developed by work begun on one of the mines. *Eberle v. Carmichael*, 1895-NMSC-023, 8 N.M. 169, 42 P. 95, writ of error dismissed, 177 U.S. 63, 20 S. Ct. 571, 44 L. Ed. 672 (1900).

**Statute of frauds inapplicable.** — Where each of three persons locates a different mine, under a parol agreement that all mines located by any should be owned in common by all, the agreement is not within the statute of frauds. *Eberle v. Carmichael*, 1896-NMSC-034, 8 N.M. 696, 47 P. 717.

**Law reviews.** — For comment, "A Judicial Approach to Updating the Mining Laws of 1872-Pedis Possessio," see 10 *Nat. Resources J.* 385 (1970).

For comment, "Mining Law: Annual Assessment Work, New Directions; The Need to Include Antiquities Survey," see 20 *Nat. Resources J.* 933 (1980).

For note, "New Mexico Statute Eliminates Previous Mining Law Discovery Work Requirements," see 22 *Nat. Resources J.* 433 (1982).

For note, "Wide Pattern Pedis Possessio: The Expansion of Prediscovery Mineral Claim Protection in New Mexico," see 24 *Nat. Resources J.* 437 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 8, 26, 44, 45, 47.

Railroad company's right in respect of material or mineral within right-of-way, 21 A.L.R. 1131.

Escheat of mining claim transferred to alien, necessity of judicial proceedings, 23 A.L.R. 1247, 79 A.L.R. 1364.

Merger in deed of provisions of antecedent contract as to mining rights in other land of grantor, 84 A.L.R. 1030, 38 A.L.R.2d 1310.

Railroad company's right to remove, or permit removal of, materials, underneath its right-of-way, 94 A.L.R. 531, 149 A.L.R. 378.

Acquisition of title to mines or minerals, 35 A.L.R.2d 124.

Discovery of radioactive minerals within mining laws, 66 A.L.R.2d 560.

58 C.J.S. Mines and Minerals, §§ 34 to 56.

### **69-3-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 134, § 24 repealed NMSA 1978, as enacted by Laws 1876, ch. 38, § 2, relating to record books provided by county clerks and recording fees, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMONESOURCE.COM*.

### **69-3-3, 69-3-4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 310, § 7, repealed 69-3-3 and 69-3-4 NMSA 1978, relating to discovery shafts, effective May 20, 1981.

### **69-3-5. Penalty.**

Any person who shall make or cause the making of a material misrepresentation of fact with the intent to defraud in a notice of claim shall forfeit his right to the claim to which the material misrepresentation relates, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) nor less than two hundred dollars (\$200) or by imprisonment in the county jail for not more than three hundred sixty days nor less than thirty days, or by both fine and imprisonment in the discretion of the court.

**History:** 1953 Comp., § 63-2-3.2, enacted by Laws 1957, ch. 61, § 2; 1981, ch. 310, § 3.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals § 241.

### **69-3-6. Penetration of water stratum by mine discovery or drill hole; plugging; reports; exceptions.**

Any person drilling a mine lode discovery or mine drill hole to a depth of ten feet or more who encounters or whose drill cuts into a water body or water-bearing stratum shall:

A. plug at a horizon and in the manner provided by the rules of the state engineer; and

B. within ninety days from the date of the discovery, report in writing the depth, location and manner of plugging the water body or water-bearing stratum to the state engineer at the state capitol and to the director of the bureau of geology and mineral resources at Socorro, New Mexico.

**History:** 1953 Comp., § 63-2-3.3, enacted by Laws 1957, ch. 108, § 1; 1967, ch. 128, § 1; 2001, ch. 246, § 9.

### ANNOTATIONS

**Cross references.** — For the appointment and qualifications of the state engineer, see 72-2-1 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, substituted "reports" for "report to state engineer and to director of the state bureau of mines and mineral resources" in the section heading; and substituted "bureau of geology" for "bureau of mines" in Subsection B.

### **69-3-7. Discovery of natural gas or hydrocarbons.**

Any person drilling a mine lode discovery or mine drill hole to a depth of ten feet or more, who shall encounter natural gas or hydrocarbons in any form shall within ten days from the date of encountering natural gas or hydrocarbons report in writing to the state oil conservation commission the depth and location of the natural gas or hydrocarbons and thereafter within a reasonable time shall plug in accordance with the rules and regulations of the New Mexico oil conservation commission.

**History:** 1953 Comp., § 63-2-3.4, enacted by Laws 1957, ch. 108, § 2.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1977, ch. 255, § 4, established the "energy and minerals department." Laws 1977, ch. 255, § 9 absorbed the oil conservation commission into the energy and minerals department.

### **69-3-8. [Exceptions.]**

The provisions of this act [69-3-6 to 69-3-9 NMSA 1978] shall not include or be applicable to seismic, core or other exploratory holes or wells drilled in search of, or for the production of, natural gas or hydrocarbons in any form.

**History:** 1953 Comp., § 63-2-3.5, enacted by Laws 1957, ch. 108, § 3.

### **ANNOTATIONS**

**Cross references.** — For regulation of oil and gas wells, see 70-2-1 NMSA 1978 et seq.

### **69-3-9. Penalty.**

Any person who fails or refuses to make any report required by this act [69-3-6 to 69-3-9 NMSA 1978] or who knowingly makes a false report of any information required by this act is guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

**History:** 1953 Comp., § 63-2-3.6, enacted by Laws 1957, ch. 108, § 4.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals § 241.

### **69-3-10. [Boundary posts.]**

The surface boundaries of mining claims hereafter [hereafter] located shall be marked by four substantial posts or monuments, one at each corner of such claim, so as to distinctly mark the claim on the ground, so that its boundaries can be readily traced, and shall otherwise conform to Section 69-3-1 NMSA 1978.

**History:** Laws 1889, ch. 25, § 2; 1897, ch. 58, § 6; C.L. 1897, § 2299; Laws 1899, ch. 57, § 1; Code 1915, § 3448; C.S. 1929, § 88-104; 1941 Comp., § 67-204; 1953 Comp., § 63-2-4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Relevant to ejectment.** — In an action of ejectment between applicant for patent for a mining claim and an adverse claimant, court errs in omitting from instructions requirements of this section. *Deeney v. Mineral Creek Milling Co.*, 1902-NMSC-005, 11 N.M. 279, 67 P. 724.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 45.

58 C.J.S. Mines and Minerals § 46.

### 69-3-11. Relocation.

The relocation of any mining ground, which is subject to relocation, shall be made in the same way as an original location is required by law to be made.

**History:** Laws 1889, ch. 25, § 3; C.L. 1897, § 2300; Code 1915, § 3449; C.S. 1929, § 88-105; 1941 Comp., § 67-205; 1953 Comp., § 63-2-5; Laws 1981, ch. 310, § 4.

## ANNOTATIONS

**Fraudulent relocation.** — A relocation by an agent in the name of a third party after neglecting to do the annual assessment work on the claim of his principal is fraud upon his principal. *Lockhart v. Washington Gold & Silver Mining Co.*, 1911-NMSC-029, 16 N.M. 223, 117 P. 833; *O'Neill v. Otero*, 1910-NMSC-066, 15 N.M. 707, 113 P. 614. See also *Lockhart v. Leeds*, 195 U.S. 427, 25 S. Ct. 76, 49 L. Ed. 263 (1904); *Lockhart v. Johnson*, 181 U.S. 516, 21 S. Ct. 665, 45 L. Ed. 979 (1901).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 49, 51, 90.

58 C.J.S. Mines and Minerals §§ 43, 84 to 89.

### 69-3-12. Amended and additional location notices.

A. If at any time the owner of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that the original notice of location is defective, erroneous or the requirement of law has not been complied with before filing, or shall be desirous

of changing his surface boundaries or to take in any part of an overlapping claim which has been abandoned, such owner may file in the office where notices of location are by law required to be filed, an amended or additional notice of location, subject to the provisions of this article. Provided, that such additional or amended notice of location does not interfere with the existing right of others at the time of filing such notice; and no such amended or additional location, or record thereof, shall, by itself, preclude the claimant or his assigns from proving any such title as they may have held under the previous location.

B. The owner of an unpatented lode or placer claim existing on June 20, 1981 may file with the county clerk's office in the county in which the mining claim is located, a written notice of location containing the information required by Subsection C of Section 69-3-1 NMSA 1978 or a map conforming to the requirements of Paragraph (6) of Subsection C of Section 69-3-1 NMSA 1978. Such notice shall also recite the book and page of the recording of the original location notice and any additional or amended location notices, and such map shall state the name of the owner of the claims and the claim names for the claims referenced on the map.

**History:** Laws 1889, ch. 25, § 4; C.L. 1897, § 2301; Code 1915, § 3450; C.S. 1929, § 88-106; 1941 Comp., § 67-206; 1953 Comp., § 63-2-6; Laws 1981, ch. 310, § 5.

## ANNOTATIONS

**Cross references.** — For recording unacknowledged, amended or additional location notices, see 14-8-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 45.

58 C.J.S. Mines and Minerals § 45.

### **69-3-12.1. Annual labor and annual filings.**

The owner of an unpatented lode or placer mining claim shall, prior to December 31 of each year following the calendar year in which such claim was located, file for record in the office of the clerk of the county in which the mining claim is located either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon or for the benefit thereof, (stating, among other facts, that the assessment work was performed before 12:00 noon of September 1 of that calendar year) or a detailed report relating to geological, geophysical or geochemical surveys. An affidavit of assessment work shall set forth the time when such work was done and the amount, character and cost thereof, together with the name of the person who performed such work. The affidavit, when made and filed as herein provided, shall be prima facie evidence of the facts therein stated. The failure to make and file the affidavit as herein provided, shall, in any



contest, suit or proceeding touching the title to such claim, place the burden of proof upon the owner of the claim to show that the work has been done according to law.

**History:** 1978 Comp., § 69-3-12.1, enacted by Laws 1981, ch. 310, § 6.

### **69-3-13. [Alteration, removal or destruction of location marks or notice; penalty.]**

Any person who shall take down, remove, alter or destroy any stake, post, monument or notice of location upon any mining claim without the consent of the owner or owners thereof shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding one hundred dollars [(\$100)] or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

**History:** Laws 1889, ch. 25, § 5; C.L. 1897, § 2302; Code 1915, § 3451; C.S. 1929, § 88-107; 1941 Comp., § 67-207; 1953 Comp., § 63-2-7.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals § 47.

### **69-3-14. [Defacing or changing location notice; penalty; correction of errors.]**

Any person or persons, or the manager, officer, agent or employe [employee] of any person, firm, corporation or association, who shall in any manner alter, deface or change the location notice of any mining claim in this state, located under the laws of the United States and of this state, or any local regulations in force in the district wherein such claim is situated, thereby in any manner affecting the rights of any person, firm or corporation, to such claim or location, or the land covered thereby, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars [(\$100)], nor more than five hundred dollars [(\$500)], or imprisoned in the county jail for not less than sixty days, nor more than one year, or by both such fine and imprisonment, in the discretion of the court trying the case. Nothing herein contained shall affect the rights of such locator or locators, and his or their assigns, to correct errors in such notice and file amended location notices as provided in Section 69-3-12 NMSA 1978, and the laws of the United States: provided, such change shall not affect or change the date of such location notice, or affect the rights of any other person.

**History:** Laws 1897, ch. 58, § 3; C.L. 1897, § 2311; Code 1915, § 3452; C.S. 1929, § 88-108; 1941 Comp., § 67-208; 1953 Comp., § 63-2-8.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals §§ 45, 131.

### **69-3-15 to 69-3-17. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1981, ch. 310, § 7, repealed 69-3-15 to 69-3-17 NMSA 1978, relating to annual labor and evidence of assessment work, effective May 20, 1981. For present provisions, see 69-3-12.1 NMSA 1978.

### **69-3-18. [Abandonment of mining claims; methods; encumbered claims.]**

In addition to the provision of law now in force in respect to the abandonment of mining claims, they may be abandoned in the following manner: the owner or owners of any mining claim, wishing to abandon the same, may sign and acknowledge in the same manner provided by law for the acknowledgment of deeds, and file for record in the office of the county clerk, a certificate describing the same, stating when and by whom located, the name of the claim, the book and page where the notice of location of such claim is recorded; that he or they give up and abandon such claim, and that the same is open and subject to relocation. Upon the filing of such certificate, the mining claim therein described shall be considered abandoned and open to relocation as if the same had never been located, and the owner or owners thereof forever estopped from claiming any right or interest therein under the location mentioned in said certificate; provided, that this provision for abandonment shall not apply to any claim or location upon which any mortgage, lien or other encumbrance exists.

**History:** Laws 1889, ch. 25, § 6; C.L. 1897, § 2303; Code 1915, § 3458; C.S. 1929, § 88-114; 1941 Comp., § 67-212; 1953 Comp., § 63-2-12.

## ANNOTATIONS

**Section merely recites common-law rule** that upon effective abandonment of an entire claim the claim is open to relocation as if it had never been located. *Laguna Dev. Co. v. McAlester Fuel Co.*, 1977-NMSC-105, 91 N.M. 244, 572 P.2d 1252.

**It has no applicability to abandonment by one cotenant** of his interest in a mining claim, which is insufficient to work an abandonment as against remaining cotenants. Laguna Dev. Co. v. McAlester Fuel Co., 1977-NMSC-105, 91 N.M. 244, 572 P.2d 1252.

**Abandonment must be by owner or all co-owners.** — This section clearly contemplates an effective abandonment of the entire mining claim by its owner or by all of its co-owners together. Laguna Dev. Co. v. McAlester Fuel Co., 1977-NMSC-105, 91 N.M. 244, 572 P.2d 1252.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

Validity and construction of statutes providing for reversion of mineral estates for abandonment or nonuse, 16 A.L.R.4th 1029.

58 C.J.S. Mines and Minerals § 78.

### **69-3-19 to 69-3-21. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1981, ch. 310, § 7, repealed 69-3-19 to 69-3-21 NMSA 1978, relating to placer mining claims, effective May 20, 1981.

### **69-3-22. [Size of placer mining claims.]**

The size of the claim or claims to be located under Sections 69-3-19 to 69-3-21 NMSA 1978 [repealed], and the amount of annual assessment work to be done thereon in order to hold possession of and secure patent to the same shall be the same as provided by Revised Statutes of the United States.

**History:** Laws 1909, ch. 65, § 4; Code 1915, § 3462; C.S. 1929, § 88-118; 1941 Comp., § 67-216; 1953 Comp., § 63-2-16.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Sections 69-3-19 to 69-3-21 NMSA 1978 were repealed by Laws 1981, ch. 310, § 7, effective May 20, 1981.

**Cross references.** — For provisions of the Revised Statutes of the United States, see 30 U.S.C. §§ 26, 27, 28, 28b, 29 to 35.

**Law reviews.** — For note, "New Mexico Statute Eliminates Previous Mining Law Discovery Work Requirements," see 22 Nat. Resources J. 433 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 45.

58 C.J.S. Mines and Minerals §§ 44, 67 to 77.

### **69-3-23. [Regulations by private landowners as to mining locations; recording; amending.]**

The owner or owners of lands within this state, the title to which has been vested by letters patent from the United States government, may make and file in the office of the county clerk of the county in which such lands are situated, such rules and regulations, not inconsistent with the laws of the United States and of this state, as they may see fit, governing the location and acquisition of mining claims thereon, which rules and regulations when so filed shall be binding upon all parties, and a copy thereof duly certified by the county clerk shall be received and admitted as evidence in any suit or proceedings relating to such mining claims; such rules and regulations may be changed and supplemented from time to time by other rules and regulations filed in like manner, providing that such change shall not affect rights acquired prior thereto.

**History:** Laws 1897, ch. 58, § 7; C.L. 1897, § 2314; Code 1915, § 3514; C.S. 1929, § 88-701; 1941 Comp., § 67-217; 1953 Comp., § 63-2-17.

#### **ANNOTATIONS**

**Cross references.** — For the meaning of "county clerk", see 69-3-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 3.

58 C.J.S. Mines and Minerals §§ 132 to 142.

### **69-3-24. [No trespassing notices.]**

Whenever the owner or lessee of any mining property in the state of New Mexico shall desire to operate the same and to prevent trespassers from entering thereon, such owner or lessees [lessee] may post notices in English and Spanish in at least three public places upon said premises, warning all persons from entering upon said property without permission of the owner or lessee or his or their authorized agent or superintendent, which notices shall describe the boundaries of said property.

**History:** Laws 1905, ch. 28, § 1; Code 1915, § 3516; C.S. 1929, § 88-703; 1941 Comp., § 67-218; 1953 Comp., § 63-2-18.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For publication in lieu of posting, see 14-11-12 NMSA 1978.

**Applies only when property operated.** — This section and the penalty provision contemplate the posting of mining property only in case the property is being operated. One making delivery of goods ordered by a tenant in dwelling house on the property is not liable to the penalty. *State v. Vincioni*, 1925-NMSC-009, 30 N.M. 472, 239 P. 281.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 379, 380, 381.

Trespass by lessee, liability of lessor of mining property to true owner, 127 A.L.R. 1020.

Injunction against repeated or continuing trespasses on real property, 60 A.L.R.2d 310.

Recovery for unauthorized geophysical or seismograph exploration or survey, 67 A.L.R.2d 444.

58 C.J.S. Mines and Minerals § 45.

### **69-3-25. [Penalty for trespass; exceptions.]**

After the posting of such notices, it shall be unlawful for any person to enter upon said premises without such permission, and any person violating the provisions of the preceding [preceding] section [69-3-24 NMSA 1978] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding fifty dollars [(\$50.00)] or imprisonment in the county jail for a period not exceeding thirty days, or both such fine and imprisonment, in the discretion of the court: provided, that this section shall not apply to any person or persons entering said premises in good faith for the purpose of ascertaining whether assessment work has been done, or for the purpose of making a location on government land.

**History:** Laws 1905, ch. 28, § 2; Code 1915, § 3517; C.S. 1929, § 88-704; 1941 Comp., § 67-219; 1953 Comp., § 63-2-19.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals § 131.

### **69-3-26. [Trespass against person rightfully in possession.]**

When any person, firm or corporation shall be lawfully and peaceably in possession of any mining claim in this state and shall have complied with all the requirements of law and regulations in force in the district in which said mining claim is situated, such persons, firm or corporation shall be deemed to be the rightful possessor of such mining claim and of the land included therein; and any person or the officer, agent or employe [employee] of any corporation who shall by force, intimidation, fraud or stealth, or in the temporary absence of the rightful possessor, enter upon such mining claim with intent to hold the same, or any part thereof, against the rightful possessor shall be considered a trespasser, and the judge of the district court for the district in which such claim is situated shall, upon the proper showing of such facts made by affidavit or by oral testimony upon a hearing ordered for that purpose, and upon the filing with the clerk of said district court of a good and sufficient bond, grant an order to show cause why a writ of injunction should not issue, enjoining and restraining such trespasser, his servants, agents and employes [employees] and any person associated with him, from in any manner interfering with the rightful possessor in the possession of such claim until the final disposition of such cause.

**History:** Laws 1897, ch. 58, § 5; C.L. 1897, § 2313; Code 1915, § 3475; C.S. 1929, § 88-213; 1941 Comp., § 67-220; 1953 Comp., § 63-2-20.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For ejectment, see 42-4-21 to 42-4-30 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 379, 380, 381.

Forcible entry and detainer or unlawful detainer as applicable in case of "lease" of minerals or oil or gas, 107 A.L.R. 661.

58 C.J.S. Mines and Minerals §§ 32, 33.

### **69-3-27. [Trespass by livestock; liability of owner.]**

The owner of any livestock in this state shall not be liable to the owner or his agent or [of] any mining or mineral claim or millsite for damages done by way of trespass upon the same by said livestock other than for actual damage done to buildings, tents, mining supplies or other personal property situated thereon: provided, that nothing in this section shall be construed as abridging or curtailing any of the existing rights of any such owner whenever any such mining or mineral claim or millsite may be used by the owners thereof, his tenant or lessee, as a livestock ranch.

**History:** Laws 1889, ch. 105, § 1; C.L. 1897, § 2327; Code 1915, § 3515; C.S. 1929, § 88-702; 1941 Comp., § 67-221; 1953 Comp., § 63-2-21.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for personal injury or death caused by trespassing or intruding livestock, 49 A.L.R.4th 710.

### **69-3-28. [Termination of lease; thirty days' notice.]**

Hereafter any lease upon any mine, or portion of a mine, not given in writing, for a specified time, shall not be terminated until after notice of the date of such termination, given by the lessor to the lessee, not less than thirty days prior to such date of termination.

**History:** Laws 1891, ch. 73, § 1; C.L. 1897, § 2358; Code 1915, § 3519; C.S. 1929, § 88-706; 1941 Comp., § 67-222; 1953 Comp., § 63-2-22.

## ANNOTATIONS

**Cross references.** — For release from record upon mineral lease forfeiture, see 70-1-3 to 70-1-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 221, 226 et seq.

Different tracts belonging to same owner and covered by single lease, duty to develop each tract, 11 A.L.R. 138.

What are minerals within deed, lease or license, 17 A.L.R. 156, 86 A.L.R. 983.

Mistake in lease, as ground for relief, 26 A.L.R. 472, 163 A.L.R. 878.

Time for payments necessary to exercise of option or avoidance of forfeiture when date fixed falls on Sunday, 29 A.L.R. 241.

Cancellation of lease of mineral rights because of forfeiture, 60 A.L.R. 922, 76 A.L.R.2d 721.

Covenant in mining lease to develop property as affected by provision for delay rental, 67 A.L.R. 221.

Distinction between "unless" and "or" lease, 67 A.L.R. 223.

Acquisition by assignee or sublessee of lessee in mining lease of rights inconsistent with those reserved by lessee, effect of, 69 A.L.R. 936.

Sublessee's right to take lease from lessor after expiration of lease to sublessor, 75 A.L.R. 847.

Estoppel by acquiescence in improvements by lessee to assert antagonistic title or interest, 76 A.L.R. 317.

Minimum obligation placed on lessee by provision in mining lease as maximum measure of his right, 76 A.L.R. 836.

Development of land and payment of royalty as affected by assignment of lease or sublease as to a portion of the land, 82 A.L.R. 1273.

Assignment of lease or sublease as to a portion of the land as affecting rights and duties as to development of the land, 82 A.L.R. 1279.

Surviving partner, or member of joint adventure, power of, to grant or sell mineral rights in land belonging to partnership or joint adventure, 89 A.L.R. 588.

Forcible entry and detainer, or unlawful detainer, as applicable in case of "lease" of minerals, 107 A.L.R. 661.

Buildings erected by tenant for use in connection with mining lease as trade fixtures, 107 A.L.R. 1155.

Mistake as to existence, practicability of removal or amount of minerals as ground for relief from lease, 163 A.L.R. 878.

Right of co-lessor in community oil or gas lease to lessen production and royalties under such lease by operations on land not covered thereby or released therefrom, 167 A.L.R. 1225.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

Right of mineral lessee to deposit top soil, waste materials and the like upon lessor's additional land not being mined, 26 A.L.R.2d 1453.

Construction and effect of provision in mineral lease excusing payment of mineral rent or royalty, 28 A.L.R.2d 1013.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Royalty as realty or personal property, 68 A.L.R.2d 728.

58 C.J.S. Mines and Minerals § 173.



### **69-3-29. [Terminating lease without notice; liability in damages; forfeiture of lease.]**

The lessor and the mine upon which any lease is terminated without such thirty days' notice, shall be liable to the lessee for all damages resulting from such termination: provided, that nothing in this or the preceding section [69-3-28 NMSA 1978] shall prevent the forfeiture and termination of any such lease without such notice when the lessee is working the leased ground in such manner as to damage the property.

**History:** Laws 1891, ch. 73, § 2; C.L. 1897, § 2359; Code 1915, § 3520; C.S. 1929, § 88-707; 1941 Comp., § 67-223; 1953 Comp., § 63-2-23.

### **69-3-30. [Stockholders; right of entry and examination of mines.]**

Any person owning stock in any corporation or company owning or operating mines in this state, shall at any time during the business hours of the day, have the right to enter in and upon any and all mines of such corporation or company, and all underground workings connected therewith for the purpose of examining the same.

**History:** Laws 1882, ch. 33, § 1; C.L. 1884, § 1572; C.L. 1897, § 2306; Code 1915, § 3472; C.S. 1929, § 88-210; 1941 Comp., § 67-224; 1953 Comp., § 63-2-24.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 235, 236.

58 C.J.S. Mines and Minerals § 256.

### **69-3-31. [Denial to stockholders of right of entry; penalty.]**

Every corporation or company or officer or agent of such corporation or company who shall refuse to allow upon demand, any person owning stock in such corporation or company, to enter such mines, as in the preceding section [69-3-30 NMSA 1978] provided, shall be guilty of a misdemeanor, and the corporation or company shall forfeit and pay to the party injured a penalty of one hundred dollars [(\$100)] for every such refusal, and all damages resulting therefrom.

**History:** Laws 1882, ch. 33, § 2; C.L. 1884, § 1573; C.L. 1897, § 2307; Code 1915, § 3473; C.S. 1929, § 88-211; 1941 Comp., § 67-225; 1953 Comp., § 63-2-25.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 235, 236.

58 C.J.S. Mines and Minerals § 241.

### **69-3-32. ["Stockholders" defined.]**

The words "any person owning stock" as used in the preceding sections [69-3-30, 69-3-31 NMSA 1978] shall be taken and considered to mean stockholders, whose names appear on the stock book of the company as owners of stock, and none others.

**History:** Laws 1884, ch. 45, § 1; C.L. 1884, § 1574; C.L. 1897, § 2308; Code 1915, § 3474; C.S. 1929, § 88-212; 1941 Comp., § 67-226; 1953 Comp., § 63-2-26.

#### **ANNOTATIONS**

**Compiler's notes.** — This section originally read: "Whenever the words 'any person owning stock' occur in an act entitled 'An act to compel mining companies to permit stockholders to examine company mines, etc.'; approved March 2nd, 1882, they shall be taken and considered to mean stockholders whose names appear on the stock book of the company as owners of stock, and none others." Compiled Laws 1884 and 1897 worded the section to read: "Whenever the words 'any person owning stock' occur in the above sections they shall be taken and considered to mean stockholders, whose names appear on the stock book of the company as owners of stock, and none others." The 1915 Code compilers provided the present wording.

## **ARTICLE 4**

### **Mining Regulation Law; Definitions**

#### **69-4-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-1 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to the definition of "mine", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-4-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 193, § 19 repealed 69-4-2 NMSA 1978, as enacted by Laws 1933, ch. 153, § 2, relating to the definition of "inspector", effective July 1, 1989.

#### **69-4-3. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-3 NMSA 1978, as enacted by Laws 1933, ch. 153, § 3, relating to the definition of "coal", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-4. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-4 NMSA 1978, as enacted by Laws 1933, ch. 153, § 4, relating to the definition of "pillar", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-5. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-5 NMSA 1978, as enacted by Laws 1933, ch. 153, § 5, relating to the definition of "working place", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-6. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-6 NMSA 1978, as enacted by Laws 1933, ch. 153, § 6, relating to the definition of "rock-dusting", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-7. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-7 NMSA 1978, as enacted by Laws 1933, ch. 153, § 7, relating to the definition of "rock-dust barrier", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-8. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-8 NMSA 1978, as enacted by Laws 1933, ch. 153, § 8, relating to the definition of "gas", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-9. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-9 NMSA 1978, as enacted by Laws 1933, ch. 153, § 9, relating to the definition of "permissible", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-4-10. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-4-10 NMSA 1978, as enacted by Laws 1933, ch. 153, § 10, relating to the definition of "operator", effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## ARTICLE 5 State Inspector of Mines

### 69-5-1. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1979, ch. 68, § 4, repealed 69-5-1 NMSA 1978, relating to the appointment of a state mine inspector. For present provisions, see 69-5-7 NMSA 1978.

### 69-5-2 to 69-5-6. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-5-2 to 69-5-6 NMSA 1978, as amended by Laws 1964 (1st S.S.), ch. 4, §§ 1 and 2, Laws 1971, ch. 234, § 6, Laws 1973, ch. 36, § 1, and Laws 1973, ch. 186, § 5 relating to the state mine inspector and deputy mine inspectors, effective July 1, 1987. For present comparable provisions, see 69-1-1, 69-1-6, and 69-8-1 to 69-8-15 NMSA 1978.

## **69-5-7. Duties; state mine inspector; director of mining and minerals.**

A. The state mine inspector shall:

- (1) develop and maintain mine safety and health training programs;
- (2) upon notification of any explosion or other catastrophic event at a mine in which the lives of mine workers are jeopardized or in which fatalities have occurred, allocate available resources within a twenty-four-hour time period to assist the mine operator in the rescue of persons and the subsequent accident investigation;
- (3) upon request from any operator, provide compliance assistance to include on-site audits to any mine or mine operator within the state to aid in the health and safety of mine workers and mine operators;
- (4) if a mine is found to be unsafe during an inspection, give written notice that the mine is unsafe to the owner, operator or manager of the mine with an explanation for the notice;
- (5) support and maintain a uniform system of mine bell signals and furnish a copy of the signal system to each underground mine operator within the state. Automated hoists shall be exempt from compliance with the bell signal requirements;
- (6) implement a program of certifying mine personnel as provided by law; and
- (7) make a report to the governor on or before June 1 of each year, which report covers the preceding calendar year and contains a review of the official acts of the inspector.

B. The director of the mining and minerals division of the energy, minerals and natural resources department shall:

- (1) cooperate with the state mine inspector to assist the state mine inspector in the performance of the state mine inspector's duties, including providing the state mine inspector with mine registration and other information collected by the department;
- (2) provide an annual resources report to the governor that shall include statistics of the number of persons employed in mining, the production and value thereof; and
- (3) have right of entry to the mines as may be required to fulfill the director's statutory duties.

History: Laws 1933, ch. 153, § 14; 1941 Comp., § 67-404; 1941, ch. 28, § 1; 1947, ch. 210, § 2; 1953, ch. 46, § 1; 1953 Comp., § 63-4-5; Laws 1963, ch. 229, § 1; 1973, ch. 218, § 2; 1987, ch. 234, § 50; 1989, ch. 193, § 2; 2007, ch. 301, § 2; 2007, ch. 302, § 2.

## ANNOTATIONS

**Cross references.** — For cooperation with bureau of geology and mineral resources, see 69-1-2 NMSA 1978.

For state mine inspector duties and status, see 69-1-6 NMSA 1978.

For inspector's duties under the Mining Safety Act, see 69-8-5 NMSA 1978.

**The 2007 amendment**, effective June 20, 2007, added Paragraphs (1) through (4) and (6) of Subsection A and exempted automated hoists from compliance with the bell signal requirements.

Laws 2007, ch. 301, § 2 and Laws 2007, ch. 302, § 2, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 2. See 12-1-8 NMSA 1978.

**The 1989 amendment**, effective July 1, 1989, added all of the catchline following "Duties"; inserted the present designation for Subsection A; redesignated former Subsections A through E as present Paragraphs (1) through (5) of Subsection A; deleted at the end of present Subsection A(5) "Statistics of the number of persons employed in and about the mines in the state and of the production and the estimated value thereof and a resume of the mining conditions generally existing in the state during that calendar year"; and added Subsection B.

**Inapplicable to water diversion project.** — A United States corps of engineers' shaft sinking operation for purposes of diverting waters of the Rio Grande and Chamita rivers would not come under the supervision and be governed by state mining provisions. 1955-56 Op. Att'y Gen. No. 56-6485.

**State inspector has no authority to reduce safety requirements.** 1959-60 Op. Att'y Gen. No. 59-50.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 237.

**69-5-8. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-5-8 NMSA 1978, as enacted by Laws 1953, ch. 82, § 3, relating to guards and safety belts around the seats of operated vehicles or equipment in underground mines, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-5-9. Inspections; right of entry; operator's representative.**

The state mine inspector is given authority at all reasonable times to:

A. enter and inspect any mine in the state in such manner as not to impede or obstruct the workings of the mine; and

B. require that the mine owner, operator or manager at all times furnish means necessary for such entry, inspection, examination and inquiry."

History: Laws 1933, ch. 153, § 15; 1941 Comp., § 67-405; 1953 Comp., § 63-4-7; 2007, ch. 301, § 3; 2007, ch. 302, § 3.

#### **ANNOTATIONS**

**The 2007 amendment**, effective June 20, 2007, eliminated the list of purposes for the inspection.

Laws 2007, ch. 301, § 3 and Laws 2007, ch. 302, § 3, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 3. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals §§ 237, 240.

### **69-5-10. Compliance assistance visit record; operator's copy.**

The state mine inspector shall make an entry of record in the state mine inspector's office of each compliance assistance visit and shall furnish the operator a copy thereof.

History: Laws 1933, ch. 153, § 16; 1941 Comp., § 67-406; 1953 Comp., § 63-4-8.; 2007, ch. 301, § 4; 2007, ch. 302, § 4.

#### **ANNOTATIONS**

**The 2007 amendment**, effective June 20, 2007, required the state mine inspector to furnish a copy of the record of each compliance assistance visit to the mine operator.

Laws 2007, ch. 301, § 4 and Laws 2007, ch. 302, § 4, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 4. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 237.

### **69-5-11. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-5-11 NMSA 1978, as enacted by Laws 1933, ch. 153, § 17, relating to duty of operator to admit inspector, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-5-12. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-5-12 NMSA 1978, as amended by Laws 1953, ch. 82, § 2, relating to office, fixtures and equipment and traveling expenses for the state inspector of mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

### **69-5-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-5-13 NMSA 1978, as enacted by Laws 1933, ch. 153, § 19, relating to records; files; full-time occupation, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-5-14. Ordering dangerous conditions in mines removed or removal of workers from danger zones.**

When any mine or portion of a mine or machine, device, apparatus or equipment pertaining to a mine, in the judgment of the state mine inspector, is in so dangerous a condition from any cause or creates such a hazard as to jeopardize life or health, the state mine inspector shall at once direct the management or operator of the mine to remove the dangerous condition or safeguard the equipment. Should the state mine inspector find during inspection of the mine a dangerous condition existing in the mine that might cause loss of life or serious personal injury to the employees, the state mine inspector has the right to require the operator to immediately withdraw all persons from the dangerous places or from the entire mine. In the event the operator fails or refuses



to immediately comply with the requirements or instructions of the state mine inspector, the state mine inspector shall issue an order closing all or any portion of the mine to regular operations and notify a representative of the miners and the mine safety and health administration immediately.

History: Laws 1933, ch. 153, § 20; 1941 Comp., § 67-410; 1953 Comp., § 63-4-12; Laws 1961, ch. 108, § 1; 1973, ch. 218, § 3; 1989, ch. 193, § 3; 2007, ch. 301, § 5; 2007, ch. 302, § 5.

## ANNOTATIONS

**Cross references.** — For the federal Mine Safety and Health Act, see 30 U.S.C. § 801. The mine safety and health administration is a division of the federal department of labor.

**The 2007 amendment**, effective June 20, 2007, authorized the state mine inspector to issue an order closing all or part of a mine to regular operation and required the inspector to notify a representative of the miners and the mine safety and health administration.

Laws 2007, ch. 301, § 5 and Laws 2007, ch. 302, § 5, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 5. See 12-1-8 NMSA 1978.

**The 1989 amendment**, effective July 1, 1989, substituted "state mine inspector" for "inspector" in the first sentence, inserted "through the district attorney for the district in which the mine is located" in the last sentence and made minor stylistic changes throughout the section.

**Endangered health prerequisite to closing mine.** — In order to stop the operation of a mine, inspector must first determine that cause exists. Under this section, the determination must be that there is so dangerous a condition from any cause, as to jeopardize life or health. In advance of such a determination, there is no power to order a cessation of operation of a working mine. The same reasoning would obtain in the case of a mine which is proposed to be reactivated. It may be true that in such mines, generally, some cause would exist for recommendations and regulation and even an order that the operation of the mine be halted until conditions were corrected. 1955-56 Op. Att'y Gen. No. 56-6442.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 237.

**69-5-15. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-5-15 NMSA 1978, as enacted by Laws 1933, ch. 153, § 21, relating to summary report of mine conditions, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-5-16. Operator's compliance.**

The operator of every mine shall observe and comply with all orders, regulations and written notices issued by the state mine inspector or the director of the division of mining and minerals of the energy, minerals and natural resources department in accordance with their respective statutory duties.

**History:** Laws 1933, ch. 153, § 22; 1941 Comp., § 67-412; 1953 Comp., § 63-4-14; Laws 1989, ch. 193, § 4.

### **ANNOTATIONS**

**The 1989 amendment**, effective July 1, 1989, added the present catchline, inserted ", regulations", and substituted all of the language following "inspector" for "in accordance with the provisions of this act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 237.

### **69-5-17. Fatal and serious mine accidents; assistance; investigation; notification; civil penalty.**

A. The state mine inspector shall proceed immediately upon notification to the site of any mine accident causing the loss of life or requiring activation of a mine rescue team and shall assist in the rescue of persons within the mine. The state mine inspector shall participate in the accident investigation with any other federal, state and local agency and company representatives.

B. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice within thirty minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the particulars of the accident.

C. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law.

D. As used in this section, "accident" means "accident" as provided in Section 69-8-2 NMSA 1978.

E. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of the mine if it is determined that the

operator failed to give immediate notice as required in this section. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

F. The penalties imposed by the state mine inspector for violations of this section shall be derived from criteria-based penalty points. A penalty conversion table developed by the state mine inspector shall serve as a guide for determining penalty assessments.

G. A person who receives a notice of violation that includes a penalty assessment under this section may, within twenty days after receipt of the notice, submit a written petition to the state mine inspector to review the notice. Within sixty days after receipt of the petition, the state mine inspector shall issue a final order upholding, amending or rescinding the notice. Within twenty days after the date of notice of the final order by the state mine inspector, a person who is the subject of the notice may file a written appeal of the order with the mining safety board. The mining safety board shall adopt rules to govern the appeal process.

History: Laws 1933, ch. 153, § 23; 1941 Comp., § 67-413; 1953 Comp., § 63-4-15; Laws 1985, ch. 68, § 1; 2006, ch. 102, § 2; 2006, ch. 106, § 2; 2007, ch. 301, § 6; 2007, ch. 302, § 6; 2010, ch. 20, § 1; 2015, ch. 107, § 1.

## ANNOTATIONS

**The 2015 amendment**, effective July 1, 2015, amended the definition of "accident" by referencing the amended definition of accident in Section 69-8-2 NMSA 1978; and in Subsection D, deleted "30 C.F.R. 50.2" and added "Section 69-8-2 NMSA 1978".

**The 2010 amendment**, effective May 19, 2010, added Subsection G.

**The 2007 amendment**, effective June 15, 2007, required the state mine inspector to participate in the accident investigation with federal, state and local agency and company representatives and added Subsection F.

**The 2006 amendment**, effective March 7, 2006, changed "imminent danger" to "requiring activation of a mine rescue team" in Subsection A; added Subsection B to provide for notice to the mine accident emergency operations center; added Subsection C to provide that nothing shall relieve the operator of reporting and notification requirements under federal law; added Subsection D to define "accident"; and added Subsection E to provide for civil penalties for failure to give notice and for waiver of civil penalties.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 237.

## **69-5-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 68, § 5 repealed 69-5-18 NMSA 1978, as enacted by Laws 1933, ch. 153, § 24, as amended, relating to hearings in regard to fatal mine accidents, effective April 1, 1985.

## **69-5-19 to 69-5-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-5-19 to 69-5-21 NMSA 1978, as enacted by Laws 1945, ch. 21, § 5 and Laws 1959, ch. 225, § 2 and as amended by Laws 1973, ch. 186, § 6, relating to the deputy state inspector of mines and the dust and mine gas engineer, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **69-5-22. Mine accident rapid response system.**

A. The state mine inspector shall:

(1) adopt rules requiring each mine operator to prepare an emergency notification plan for its operations and, upon the inspector's approval of the plan, shall retain a copy of each mine operator's emergency notification plan at the emergency operations center; and

(2) establish and maintain the mine accident emergency operations center as the primary state government communications center for dealing with mine accidents that:

(a) provides emergency assistance and response coordination for mine accidents or emergencies; and

(b) is accessible twenty-four hours a day, seven days a week, at a statewide telephone number established and designated by the inspector.

B. Upon receipt of an emergency call regarding an accident, as defined in Section 69-5-17 NMSA 1978, the mine accident emergency operations center shall immediately notify the state mine inspector, who will ensure that the emergency notification plan for the appropriate mine is complied with.

C. In the event of an accident or recovery operation in or about a mine, the state mine inspector may coordinate the assignment of mine rescue teams to assist with needed rescues.

**History:** Laws 2006, ch. 102, § 1 and Laws 2006, ch. 106, § 1.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 2006, ch. 102, § 1 and Laws 2006, ch. 106, § 1, both effective March 7, 2006, enacted identical new sections.

### **69-5-23. Attorney general.**

The attorney general shall appoint a counsel as needed to support the enforcement of the state mine inspector's office and the duties of the state mine inspector and the bureau of mine safety.

**History:** Laws 2007, ch. 301, § 7 and Laws 2007, ch. 302, § 7.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 2007, ch. 301, § 7 and Laws 2007, ch. 302, § 7, both effective June 15, 2007, enacted identical sections.

## **ARTICLE 6**

### **Penalties and General Provisions Relating to All Mines**

#### **69-6-1. Penalties for violations by operator, official or employee of a mine, mill or smelter; injunctions.**

Unless otherwise provided by law, any violation of any provision of Chapter 69 NMSA 1978 by any operator, official, miner or other employee of a mine, mill or smelter is a misdemeanor and shall be punishable by a fine of not more than two hundred dollars (\$200) or by imprisonment for three months in the county jail or by both such fine and imprisonment. The district attorney may initiate action in the district court as he deems appropriate to bring about compliance with the statutes, rules, regulations or orders. The district court has jurisdiction to issue temporary or permanent restraining orders, including orders closing all or any portion of a mine to regular operations, or grant other appropriate equitable relief to assure compliance with the provisions of Chapter 69 NMSA 1978 or any applicable rule, regulation or order.

**History:** Laws 1933, ch. 153, § 307; 1941 Comp., § 67-2901; 1953 Comp., § 63-29-1; Laws 1961, ch. 108, § 2; 1989, ch. 193, § 5.

#### **ANNOTATIONS**

**The 1989 amendment**, effective July 1, 1989, substituted "Chapter 69 NMSA 1978" for "Chapter 63, New Mexico Statutes Annotated, 1953 Compilation" and made minor stylistic changes in the first sentence; deleted the former second sentence which read:

"It shall be the duty of the mine inspector to institute proceedings in the district or other proper courts in case of all such violations"; and substituted the present second and third sentences for the former third sentence, which read: "The state mining inspector may institute proceedings in the district court of the county within which any person charged with violating any of the provisions of Chapter 69, NMSA 1978, resides or maintains a place of business to enjoin such violation, and such court shall have jurisdiction to issue temporary or permanent restraining orders, including orders closing all or any portion of a mine to regular operations, or grant other appropriate equitable relief to assure compliance with the provisions of Chapter 69, NMSA 1978, or any applicable rules, regulation or order of the inspector".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 377 et seq.

58 C.J.S. Mines and Minerals § 131.

### **69-6-2. Right of appeal.**

Every owner, operator or employee of a mine has a right of appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1933, ch. 153, § 308; 1941 Comp., § 67-2902; 1953 Comp., § 63-29-2; Laws 1998, ch. 55, § 83; 1999, ch. 265, § 84.

#### **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".

**The 1998 amendment**, effective September 1, 1998, rewrote the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 269 et seq.

### **69-6-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-6-3 NMSA 1978, as enacted by Laws 1955, ch. 130, § 1, relating to trolley wires used in underground mine haulage

systems, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 7**

### **Ore; Mills and Smelters**

#### **69-7-1. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-7-1 NMSA 1978, as enacted by Laws 1889, ch. 103, § 1, relating to the record of ore receipts required, effective July 1, 1987. For present comparable provisions, see 69-7-2 NMSA 1978.

#### **69-7-2. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-2 NMSA 1978, as enacted by Laws 1889, ch. 103, § 2, relating to inspection by owner of stolen ores and filed affidavit, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-7-3. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-3 NMSA 1978, as enacted by Laws 1889, ch. 103, § 3, relating to penalty and damages for refusal to keep records, make proper entries or permit inspections, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-7-4. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-4 NMSA 1978, as enacted by Laws 1889, ch. 103, § 4, relating to failure or neglect to make inquiries for record or negligent entries or to keep record book, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-7-5. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-5 NMSA 1978, as enacted by Laws 1889, ch. 103, § 5, relating to purchaser of ore from illegal possessor of mine, deemed accessory, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-7-6. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-6 NMSA 1978, as enacted by Laws 1887, ch. 34, § 1, relating to employer's liability for lead poisoning of smelter employee, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-7-7. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-7-7 NMSA 1978, as enacted by Laws 1887, ch. 34, § 2, relating to failure to provide care of lead-poisoned employee, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## ARTICLE 8 Mining Safety

### 69-8-1. Short title.

Chapter 69, Article 8 NMSA 1978 may be cited as the "Mining Safety Act".

**History:** 1953 Comp., § 63-31-1, enacted by Laws 1961, ch. 136, § 1; 2006, ch. 102, § 3; 2006, ch. 106, § 3.

## ANNOTATIONS

**The 2006 amendment,** effective March 7, 2006, added the statutory reference to the short title.

Laws 2006, ch. 102, § 3 and Laws 2006, ch. 106, § 3, both effective March 7, 2006, enacted identical amendments this section. The section was set out as amended by Laws 2006, ch. 106, § 3. See 12-1-8 NMSA 1978.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 255, 256, 257.

58 C.J.S. Mines and Minerals § 229.

## **69-8-2. Definitions.**

As used in the Mining Safety Act:

A. "accident" means:

- (1) in the case of a surface mine:
  - (a) a death of an individual at a mine;
  - (b) an injury that has a reasonable potential to cause death to an individual at a mine;
  - (c) an entrapment of an individual that has a reasonable potential to cause death;
  - (d) an unplanned ignition or explosion of a blasting agent or an explosive;
  - (e) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank; or
  - (f) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs; or
- (2) in the case of an underground mine or the surface areas of an underground mine:
  - (a) a death of an individual at a mine;
  - (b) an injury that has a reasonable potential to cause death to an individual at a mine;
  - (c) an entrapment of an individual that has a reasonable potential to cause death;
  - (d) an unplanned inundation of a mine by a liquid or gas;
  - (e) an unplanned ignition or explosion of gas or dust;

(f) an unplanned mine fire in an underground mine that is not extinguished within ten minutes of discovery or an unplanned mine fire within the surface area of an underground mine that is not extinguished within thirty minutes;

(g) an unplanned ignition or explosion of a blasting agent or an explosive;

(h) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

(i) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour;

(j) an unstable condition at an impoundment, refuse pile or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area or failure of an impoundment, refuse pile or culm bank;

(k) damage to hoisting equipment in a shaft or slope that endangers an individual; or

(l) an event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs;

B. "employee" means any person suffered or permitted to work in a mining occupation or pursuit by an employer;

C. "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee to a place of employment;

D. "inspector" means the state mine inspector;

E. "mine" means:

(1) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground;

(2) private ways and roads appurtenant to an area described in Paragraph (1) of this subsection; and

(3) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools or other property, including impoundments, retention dams and tailings ponds, on the surface or underground, used in, to be used in or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities;

F. "mining occupations or pursuits" includes mining, smelting and the operation of a mill, ore house or treatment plant in which ore or rock is processed;

G. "operator" means:

(1) any owner, lessee or other person that operates, controls or supervises a coal mine; or

(2) the person, partnership, association or corporation, or subsidiary of a corporation, operating a metal or nonmetal mine and owning the right to do so, including any agent thereof charged with responsibility for the operation of such mine;

H. "person" means an individual, partnership, association, corporation, business trust, receiver, trustee, legal representative or successor to any of the foregoing; and

I. "place of employment" means any place in or about which the employee is suffered or permitted to work.

History: 1953 Comp., § 63-31-2, enacted by Laws 1961, ch. 136, § 2; 2007, ch. 301, § 8; 2007, ch. 302, § 8; 2015, ch. 107, § 2.

## ANNOTATIONS

**Cross references.** — For duties of the state mine inspector, see 69-5-7 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, amended certain definitions in the Mining Safety Act; in the introductory sentence of Subsection A, after "'accident'", deleted "pursuant to 30 C.F.R. 50.2"; added the new introductory sentence in Paragraph (1) of Subsection A and redesignated former Paragraphs (1), (2) and (3) of Subsection A as Subparagraphs A(1)(a), A(1)(b) and A(1)(c), respectively; in Subparagraph A(1)(c), after "individual", deleted "for more than thirty minutes or"; deleted Paragraphs (4), (5) and (6) of Subsection A; redesignated former Paragraph (7) of Subsection A as Subparagraph A(1)(d); deleted Paragraphs (8) and (9) of Subsection A and redesignated former Paragraph (10) of Subsection A as Subparagraph A(1)(e); deleted Paragraph (11) of Subsection A and redesignated former Paragraph (12) of Subsection A as Subparagraph A(1)(f); in Subparagraph A(1)(f), after "occurs;", added "or"; added new Paragraph 2 of Subsection A; deleted Subsection B and redesignated former Subsection C as Subsection B; added new Subsections C and D and redesignated former Subsection D as Subsection E; in the introductory sentence of Subsection E, after "'mine'", deleted "pursuant to 30 C.F.R. 50.2"; added new Subsection F and redesignated former Subsections E, F and G as Subsections G, H and I, respectively; in the introductory sentence of Subsection G, after "'operator'", deleted "pursuant to 30 C.F.R. 50.2"; and deleted former Subsections H and I.

**The 2007 amendment**, effective June 20, 2007, added Subsections A, D and E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What is "mine" under Federal Mine Safety and Health Act of 1977 (30 U.S.C.S. § 801 et seq.), 63 A.L.R. Fed. 415.

### **69-8-3. Mining safety board.**

A. There is created a "mining safety board", referred to in Chapter 69, Article 8 NMSA 1978 as the "board", consisting of thirteen members. The members of the board shall represent and balance management and non-management employees at coal, metal-nonmetal and sand and gravel operations throughout New Mexico. The members of the board shall be appointed by the governor for terms of six years or until their successors are appointed and qualified. Vacancies shall be filled by appointment for the unexpired term by the governor in the same manner as the original appointments. Members absent for three or more consecutive meetings shall be considered inactive. The chair of the board shall ask the governor's office to appoint a new member to the board if a current member becomes inactive. The inspector and the secretary of energy, minerals and natural resources shall be ex-officio members of the board but shall have no vote.

B. Voting members of the board shall receive compensation pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978]. The inspector is authorized and directed to provide the board with such clerical, technical, legal and other assistance as shall be necessary to permit the board to perform its duties as provided in the Mining Safety Act [69-8-1 NMSA 1978].

History: 1953 Comp., § 63-31-3, enacted by Laws 1961, ch. 136, § 3; 1967, ch. 21, § 1; 1971, ch. 62, § 1; 1985, ch. 68, § 2; 1987, ch. 234, § 51; 2001, ch. 246, § 10; 2007, ch. 301, § 9; 2007, ch. 302, § 9.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 20, 2007, changed the name of the "mining safety advisory board" to the "mining safety board"; required members of the board to represent and balance management and nonmanagement employees at coal, metal-nonmetal and sand and gravel operations throughout New Mexico; specified that members become inactive if they are absent from three or more meetings; provide for the replacement of inactive members; provided that voting members shall receive compensation pursuant to the Per Diem and Mileage Act; and eliminated the requirement that the board hold two regular meetings each year.

Laws 2007, ch. 301, § 9 and Laws 2007, ch. 302, § 9, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 9. See 12-1-8 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in the first sentence in Subsection A.

**Members of mining safety advisory board are appointed** within the meaning of N.M. Const., art. IV, § 28. Thus, that provision prohibits appointing a member of the legislature to the mining safety advisory board. 1969 Op. Att'y Gen. No. 69-05 (rendered under prior law).

**Lawmaking functions validly delegated to board.** — The mining safety advisory board functions as an integral part of validly delegated lawmaking functions, exercising part of the sovereign power of the state. 1969 Op. Att'y Gen. No. 69-05 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

#### **69-8-4. Duties of the board; rulemaking.**

A. The board shall, after public hearing, adopt rules for the protection of the life and safety of employees and to carry out the intent of the Mining Safety Act. The board may appoint a special committee of employers, employees and experts to assist in the development of proposed rules. The inspector may make recommendations to the board as necessary to carry out the intent of the Mining Safety Act.

B. 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 rule 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 that have made a written request to the board or the inspector for advance notice of hearings.

C. The board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. The board may designate a hearing officer to take evidence in the hearing. Any person that provides comments shall be given written notice of the action of the board.

D. All rules and regulations shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

History: 1978 Comp., § 69-8-4, enacted by Laws 1985, ch. 68, § 3; 2007, ch. 301, § 10; 2007, ch. 302, § 10.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1985, ch. 68, § 3, repealed former 69-8-4 NMSA 1978, as enacted by Laws 1961, ch. 136, § 4, and enacted a new section.

**The 2007 amendment**, effective June 20, 2007, provided that the board shall adopt rules after public hearing and rewrote Subsections B and C.

Laws 2007, ch. 301, § 10 and Laws 2007, ch. 302, § 10, both effective June 20, 2007, enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 302, § 10. See 12-1-8 NMsA 1978.

**Purpose of mining safety advisory board** as specified in the act is to formulate and propose rules and regulations for safety in the mining industry and then to submit these proposed rules and regulations to the state inspector of mines. 1969 Op. Att'y Gen. No. 69-05 (rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

### **69-8-4.1. Duties of the board; appeal of certification actions by inspector.**

A. A person who is the subject of an action of the inspector pursuant to Subsection D of Section 69-14-4 NMSA 1978 may file a written petition for review before the board within twenty days after service of the notice provided in Subsection E of Section 69-14-4 NMSA 1978. Unless a timely petition for review is made, the decision of the inspector shall be final and not subject to judicial review.

B. If a timely petition for review is made, the board shall consider the petition within ninety days after receipt of the petition. The board shall notify the petitioner and the inspector of the date, time and place of the review.

C. The board shall review the record compiled before the inspector and shall allow any party to submit arguments. Prior to the date set for review, if a party shows to the satisfaction of the board that there is good reason to allow additional evidence on an issue being challenged, the board shall allow additional evidence to be taken. Based on the review of the evidence and the arguments of the parties, the board shall sustain, modify or reverse the action of the inspector.

D. The board shall notify the parties of the action taken by the board and the reasons for that action. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 2007, ch. 301, § 11 and Laws 2007, ch. 302, § 11.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 2007, ch. 301, § 11 and Laws 2007, ch. 302, § 11 enacted identical new sections, both effective June 20, 2007.

## **69-8-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-5 NMSA 1978, as enacted by Laws 1961, ch. 136, § 5, relating to duties of state mine inspector, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-8-5.1. Training fees.**

The inspector is authorized to charge fees to mining companies for mine safety training given to their personnel. The amount of the training fees shall be arrived at by the inspector after consultation with the board. Fees collected shall be deposited in the state mine inspector fund to assist in the funding of the inspector.

History: Laws 1986, ch. 54, § 1; 1989, ch. 193, § 6; 2010, ch. 20, § 2.

### **ANNOTATIONS**

**The 2010 amendment**, effective May 19, 2010, changed "state mine inspector" to "inspector", and "mining safety advisory board" to "board".

**The 1989 amendment**, effective July 1, 1989, deleted "and shall not exceed fifty dollars (\$50.00) per day per person" at the end of the second sentence, and substituted "state mine inspector fund" for "oil conservation fund" in the third sentence.

## **69-8-5.2. State mine inspector fund.**

There is created in the state treasury the "state mine inspector fund". All income and interest earned from the fund shall be credited to the general fund.

**History:** 1978 Comp., § 69-8-5.2, enacted by Laws 1989, ch. 193, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 193, § 20 made Laws 1989, ch. 193, § 7 effective July 1, 1989.

## **69-8-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 68, § 5 repealed 69-8-6 NMSA 1978, as enacted by Laws 1961, ch. 136, § 6, relating to the state mine inspector's rulemaking power, effective April 1, 1985. For present provisions as to rulemaking, see 69-8-4 NMSA 1978.

## **69-8-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-7 NMSA 1978, as enacted by Laws 1961, ch. 136, § 7, relating to notice of public hearings, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-8-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-8 NMSA 1978, as enacted by Laws 1961, ch. 136, § 8, relating to publication of effective date of rules, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-8-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-9 NMSA 1978, as enacted by Laws 1961, ch. 136, § 9, relating to variations, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-8-9.1. Standard of evaluation of variances; effect of variances granted.**

A. A person affected by a rule adopted under the Mining Safety Act [69-8-1 NMSA 1978] may petition the inspector for a variance.

B. A variance of a mandatory safety standard may be granted upon a determination that:

(1) an alternative method of achieving the result of the standard or rule exists that will at all times guarantee no less than the same measure of protection afforded by the standard or rule; or



(2) application of the standard or rule would diminish the safety of the affected miners.

C. All variances granted pursuant to this section shall have only future effect.

D. The inspector shall fully investigate any proposed variance with the requesting mine operator and the respective representative of miners, or a reasonable number of miners that will be affected by the proposed variance. The proposed variance shall be posted at the mine when submitted to the inspector to ensure that all miners have the opportunity to review and make comments to the inspector. Investigation shall begin within ninety days of receipt of the proposed petition, and the inspector shall make a final determination no longer than one hundred eighty days from the receipt of the proposed petition.

E. A person affected by the final decision of the inspector may appeal to the board within thirty days of the inspector's final decision. The appeal shall be in writing and sent to the board's chair. The board shall review the appeal within ninety days and may hold a hearing. The board shall make a final decision regarding the variance request.

F. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 2007, ch. 301, § 12 and Laws 2007, ch. 302, § 12.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 2007, ch. 301, § 12 and Laws 2007, ch. 302, § 12, both effective June 15, 2007, enacted identical sections.

#### **69-8-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-10 NMSA 1978, as enacted by Laws 1961, ch. 136, § 10, relating to right of entry and investigation, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-8-11. Right of entry and investigation.**

The state mine inspector or his authorized representative shall have the power and authority to enter and inspect such places, question such employees and investigate such facts, conditions, practices or matters as he may deem appropriate to determine whether any person has violated any provisions of the Mining Safety Act, or any rule or regulation issued thereunder.

**History:** 1953 Comp., § 63-31-11, enacted by Laws 1961, ch. 136, § 11.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 142.

#### **69-8-12, 69-8-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 193, § 19 repealed 69-8-12 and 69-8-13 NMSA 1978, as enacted by Laws 1961, ch. 136, §§ 12, 13 relating to enforcement and power as to witnesses, effective July 1, 1989.

#### **69-8-14. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-8-14 NMSA 1978, as enacted by Laws 1961, ch. 136, § 14, relating to court review, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### **69-8-15. Construction of act.**

Rules and regulations promulgated under the Mining Safety Act shall be construed as "statutory regulations" and any safety devices required by such rules and regulations shall be construed as "safety devices required by law" as such terms are used in the Workmen's Compensation Act [Chapter 52, Article 1 NMSA 1978].

**History:** 1953 Comp., § 63-31-15, enacted by Laws 1961, ch. 136, § 15.

#### **ANNOTATIONS**

**Severability.** — Laws 1961, ch. 136, § 16, provided for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 33, 35, 36, 37, 264.

58 C.J.S. Mines and Minerals § 229.

## **69-8-16. Underground mine safety requirements; penalties.**

In addition to requirements pursuant to federal law for underground mines:

A. a self-contained self-rescue device approved by the state mine inspector shall be worn by each person while underground in a coal mine or kept within the person's immediate reach while underground in a coal mine. The device shall be provided by the employer. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer or, alternatively, sufficient to allow the employee time to reach an additional self-contained self-rescue device. Each employer shall train each miner in the use of the device, and refresher training courses for all underground employees shall be held during each calendar year;

B. the employer shall provide caches of self-contained self-rescue devices throughout any underground mine in accordance with a plan approved by the state mine inspector. Each self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Battery-powered strobe lights or permanently activated strobe lights shall be affixed to each cache. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache, and luminescent direction signs shall be posted leading to each cache. The employer shall conduct weekly inspections of each cache and the affixed strobe lights to ensure operability;

C. a wireless emergency communication device or a two-way radio system approved by the state mine inspector and provided by the employer shall be available to each person in the active working section of an underground mine. Each employer shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The employer shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device or two-way radio system in active working sections of the underground mine;

D. a wireless tracking device approved by the state mine inspector and provided by the employer shall be worn by each person in an underground coal mine. In the event of an accident or other emergency, the tracking device shall be capable of providing the approximate physical location of each person who is underground. Each employer shall train each employee in the use of the device and provide refresher training courses for all underground employees during each calendar year. The employer shall install in or around the mine all equipment necessary to provide the approximate physical location of each person who is underground;

E. a person who, without the authorization of the employer or the state mine inspector, knowingly removes or attempts to remove any device or related equipment, required by this section and approved by the inspector, from a mine or mine site with the intent to permanently deprive the employer of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a

fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

F. the state mine inspector shall, within ninety days of the effective date of this section, approve an implementation plan for each mine covered by this section that includes a schedule for meeting the requirements of this section.

History: Laws 2006, ch. 102, § 4; 2006, ch. 106, § 4; 2008, ch. 12, § 1.

### **ANNOTATIONS**

**The 2008 amendment**, effective May 14, 2008, required self-contained self-rescue devices in coal mines.

#### **69-8-17. Employee rights.**

An employer shall not discharge or in any manner discriminate against, cause to be discharged or cause discrimination against an employee, representative of employees or applicant for employment in a mine subject to the Mining Safety Act [69-8-1 NMSA 1978] because the employee, representative of employees or applicant for employment has filed or made a complaint under or related to that act or Chapter 69, Article 5 NMSA 1978, including a complaint notifying the operator, the operator's agent or the state mine inspector of an alleged danger or a safety or health violation in a mine, or because the employee, representative of employees or applicant for employment has instituted or caused to be instituted a proceeding under or related to the Mining Safety Act or has testified or is about to testify in any such proceeding.

**History:** Laws 2006, ch. 102, § 5 and Laws 2006, ch. 106, § 5.

### **ANNOTATIONS**

**Duplicate laws.** — Laws 2006, ch. 102, § 5 and Laws 2006, ch. 106, § 5, effective March 7, 2006, enacted identical new sections. The section is set out as enacted by Laws 2006, ch. 106, § 5. See 12-1-8 NMSA 1978.

## **ARTICLE 9**

### **Consolidation of Small Tracts for Mineral Development**

#### **69-9-1. Declaration of policy.**

It is hereby declared to be in the public interest to provide a method whereby small tracts of land, which cannot economically be separately explored and mined, may be consolidated for the purposes of exploring, mining and conserving the natural resources

of this state under those circumstances where the mineral development of such tracts and the recovery and conservation of the natural resources of this state therein contained cannot otherwise be practically accomplished.

**History:** 1953 Comp., § 63-32-1, enacted by Laws 1967, ch. 33, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 44, 45.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 A.L.R.2d 434.

### **69-9-2. Excluded lands and minerals.**

No lands owned by the United States of America or the state of New Mexico or lying within the corporate limits of an incorporated village, city or town or held under patented or unpatented mining claim, and no allotted or tribal Indian lands shall be subject to the provisions of this act [69-9-1 to 69-9-10 NMSA 1978]. Neither shall this act be applicable to or affect rights to produce, mine or remove from the land oil, gas, coal or other hydrocarbons, or other materials mined primarily for their nonmetallic constituents such as potassium, phosphate, sodium or salt.

**History:** 1953 Comp., § 63-32-2, enacted by Laws 1967, ch. 33, § 2.

### **69-9-3. Definitions.**

As used in Chapter 69, Article 9 NMSA 1978:

A. "small tract" means a tract of land comprising two acres or less. Where contiguous tracts of two acres or less are owned in common, as for example common ownership of contiguous lots created by platting, each tract is nevertheless a small tract within this definition;

B. "ore" means uranium exclusively with the exception of associated minerals mined therewith;

C. "owner" means a person having an interest in or right to ore in place, or the mining and removal thereof, in or on a small tract included in the area covered by an application for consolidation under Chapter 69, Article 9 NMSA 1978;

D. "mining rights" means the right to explore for, mine, remove, own and dispose of ore; and

E. "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 63-32-3, enacted by Laws 1967, ch. 33, § 3; 1977, ch. 255, § 20; 1987, ch. 234, § 52.

#### **69-9-4. Administration.**

The secretary shall be vested with jurisdiction over the administration of this act [69-9-1 to 69-9-10 NMSA 1978] and shall have the power and the duty to make such rules, regulations and orders as may be necessary or proper to effectuate its purposes.

**History:** 1953 Comp., § 63-32-4, enacted by Laws 1967, ch. 33, § 4; 1977, ch. 255, § 21.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 241.

#### **69-9-5. Application for consolidation.**

Any person, corporation or other legal entity seeking consolidation of an area comprised wholly of small tracts and holding mining rights with respect to interests equal in the aggregate to at least sixty percent of the entire mineral estate (insofar as it pertains to ore) in such area, may make written application for such consolidation to the secretary, which application shall include the following:

A. a plat of the area to be consolidated, which area shall consist of contiguous small tracts and shall not comprise more than a total of 660 acres;

B. a designation (which may be by showing such information on aforesaid plat) of the small tracts or interest therein, within the area with respect to which applicant holds mining rights and the terms and conditions of such rights; a copy of the form of mining lease on which applicant has obtained its leases or a majority thereof within the area to be attached as an exhibit to the application;

C. a designation respectively of the small tracts, or interests therein, within the area with respect to which:

- (1) the owners' names are known but their addresses are unknown;
- (2) the owners are unknown; and

(3) the owners' names and addresses are known but on whose interests applicant has not obtained mining rights; stating such owners' names and addresses so far as known to applicant;

D. an affidavit by the applicant or by an officer of the applicant if it be a corporation setting forth the following particulars:

(1) the efforts made to locate the owners within the area whose names or addresses are alleged to be unknown; and

(2) the efforts made to obtain mining rights with respect to the interest of each owner in the area whose name and address is known but from whom the applicant has not obtained such rights;

E. a statement concerning the proposed operations, their objects and the methods to be utilized;

F. a statement concerning the need for the proposed consolidation.

**History:** 1953 Comp., § 63-32-5, enacted by Laws 1967, ch. 33, § 5; 1977, ch. 255, § 22.

### **69-9-6. Hearing; notice; expenses.**

Upon receiving an application for consolidation under this act [69-9-1 to 69-9-10 NMSA 1978], the secretary shall set a date for hearing evidence with respect to such application. Notice of the hearing shall be given to all owners by publication once a week for four consecutive weeks in a newspaper of general circulation published in the county where the area to be consolidated is situated and, as to those owners for whom applicant has an address, by mailing by certified mail return receipt requested within five days after the date of first publication a copy of the notice as published to such owners at their respective addresses reflected in applicant's records. The last publication shall be at least ten days prior to the date set for the hearing. The notice shall describe the area sought to be consolidated, giving the section and the township, range and county and shall state generally the nature of the proceeding and the objects thereof.

In the event there is no newspaper of general circulation published in the county where the area to be consolidated is situated, notice shall be given in such manner as the secretary shall direct. The applicant shall pay all expenses incurred by the secretary in connection with an application for consolidation under this act.

**History:** 1953 Comp., § 63-32-6, enacted by Laws 1967, ch. 33, § 6; 1977, ch. 255, § 23.

### **69-9-7. Findings prerequisite to consolidation.**

The secretary shall order consolidation of an area comprised of small tracts pursuant to application filed under this act [69-9-1 to 69-9-10 NMSA 1978] if he finds that:

- A. proper notice of said hearing has been given as required by this act;
- B. mineral development of the small tracts in the area to be consolidated on a separate and individual basis would be uneconomic and impractical;
- C. the area set out in the application or such other area as determined by the secretary comprises an appropriate unit for the purposes set out herein;
- D. consolidation of the area is needed to induce mineral exploration and potential mineral development of the area, will avoid waste of natural resources and will protect the correlative rights of all who have interests in the area;
- E. the proposed operations are feasible and in accord with good industry practices;
- F. the applicant has made diligent and good faith effort to locate all owners in the area and to obtain mining rights as to their interests but despite the applicant's efforts, there remain owners in the area who are unknown or whose addresses are unknown or from whom applicant has not obtained mining rights; and
- G. the applicant holds mining rights with respect to interests equal in the aggregate to at least sixty percent of the entire mineral estate (so far as it pertains to ore) in the area.

**History:** 1953 Comp., § 63-32-7, enacted by Laws 1967, ch. 33, § 7; 1977, ch. 255, § 24.

### **69-9-8. Effect of order.**

An order of consolidation entered by the secretary pursuant to this act [69-9-1 to 69-9-10 NMSA 1978] shall, as to each small tract or interest therein, within the consolidated area on which applicant does not otherwise hold the mining rights, effectuate a mining lease to applicant from the owner of such tract, or interest therein, granting applicant mining rights thereon effective as of the date of the first publication of the notice of hearing on the application for consolidation.

The terms and provisions of the leases so granted to applicant shall be stated in the order and shall correspond to those contained in the form of mining lease attached to the application, except for such changes therefrom as the secretary may in his order determine to be required in order to effectuate the intents and purposes of this act, and provided that for purposes of such leases:



A. if operations are being conducted anywhere on the consolidated area, it shall be considered that operations are being conducted on each tract within the consolidated area;

B. if ore is produced from any part of the consolidated area (ore produced, saved and removed from the consolidated area being hereinbelow called "area production"), it shall be considered as though production of ore is had from each tract within the consolidated area and there shall be allocated to each such tract, as its share of area production, that part of the area production which bears the same ratio to the whole amount of such area production as the ratio that the number of surface acres in said tract bears to the total number of surface acres in the consolidated area; and unless the secretary shall determine and make another allocation which is more equitable in the protection of the correlative rights of the interested parties; and

C. each owner in a small tract within the consolidated area whose interest is under lease granted pursuant to this act shall receive in lieu of any other royalties a royalty as the same shall be fixed by the terms of the lease.

**History:** 1953 Comp., § 63-32-8, enacted by Laws 1967, ch. 33, § 8; 1977, ch. 255, § 25.

### **69-9-9. Approval by district court.**

The order of the secretary shall be effective when approved by the district court for the county in which the consolidated area is located. Notice of hearing in the district court shall be given in the same manner as required for notice of hearing before the secretary, as specified in Section 69-9-6 NMSA 1978.

**History:** 1953 Comp., § 63-32-9, enacted by Laws 1967, ch. 33, § 9; 1977, ch. 255, § 26.

### **69-9-10. Money placed in suspense; escheat.**

Any money payable to unknown owners or to owners whose addresses are unknown under leases effectuated by an order of consolidation pursuant to this act [69-9-1 to 69-9-10 NMSA 1978] shall be placed in suspense with the state treasurer who shall hold said money for payment upon demand and proof of ownership. Any money held in suspense for a period of ten years or longer shall be handled pursuant to the Uniform Disposition of Unclaimed Property Act [repealed].

**History:** 1953 Comp., § 63-32-10, enacted by Laws 1967, ch. 33, § 10.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The Uniform Disposition of Unclaimed Property Act was compiled as

Chapter 7, Article 8 NMSA 1978 before being repealed in 1997. For comparable provisions, see Chapter 7, Article 8A NMSA 1978.

**Severability.** — Laws 1967, ch. 33, s. 11, provided for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 10**

### **Mineral Resources Development**

#### **69-10-1. Short title.**

This act [69-10-1 to 69-10-4 NMSA 1978] may be cited as the "Mineral Resources Development Act."

**History:** 1953 Comp., § 63-33-1, enacted by Laws 1967, ch. 254, § 1.

#### **69-10-2. Public policy.**

The legislature finds and declares that:

A. the exploitation of New Mexico's mineral resources provides an opportunity for highly paid jobs for New Mexicans;

B. the successful exploitation of minerals shall be encouraged by the state of New Mexico;

C. New Mexico has been very successful in the past in exploiting minerals with visual observational methods applied to the surface of the ground; and

D. New Mexico has now reached the stage where future exploitation of minerals must proceed on the basis of the intensive application of modern technology. The immediate need is for the assembly of known data on mineral resources by mineral resource economists in order to make it possible to point to the areas offering the highest probability of successful exploitation of these resources.

**History:** 1953 Comp., § 63-33-2, enacted by Laws 1967, ch. 254, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 4.

#### **69-10-3. Technological studies; economist.**

New Mexico institute of mining and technology is directed to use its mineral resource economist to undertake studies aimed at developing technology which will make

possible the profitable exploitation of New Mexico's mineral resources. This effort should be aimed initially at those minerals development opportunities which offer the best hope of successful exploitation and the creation of the greatest number of jobs. When a profit opportunity has been developed, the mineral resource economist shall make this information available to the secretary of the economic development department.

**History:** 1953 Comp., § 63-33-3, enacted by Laws 1967, ch. 254, § 3; 1977, ch. 247, § 168; 1983, ch. 296, § 26; 1991, ch. 21, § 41.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "the economic development department" for "commerce and industry department" in the final sentence.

#### **69-10-4. Development.**

It shall be the responsibility of the department of development [economic development division] to locate suitable private enterprises and interest them in the development of the profit opportunity uncovered by the minerals [mineral] resource economist.

**History:** 1953 Comp., § 63-33-4, enacted by Laws 1967, ch. 254, § 5.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Department of development.** — See 69-10-3 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 4.

## **ARTICLE 11**

### **Coal Mines; Registration and Statistical Information**

#### **69-11-1. Registration of coal mines and statistics required.**

A. Each coal mining operation in the state shall register with the mining and minerals division of the energy, minerals and natural resources department annually and upon start of operations. The registration shall include:

- (1) the name of the operation;

- (2) post office address;
- (3) the name of the operator or person in charge; and
- (4) the character of operation such as the mineral produced or sought.

B. The mining and minerals division shall provide a copy of the registration to the state mine inspector.

**History:** Laws 1933, ch. 153, § 25; 1941 Comp., § 67-501; 1953 Comp., § 63-5-1; Laws 1989, ch. 193, § 8.

### ANNOTATIONS

**Cross references.** — For state mine inspector, see N.M. Const., art. XVII, § 1.

**The 1989 amendment,** effective July 1, 1989, added the catchline; designated the formerly undesignated provisions as Subsection A, restructuring the former single sentence into two sentences, substituting the present language of the first sentence for "Each coal mine or mining operation in the state of New Mexico shall register with the state mine inspector annually before the first of August of each year", and making minor stylistic changes throughout the subsection; and added Subsection B.

**Law reviews.** — For article, "The Making of Federal Coal Policy: Lessons for Public Lands Management From a Failed Program, An Essay and Review," see 25 Nat. Resources J. 349 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 259.

58 C.J.S. Mines and Minerals § 382.

### **69-11-2. Annual information to be furnished; confidential data.**

A. Each mine or mining operation shall furnish to the mining and minerals division of the energy, minerals and natural resources department each year information regarding production and value of production, persons employed, mining equipment and methods and any other information as may be reasonably required for the previous calendar year on blank forms to be furnished the operator for this purpose.

B. Any information regarding production and value of production of individual mines is to be held confidential and not published unless agreed to by the operator, except that the mining and minerals division may reveal such information to:

- (1) the taxation and revenue department for use in auditing or assessing taxpayers. The taxation and revenue department and its employees are subject to the

provisions of this section with respect to any information acquired from the inspector;  
and

(2) the state mine inspector; provided that concerning any information so obtained, the state mine inspector shall be subject to the provisions of Section 71-2-8 NMSA 1978.

**History:** Laws 1933, ch. 153, § 26; 1941 Comp., § 67-502; 1953, ch. 47, § 1; 1953 Comp., § 63-5-2; Laws 1963, ch. 229, § 2; 1971, ch. 276, § 1; 1973, ch. 218, § 4; 1979, ch. 325, § 1; 1987, ch. 234, § 53; 1989, ch. 193, § 9.

### ANNOTATIONS

**The 1989 amendment**, effective July 1, 1989, deleted "state mine inspector" following "furnished" in the catchline; in Subsection A substituted "mining and minerals division of the energy, minerals and natural resources department" for "state mine inspector on or before February 15 of", twice deleted "estimated" preceeding "production", and deleted "by the inspector" following "operator"; in the introductory paragraph of Subsection B substituted "unless agreed to by the operator except that the mining and minerals division" for "by the state mine inspector unless agreed to by the operator, except that the inspector"; and substituted "state mine inspector" for "secretary of energy, minerals and natural resources" near the beginning of Subsection B(2) and "state mine inspector" for "secretary and employees of the energy, minerals and natural resources department" near the end of that subsection.

**The 1987 amendment**, effective July 1, 1987, in Subsection B(2), substituted "energy, minerals and natural resources" for "energy and minerals" both places it appears and made minor changes in language throughout the section.

**The 1979 amendment** inserted "state" preceding "mine inspector" in the catchline and near the beginning of Subsection A, designated the previously undesignated two paragraphs as Subsections A and B, rewrote and designated a portion of the first sentence and the second sentence in the former second paragraph as Subsection B(1), substituting "the taxation and revenue department" for "the bureau of revenue and the property tax appraisal department," and added Subsection B(2).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 382.

### 69-11-3. Furnishing requested data.

The mine operator shall, at any time upon written request, furnish any reasonable information or data desired by the mining and minerals division of the energy, minerals and natural resources department.

**History:** Laws 1933, ch. 153, § 27; 1941 Comp., § 67-503; 1953 Comp., § 63-5-3; Laws 1989, ch. 193, § 10.

### ANNOTATIONS

**The 1989 amendment**, effective July 1, 1989, added the catchline and substituted all of the language beginning with "written request" for "the mine inspector's written request, furnish any reasonable information or data desired by the mine inspector".

**Inspector may require notice before reactivation of mine.** Under this section, the inspector could require that the operator or owner of a mine that is proposed to be reactivated give notice of the contemplated reactivation with such other information as inspector might desire. Under this statute inspector could promulgate a regulation requiring that notice of this type be given a reasonable time prior to the reactivation by the mine owners or operators so that inspector could plan inspections accordingly. 1955-56 Op. Att'y Gen. No. 56-6442 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 382.

## ARTICLE 12

### General Duties of Coal Mine Operators

#### 69-12-1. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-12-1 NMSA 1978, as enacted by Laws 1933, ch. 153, § 28, relating to safety measures, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

#### 69-12-2. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-12-2 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to presence of official with final authority required, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-12-3. Mine maps; scale and contents; distribution; final survey required.**

A. The owner of every underground coal mine shall have made by a competent surveyor a clear and accurate map showing the surface plant and the underground workings of the mine. The map shall be on a scale of not more than two hundred feet to the inch and shall bear the name of the mine, its location as to county, township and section, the name of the company, owner, the north point, the scale to which the map is drawn and the certificate of the surveyor as to the accuracy and date of the survey. The mine map shall be extended and corrected every year. True copies of the map and extensions and corrections thereof shall be provided, as follows: one copy of each map and plan shall be kept in the office of the mine; and one copy of each map shall be delivered to the mining and minerals division of the energy, minerals and natural resources department and shall become the property of the state and shall be kept at the office of the mining and minerals division. Unless the owner of the property gives written authorization, mine maps shall not be available to any person other than the state mine inspector or his clerks and the director of the mining and minerals division.

B. Whenever an underground mine is about to be closed or abandoned for an indefinite period, the owner shall have made a complete final survey of all workings not represented on the map of the mine and shall properly enter the results upon the map of the mine so as to show the exact relations of the most advanced workings to the boundary of the property and shall file a copy of same with the director of the mining and minerals division.

**History:** Laws 1933, ch. 153, § 30; 1941 Comp., § 67-603; 1953 Comp., § 63-6-3; Laws 1989, ch. 193, § 11.

#### **ANNOTATIONS**

**The 1989 amendment**, effective July 1, 1989, added the catchline, substituted "map" for "map or maps" and "mining and minerals division of the energy, minerals and natural resources department" for "mine inspector" throughout the section, deleted "filed in the office of the mine inspector" following "maps" in the last sentence of Subsection A, and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 382.

### **69-12-4. Mine abandonment; fencing; warning notices.**

Upon abandonment of a mine and thereafter, the owner or operator must effectively close or fence off all surface openings down which persons could fall or through which persons could enter. Upon or near all such safeguards, trespass warnings and

appropriate danger notices shall be posted. The director of the mining and minerals division of the energy, minerals and natural resources department may bring an action in the district court in which the mine is located to compel the safeguarding of an abandoned mine. In the event of an immediate danger to public health and safety, the director of the mining and minerals division may take all action necessary to safeguard the abandoned mine and recover reasonable costs for such work from the owner of the mine.

**History:** Laws 1933, ch. 153, § 31; 1941 Comp., § 67-604; 1953 Comp., § 63-6-4; Laws 1989, ch. 193, § 12.

### **ANNOTATIONS**

**The 1989 amendment**, effective July 1, 1989, added the catchline, inserted "and thereafter" in the first sentence, corrected a misspelling in the second sentence, and added the last two sentences.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 375.

### **69-12-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-12-5 NMSA 1978, as enacted by Laws 1933, ch. 153, § 32, relating to immediate notification of fatal mine accidents, fires and explosions, complete report and record of accidents, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-12-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-12-6 NMSA 1978, as enacted by Laws 1933, ch. 153, § 33, relating to report of serious conditions threatening loss of life or property, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-12-7. Accidents; written report.**

A report in writing shall be made to the state mine inspector of each mine accident. The report shall be made within one month of the date of the accident. Submitting a copy of the report required under the Federal Mine Safety and Health Act of 1977 to the inspector shall satisfy the requirements of Chapter 69 NMSA 1978.



History: Laws 1933, ch. 153, § 34; 1941 Comp., § 67-607; 1953 Comp., § 63-6-7; 2007, ch. 301, § 13; 2007, ch. 302, § 13.

## ANNOTATIONS

**Cross reference.** — For the Federal Mine Safety and Health Act of 1977, see 30 U.S.C. § 801.

**The 2007 amendment**, effective June 15, 2007, eliminated the specification of the contents of accident reports and provided that the submission of a copy of the report required under the Federal Mine Safety and Health Act shall satisfy the requirements of Chapter 69 NMSA 1978.

Laws 2007, ch. 301, § 13 and Laws 2007, ch. 302, § 13, both effective June 15, 2007, enacted identical amendments to this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 382.

**69-12-8 to 69-12-18. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-12-8 to 69-12-18 NMSA 1978, as enacted by Laws 1889, ch. 126, §§ 1, 2, 4, and 5 and Laws 1937, ch. 45, §§ 1 to 6, and as amended by Laws 1937, ch. 86, § 1, relating to mine scales at coal mines employing coal miners, effective July 1, 1987. For present comparable provisions, see 69-5-7 NMSA 1978.

## ARTICLE 13 Duties of Coal Mine Employees

**69-13-1. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-13-1 NMSA 1978, as enacted by Laws 1933, ch. 153, § 35, relating to safety devices and orders, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

**69-13-2. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-13-2 NMSA 1978, as enacted by Laws 1933, ch. 153, § 36, relating to door, combustible device, explosive, missed shot, check, prop and lamp regulations, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### **69-13-3. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-13-3 NMSA 1978, as enacted by Laws 1933, ch. 153, § 37, relating to misdemeanors and punishment, intoxicating liquor regulations, destruction of machinery, passing danger signs and travel by haulageway, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## ARTICLE 14

### Qualifications and Duties of Coal Mine Officials

#### **69-14-1. Mine foremen; mine examiners; certification by state mine inspector.**

The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position.

History: Laws 1933, ch. 153, § 38; 1941 Comp., § 67-801; 1953 Comp., § 63-8-1; Laws 1973, ch. 218, § 5; 2007, ch. 301, § 14; 2007, ch. 302, § 14.

## ANNOTATIONS

**The 2007 amendment**, effective June 15, 2007, provided authority for the state mine inspector to certify, recertify and discipline persons who act as mine foremen.

Laws 2007, ch. 301, § 14 and Laws 2007, ch. 302, § 14, both effective June 15, 2007, enacted identical amendments to this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 378.

## **69-14-2. Methods of certification; certificates from other states; permits; examinations.**

The state mine inspector shall certify persons for the positions of mine foreman and mine examiner and issue certificates accordingly as follows:

A. the state mine inspector may recognize the foreman's or mine examiner's certificate issued by any other state and issue certificates accordingly;

B. the state mine inspector shall hold written examinations, at times and places to be given out at least thirty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates; and

C. the state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner shall submit a completed application at least thirty days prior to the examination date and shall meet the experience requirements of this section. Every person desiring to secure a mine foreman's certificate and not already in such position or not holding such certificate from another state shall first serve as a mine examiner for six months and shall have at least four years' coal mine experience to participate in the foreman's examination. A person who holds a certificate for surface mine foreman who wishes to take the underground foreman test must have a minimum of four years' experience in underground mine workings. A person who holds an underground mine foreman certificate and who wishes to participate in the surface mine foreman examination must have at least two years' surface mine experience.

History: Laws 1933, ch. 153, § 40; 1941 Comp., § 67-803; 1953 Comp., § 63-8-3; Laws 1973, ch. 218, § 6; 2007, ch. 301, § 15; 2007, ch. 302, § 15.

### **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, required an examination for certification as mine foreman and mine examiner; required applicants to submit an application thirty days prior to the examination date and to meet the experience requirements of this section; and specified the experience requirements for mine foreman certification.

Laws 2007, ch. 301, § 15 and Laws 2007, ch. 302, § 15, both effective June 15, 2007, enacted identical amendments to this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals §§ 236, 237.

## **69-14-3. Qualifications for certain positions.**

The mining safety board may, by rule, enact requirements, including requirements for applications, examinations and qualifications, for the certification of any mine personnel required to be qualified by state or federal law.

History: Laws 1933, ch. 153, § 41; 1941 Comp., § 67-804; 1953 Comp., § 63-8-4; Laws 1973, ch. 36, § 2; 2007, ch. 301, § 16; 2007, ch. 302, § 16.

## ANNOTATIONS

**Cross references.** — For age of majority, see 28-6-1 NMSA 1978.

**The 2007 amendment**, effective June 15, 2007, authorized the mine safety board to enact rules for the certification of mine personnel.

Laws 2007, ch. 301, § 16 and Laws 2007, ch. 302, § 16, both effective June 15, 2007, enacted identical amendments to this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 378.

### **69-14-4. Certification period; recertification; discipline; appeal.**

A. Certification for mine personnel shall be issued for a period of five years. All mine personnel certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each certified person has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of the change. Failure to provide current information may result in suspension of certification.

B. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector. The mining safety board shall adopt rules for requirements for recertification.

C. The state mine inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under Chapter 69 NMSA 1978 upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the state mine inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

- (3) has failed to maintain certification;
- (4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the state mine safety laws; or
- (5) has been disciplined in another state that certifies mine personnel.

D. If the state mine inspector contemplates taking any of the actions in Subsection C of this section for any of the reasons provided in that subsection, the state mine inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the state mine inspector has sufficient evidence that, if not rebutted or explained, will justify the state mine inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or person at least twenty days to submit written evidence to rebut or explain the allegations.

E. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection C of this section, the state mine inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act [69-8-1 NMSA 1978].

History: Laws 1933, ch. 153, § 42; 1941 Comp., § 67-805; 1953 Comp., § 63-8-5; Laws 1989, ch. 193, § 13; 2007, ch. 301, § 17; 2007, ch. 302, § 17; 2010, ch. 20, § 3.

### ANNOTATIONS

**Cross reference.** — For the Federal Mine Safety and Health Act of 1977, see 30 U.S.C. § 801.

**The 2010 amendment,** effective May 19, 2010, In Subsection A, in the second sentence, after "prior to", deleted "the effective date of this 2007 act" and added "June 15, 2007"; and in Subsection B, in the third sentence, after "state mine inspector", deleted "at least thirty days prior to the testing date"; and added the last sentence.

**The 2007 amendment,** effective June 15, 2007, added Subsections A through E.

**The 1989 amendment,** effective July 1, 1989, added the catchline, deleted "by the mine inspector" following "revoked" in the second sentence, substituted "hearing before the mining safety advisory board" for "trial before the mine inspector" in the third sentence, and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals §§ 378, 382.

## **69-14-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-5 NMSA 1978, as enacted by Laws 1933, ch. 153, § 43, relating to foreman, charge of underground operations, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-6 NMSA 1978, as enacted by Laws 1933, ch. 153, § 44, relating to inside mine workings, employees and qualifications and hours of duty of foreman, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-7 NMSA 1978, as enacted by Laws 1933, ch. 153, § 45, relating to absence of foreman, temporary appointment and notice to inspector, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-8 NMSA 1978, as enacted by Laws 1933, ch. 153, § 46, relating to daily inspection of working places, safety measures, air measurements, gas inspection and reports, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-9 NMSA 1978, as enacted by Laws 1933, ch. 153, § 47, relating to removal of dangerous conditions, notices and barriers, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-10 NMSA 1978, as enacted by Laws 1933, ch. 153, § 48, relating to duties of assistant mine foreman, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-11 NMSA 1978, as enacted by Laws 1933, ch. 153, § 49, relating to mine examiners, inspection before entrance of shift and gassy mines, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-12 NMSA 1978, as enacted by Laws 1933, ch. 153, § 50, relating to dangerous places, warning marks and barriers, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-13 NMSA 1978, as enacted by Laws 1933, ch. 153, § 51, relating to record of dangerous conditions and knowledge of officials, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-14 NMSA 1978, as enacted by Laws 1933, ch. 153, § 52, relating to inspection of shot holes, direction and condemnation of shot holes, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-15 NMSA 1978, as enacted by Laws 1933, ch. 153, § 53, relating to lawful blasting, tests for gas and qualification of shotfirer as mine examiner, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-16. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-16 NMSA 1978, as enacted by Laws 1933, ch. 153, § 54, relating to qualifications of shotfirer, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-17 NMSA 1978, as enacted by Laws 1933, ch. 153, § 55, relating to mine foreman acting as examiner and shotfirer, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **69-14-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-14-18 NMSA 1978, as enacted by Laws 1882, ch. 57, § 9, relating to overseer negligence and penalty, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 15**

### **Safety Regulations, Escapeways, Fire Control and Boiler Inspection in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

## **69-15-1 to 69-15-16. Repealed.**



## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-15-1 to 69-15-16 NMSA 1978, as enacted by Laws 1887, ch. 57, § 10 and Laws 1933, ch. 153, §§ 60, 62, 63, 65 to 67, and 70 and as amended by Laws 1973, ch. 218, §§ 13 to 18 and Laws 1977, ch. 42, § 1, relating to safety regulations in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## ARTICLE 16 Ladderways in Coal Mines

(Repealed by Laws 1987, ch. 234, § 84.)

**69-16-1 to 69-16-7. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-16-1 to 69-16-7 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 72 to 77, relating to ladderways in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## ARTICLE 17 Underground Haulage in Coal Mines

(Repealed by Laws 1987, ch. 234, § 84.)

**69-17-1 to 69-17-10. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-17-1 to 69-17-10 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 79 and 81 to 87 and as amended by Laws 1973, ch. 218, §§ 19 and 20, relating to underground haulage in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## ARTICLE 18 Hoisting Equipment in Coal Mines

**69-18-1 to 69-18-13. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-18-1 to 69-18-13 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 90, 94, and 100 and as amended by Laws 1973, ch. 218, §§ 21 to 30, relating to hoisting equipment in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **69-18-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-18-14 NMSA 1978, as enacted by Laws 1933, ch. 153, § 101, relating to hoist engineer qualifications, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 19 Explosives in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

## **69-19-1 to 69-19-19. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-19-1 to 69-19-19 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 102 to 106, 108, 109, and 113 to 120 and as amended by Laws 1973, ch. 218, §§ 32 to 35, relating to explosives in mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 20 Ventilation and Gases in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

## **69-20-1 to 69-20-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-20-1 to 69-20-21 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 122, 123, 125, 126, 128, 130 to 133, 138, 140, 141, and as amended by Laws 1967, ch. 18, § 1, Laws 1971, ch. 143, § 1, Laws 1973, ch. 218, §§ 36, 38, and 39, Laws 1973, ch. 263, § 1, Laws 1977, ch. 40, § 1, and Laws 1977, ch. 41, §§ 1, 2, relating to ventilation of gases in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 21**

### **Timbering in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

#### **69-21-1 to 69-21-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-21-1 to 69-21-6 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 142, 144, 146, and 147 and as amended by Laws 1973, ch. 218, §§ 40 and 41, relating to timbering in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 22**

### **Rock Dust in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

#### **69-22-1 to 69-22-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-22-1 to 69-22-6 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 148 and 150 to 152, and as amended by Laws 1967, ch. 19, § 1 and Laws 1977, ch. 39, § 1, relating to rock dust in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 23**

### **Electrical Equipment in Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

#### **69-23-1 to 69-23-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-23-1 to 69-23-19 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 157, 158, 160 to 165, 167 to 169, 171, and 173 to 175 and as amended by Laws 1971, ch. 144, § 1, Laws 1973, ch. 218, §§ 42, 43, and Laws 1977, ch. 33, § 1, relating to electrical equipment in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 24**

### **Coal Mines; General Provisions**

**69-24-1 to 69-24-14. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-24-1 to 69-24-14 NMSA 1978, as enacted by Laws 1912, ch. 80, § 12 and Laws 1933, ch. 153, §§ 176 to 181, 183 to 185, and 187, and as amended by Laws 1973, ch. 218, §§ 44 to 47, relating to general safety provisions in coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

#### **69-24-15. [Setting fire at or within mine; penalty.]**

Any person who shall willfully set on fire or ignite or cause to be set on fire or ignited any building equipment or anything whatsoever at or within any mine when any person is present in such mine at the time, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned for not less than five years nor more than twenty-five years, provided, however, that if the life of any person be lost through the ignition or causing to be ignited of any such building, equipment or other thing as in this section provided, the person setting or causing to be set such fire shall be deemed guilty of murder in the first degree, and shall be dealt with according to the law at the time in force prescribing the penalty for such offense.

**History:** Laws 1912, ch. 80, § 12; Code 1915, § 3513; C.S. 1929, § 88-626; 1941 Comp., § 67-1815; 1953 Comp., § 63-18-15.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 261 et seq., 390 et seq., 419.

58 C.J.S. Mines and Minerals § 377.

## **ARTICLE 25**

### **Coal Surfacemining**

(Repealed by Laws 1979, ch. 291, § 38.)

**69-25-1 to 69-25-21. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 291, § 38, repealed 69-25-1 to 69-25-21 NMSA 1978, relating to coal surface mining. For present provisions, see 69-25A-1 to 69-25A-35 NMSA 1978.

## **ARTICLE 25A**

### **Surface Mining**

#### **69-25A-1. Short title.**

Chapter 69, Article 25A NMSA 1978 may be cited as the "Surface Mining Act".

**History:** Laws 1979, ch. 291, § 1; 2000, ch. 4, § 19.

#### **ANNOTATIONS**

**Cross references.** — For regulation of hard rock mines, see the New Mexico Mining Act, Chapter 69, Article 36 NMSA 1978.

**The 2000 amendment,** effective February 15, 2000, substituted "Chapter 69, Article 25A NMSA 1978" for "This act".

**Law reviews.** — For article, "Promoting Economic Incentives for Environmental Protection in the Surface Mining Control and Reclamation Act of 1977: An Analysis of the Design and Implementation of Reclamation Performance Bonds," see 25 Nat. Resources J. 389 (1985).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mine tailings as real or personal property, 75 A.L.R.4th 965.

#### **69-25A-2. Purpose of act.**

It is the purpose of the Surface Mining Act to:

A. establish a program to protect society and the environment from the adverse effects of surface coal mining operations;

B. assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected against losses resulting from the improper conduct of such operations;

C. assure that surface mining operations are not conducted where reclamation as required by the Surface Mining Act is not feasible;

D. assure that surface coal mining operations are conducted in a manner which will protect the environment;

E. assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

F. assure that the coal supply essential to the nation's energy requirements and to its economic and social well-being is provided, and to strike a balance between protection of the environment and agricultural productivity and the nation's need for coal as an essential source of energy;

G. assure that appropriate procedures are provided for public participation in the development, revision and enforcement of regulations, standards, reclamation plans or programs established under the Surface Mining Act; and

H. establish a regulatory program appropriate to the terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations within New Mexico so that the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations shall rest with the state, and so that New Mexico may assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within this state, as contemplated by the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sections 1201 - 1328 (1977).

**History:** Laws 1979, ch. 291, § 2.

## **ANNOTATIONS**

### **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 designee;

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

D. "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the

surrounding terrain with all highwalls and spoil piles eliminated; water impoundments may be permitted where the director determines that they are in compliance with Paragraph (8) of Subsection B of Section 69-25A-19 NMSA 1978;

E. "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of the Surface Mining Act, in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement;

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

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

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

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

J. "permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land is to be covered by the operator's bond as required by Section 69-25A-13 NMSA 1978 and shall be readily identifiable by appropriate markers on the site;

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

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

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

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

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

P. "surface coal mining operations" means:

(1) activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of Section 69-25A-20 NMSA 1978 relating to surface operations and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining. These activities also include uses of explosives and blasting and in situ distillation or retorting, leaching or other chemical or physical processing and the cleaning, concentrating or other processing or preparation, including loading of coal at or near the mine site. Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 69-25A-16 NMSA 1978; and

(2) the areas upon which these activities occur or where the activities disturb the natural land surface. These areas also include any adjacent land, the use of which is incidental to any of the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to these activities;

Q. "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Surface Mining Act due to indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation of the permit or the Surface Mining Act due to indifference, lack of diligence or lack of reasonable care; and

R. "lignite coal" means consolidated lignitic coal having less than eight thousand three hundred BTUs per pound, moisture- and mineral-matter free.

**History:** Laws 1979, ch. 291, § 3; 1987, ch. 234, § 54.

## **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, in Subsection B, substituted "energy, minerals and natural resources" for "energy and minerals"; in Subsection D, substituted "69-25A-19 NMSA 1978" for "19 of the Surface Mining Act"; in Subsection J, substituted



"69-25A-13 NMSA 1978" for "13 of the Surface Mining Act"; in Subsection N, substituted "69-25A-12 NMSA 1978" for "12 of the Surface Mining Act"; in Subsection P, in Paragraph (1) in the first sentence substituted "69-25A-20 NMSA 1978" for "20 of the Surface Mining Act" and in the last sentence substituted "69-25A-16 NMSA 1978" for "16 of that act"; and made minor changes in language and punctuation throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

#### **69-25A-4. Coal surface mining commission; duties. (Repealed effective July 1, 2020.)**

A. The "coal surface mining commission" is created. The commission shall consist of:

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

(3) the secretary of environment or his designee;

(4) the chairman of the soil and water conservation commission or his designee;

(5) the director of the agricultural experiment station of New Mexico state university or his designee;

(6) the state engineer or his designee;

(7) the commissioner of public lands or his designee; and

(8) two public members who shall be appointed by the governor with the advice and consent of the senate. The public members shall have, by education, training or experience, expertise related to mining or mine reclamation.

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

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

D. A majority of the commission is a quorum for the transaction of business. However, no action of the commission is valid unless concurred in by at least three of the members present.

E. The commission shall perform those duties as specified in the Surface Mining Act relating to the promulgation of regulations and as specified in Section 69-25A-29 NMSA 1978 relating to appeals from the decisions of the director.

F. No member of the commission who performs a function or duty under the Surface Mining Act may have a direct or indirect financial interest in any activity undertaken by the commission.

G. The public members shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1979, ch. 291, § 4; 1993, ch. 157, § 1; 2001, ch. 246, § 11.

### ANNOTATIONS

**Delayed repeals.** — For delayed repeal, see 69-25A-36 NMSA 1978.

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, in Paragraph A(1), substituted "bureau of geology" for "bureau of mines" and inserted "of the New Mexico institute of mining and technology".

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "his designee" for "a member of his staff designated by him" in Paragraphs (1), (2), and (4) through (7), rewrote Paragraph (3), and added Paragraph (8); in Subsection E, substituted "Section 69-25A-29 NMSA 1978" for "Section 29 of that act"; and added Subsections F and G.

**State engineer.** — The "state engineer" is the director of the water resources division of the natural resources department. See 72-2-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 334 et seq.

### 69-25A-5. Regulations.

A. The commission shall adopt and file such reasonable regulations as are necessary to implement the Surface Mining Act and as are consistent with that act. Such regulations shall be concise and written in plain, understandable language and shall include regulations governing surface coal mining and the issuance of permits during the interim period following the effective date of that act and preceding the date which occurs eight months following the date upon which that act is approved as a part

of a state program within the meaning of Section 503 of the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C., Section 1253 (1977). In promulgating the interim regulations, the commission shall consider existing federal law relating to surface coal mining operations. The interim regulations shall govern surface coal mining operations of applicants and permittees during the interim period or until a permittee receives a permit issued pursuant to the Surface Mining Act which shall be valid beyond the interim period. Such regulations shall provide that permits issued during such interim period may be permits either as defined in Section 3 [69-25A-3 NMSA 1978] of the Surface Mining Act or as were previously issued pursuant to Laws 1972, Chapter 68 [repealed], as amended, and regulations issued pursuant to such laws. Such permits shall be subject to performance standard regulations promulgated pursuant to the Surface Mining Act.

B. Except for the persons having a permit to which Section 9 [69-25A-9 NMSA 1978] of the Surface Mining Act is applicable, no person shall engage in or carry out any surface coal mining operations during the interim period unless such person has first obtained a permit issued by the director pursuant to regulations promulgated for the interim period under Subsection A of this section.

**History:** Laws 1979, ch. 291, § 5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1972, Chapter 68, referred to in Subsection A, was formerly compiled as 69-25-1, 69-25-3 to 69-25-21 NMSA 1978 and was repealed by Laws 1979, ch. 291, § 38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 257, 260.

58 C.J.S. Mines and Minerals § 334 et seq.

### **69-25A-6. Procedure for adopting regulations.**

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

B. 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

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

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

D. The commission may designate a hearing officer to take evidence at the hearing.

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

F. No regulation, its amendment or repeal shall be effective until thirty days after it is filed, as required under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1979, ch. 291, § 6.

#### **ANNOTATIONS**

#### **69-25A-7. Petition to initiate regulations.**

A. After the commission has adopted the regulations required by the Surface Mining Act , any person may petition the commission to initiate a proceeding for the issuance, amendment or repeal of a rule under that act.

B. Such petitions shall be filed with the chairman of the commission and shall set forth the facts which it is claimed establish that it is necessary to issue, amend or repeal a regulation under the Surface Mining Act.

C. The commission may hold a public hearing or may conduct such investigation or proceeding as the commission deems appropriate in order to determine whether or not such petition should be granted.

D. Within ninety days after the filing of a petition described in Subsection A of this section, the commission shall either grant or deny the petition. If the commission grants such petition, the commission shall promptly commence an appropriate proceeding in accordance with the provisions of the Surface Mining Act. If the commission denies such petition, the commission shall so notify the petitioner in writing setting forth the reasons for such denial.

**History:** Laws 1979, ch. 291, § 7.

#### **ANNOTATIONS**

#### **69-25A-8. Director; duties.**

The director shall perform all duties specified in the Surface Mining Act to be performed by the director and shall exercise all powers of enforcement and administration arising under that act not otherwise expressly delegated to the commission. The director shall execute and administer the commission's regulations. The director shall coordinate his review and issuance of permits for surface coal mining and reclamation with any other state or federal permit process applicable to the proposed operations. Provided, that nothing in that act shall be construed to supersede the authority which any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction.

**History:** Laws 1979, ch. 291, § 8.

### **ANNOTATIONS**

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 334 et seq.

### **69-25A-9. General provisions pertaining to permits.**

A. No later than eight months from the date on which the Surface Mining Act is approved as part of a state program within the meaning of Section 503 of the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1253 (1977), no person shall engage in or carry out any surface coal mining operations unless such person has first obtained a permit issued by the director pursuant to Section 14 [69-25A-14 NMSA 1978] of the Surface Mining Act; provided, that a person conducting surface coal mining operations under a permit issued pursuant to Laws 1972, Chapter 68, as amended in effect upon the effective date of the Surface Mining Act or issued prior to the approval of a state program may conduct such operations beyond such period if an application for a permit has been filed in accordance with the provisions of that act, and the initial administrative decision has not been rendered.

B. All permits issued pursuant to the requirements of the Surface Mining Act shall be issued for a term not to exceed five years; provided, that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the director may grant a permit for the longer term. A successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue surface coal mining and

reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor's application is granted or denied.

C. A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years of the issuance of the permit; provided, that the director may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. Provided further, that with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface coal mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

D. Any valid permit issued pursuant to the Surface Mining Act shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and the renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), subsequent to fulfillment of the public notice requirements of Sections 17 and 18 [69-25A-17 and 69-25A-18 NMSA 1978] of that act unless it is established that and [any] written findings by the director are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of the Surface Mining Act or regulations promulgated thereunder;

(3) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the director might require pursuant to Section 13 [69-25A-13 NMSA 1978] of the Surface Mining Act; or

(5) any additional revised or updated information required by the director has not been provided. Prior to the approval of any renewal of permit, the director shall provide notice to the appropriate public authorities.

E. If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under the Surface Mining Act. Provided, that if the surface coal mining operations authorized by a permit issued

pursuant to that act were not subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 14 [69-25A-14 NMSA 1978] of that act by reason of complying with the proviso of Paragraph (5) of Subsection B of Section 14 [69-25A-14 NMSA 1978] of that act, then the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to Section 12 [69-25A-12 NMSA 1978] of that act shall not be subject to the standards contained in such subparagraphs.

F. Any permit renewal shall be for a term not to exceed the period of the original permit established by the Surface Mining Act. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

**History:** Laws 1979, ch. 291, § 9.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1972, Chapter 68, referred to in Subsection A, was formerly compiled as 69-25-1, 69-25-3 to 69-25-21 NMSA 1978 and was repealed by Laws 1979, ch. 291, § 38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 334 et seq.

### **69-25A-10. Permit application requirements.**

A. Each application for a surface coal mining and reclamation permit pursuant to the Surface Mining Act shall be accompanied by a fee as determined by regulation of the commission. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering and enforcing the permit. All fees collected by the director shall be deposited with the state treasurer to be placed in a special fund and are appropriated for expenditure by the director in administering that act. The director may develop procedures so as to enable the cost of the fee to be paid over the term of the permit.

B. The permit application shall be submitted in a manner satisfactory to the director and shall contain, among other things:

(1) the names and addresses of the permit applicant, every legal owner of record of the property (surface and mineral) to be mined, the holders of record of any leasehold interest in the property, any purchaser of record of the property under a real estate contract, the operator, if he is a person different from the applicant, and, if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) the names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area;

(3) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification and each pending application;

(4) if the applicant is a partnership, corporation, association or other business entity, the following where applicable: the names and addresses of every officer, partner, director or person performing a function similar to a director of the applicant, together with the name and address of any person owning, of record, ten percent or more of any class of voting stock of the applicant, and a list of all names under which the applicant, partner or principal shareholder previously operated a surface coal mining operation within the United States within the five-year period preceding the date of submission of the application;

(5) a statement of whether the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, has ever held a federal or state mining permit which, in the five-year period prior to the date of submission of the application, has been superseded or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of the applicant's advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, and which includes the ownership, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location of where the application is available for public inspection;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used and the equipment used or proposed to be used;

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

(9) an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right to enter and commence surface mining operations, and a statement of those documents upon which the applicant bases his legal right to enter and commence surface mining operations on the area affected and whether that right is the subject of pending court litigation. Provided, that nothing in the Surface Mining Act shall be construed as vesting in the director or the commission the jurisdiction to adjudicate property title disputes;



(10) the name of the watershed and location of any surface stream or tributary into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. Provided, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. Provided, that the permit shall not be approved until such information or comparable information developed by either a professional engineer registered in New Mexico or a professional hydrologist is available and is incorporated into the application;

(12) when requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds and the seasonal temperature ranges;

(13) accurate maps to an appropriate scale clearly showing the land to be affected as of the date of application and all types of information set forth on topographical maps of the United States geological survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant known archaeological sites existing on the date of application. Such a map or plan shall, among other things specified by the director, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area;

(14) cross-section maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a qualified professional engineer registered in New Mexico, with assistance from experts in related fields such as geology, land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information:

- (a) the nature and depth of the various strata of overburden;
- (b) the location of subsurface water, if encountered, and its quality;
- (c) the nature and thickness of any coal or rider seam above the coal seam to be mined;
- (d) the nature of stratum immediately beneath the coal seam to be mined;

(e) all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected;

(f) existing or previous surface mining limits;

(g) the location and extent of known workings of any underground mines, including mine openings to the surface;

(h) the location of aquifers;

(i) the estimated elevation of the water table;

(j) the location of spoil, waste or refuse areas and topsoil preservation areas;

(k) the location of all impoundments for waste or erosion control;

(l) any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and

(m) profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(15) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found and analysis of the chemical properties of such coal; the sulfur content of any coal seam; chemical analysis of potentially acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined, except that the provisions of this paragraph may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(16) for those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to regulations of the commission promulgated after consideration of standards established by the United States secretary of agriculture in order to confirm the exact location of such prime farmlands, if any; and

(17) information pertaining to coal seams, test borings, core samplings or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected. Provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

C. Upon a determination by the director that the anticipated annual production from all coal mining activities of an applicant will not exceed one hundred thousand tons, the

determination of probable hydrologic consequences required by Paragraph (11) of Subsection B of this section and the statement of the result of test borings or core samplings required by Paragraph (15) of Subsection B of this section shall, upon the written request of the applicant, be performed by a qualified public or private laboratory designated by the director and the cost of the preparation of the determination and statement shall be paid for by [the] energy and minerals department.

D. Each applicant for a permit shall submit to the director as part of the permit application a reclamation plan which shall meet the requirements of Section 12 [69-25A-12 NMSA 1978] of the Surface Mining Act.

E. Each applicant for a permit shall file a copy of his application for public inspection with the county clerk of the county or an appropriate public office approved by the director where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

F. Each applicant for a permit shall submit to the director as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Paragraph (15) of Subsection B of Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act.

G. Each applicant for a permit shall submit to the director a certificate of insurance or evidence of self-insurance as required by Section 11 [69-25A-11 NMSA 1978] of the Surface Mining Act.

**History:** Laws 1979, ch. 291, § 10.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 257, 260.

Statutory or contractual obligation to restore surface after strip or surface mining, 1 A.L.R.2d 575.

58 C.J.S. Mines and Minerals § 334 et seq.

### **69-25A-11. Public liability and self-insurance requirements.**

A. Each applicant for a permit shall submit to the director as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability policy in force for the surface coal mining and reclamation operations for which the permit is sought. The policy shall provide for personal injury and property damage protection in the amount required by Subsection C of this section.

B. The director may waive the requirement of Subsection A of this section, or may reduce the amount of such insurance, if the applicant demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process in New Mexico and a history of financial solvency and continuous operation, within or without New Mexico, sufficient for authorization to self-insure all or part of the amount required by Subsection C of this section; or the existence of other insurance maintained by the applicant and arising from an insurance exchange such as Lloyd's of London, a mutual insurance association or a reciprocal insurance association, provided that such other insurance coverage be legally enforceable within New Mexico, notwithstanding that some or all member companies of such associations or exchanges may not be companies authorized to do business in the United States within the meaning of Subsection A of this section. The director may require periodic review of the coverage maintained by the applicant pursuant to this subsection following issuance of a permit involving a waiver of the requirements of Subsection A of this section.

C. The policy or undertaking of self-insurance or other coverage, or the total of such coverage, shall be in an amount determined by the director to be an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under state law. In determining such amount, the director shall take into account the liability record of the applicant, the nature and size of the applicant's proposed operation and the location of the permit area relative to areas of public access. Such coverage shall be maintained in full force and effect during the terms of the permit and any renewal, including the length of all reclamation operations. A certificate of such insurance, if any, shall be submitted to the director with the application.

D. This section shall have no effect upon the New Mexico Occupational Disease Disablement Law and the Workmen's Compensation Act [Chapter 52, Article 1 NMSA 1978] and shall not be construed to give to workmen any cause of action barred by such laws, it being the intent of this section to compensate persons not employed by the applicant.

**History:** Laws 1979, ch. 291, § 11.

## ANNOTATIONS

**Cross references.** — For the Occupational Disease Disablement Law, see 52-3-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 260.

Statutory or contractual obligation to restore surface after strip or surface mining, 1 A.L.R.2d 575.

### **69-25A-12. Reclamation plan requirements.**

A. Each reclamation plan submitted as part of a permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by the Surface Mining Act can be accomplished, a statement of:

(1) the identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence and timing of the subareas for which it is anticipated that individual permits for mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining including:

(a) the uses existing at the time of the application, and if the land has a history of previous mining, the uses which preceded any mining;

(b) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography and vegetative cover, and, if applicable, a soil survey prepared pursuant to Section 10 [69-25A-10 NMSA 1978] of the Surface Mining Act; and

(c) the productivity of the land prior to mining, including appropriate classification as prime farmlands, as well as the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

(3) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, state and local governments or agencies thereof which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and a water accumulation; a plan, where appropriate, for backfilling, soil stabilization and compacting, grading and appropriate revegetation; a plan for soil reconstruction, replacement and stabilization, pursuant to the performance standards in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act, for those food, forage and forest lands identified in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act;

(6) the consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(7) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable state and local land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(11) all lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(12) the results of test boring which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid forming properties of the mineral and overburden. Provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental contents which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(a) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(b) the rights of present users to such water; and

(c) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where such protection of quantity cannot be assured; and

(14) such other requirements as the commission shall prescribe by regulations.

B. Any information required by this section which is not on public file pursuant to state law shall be held in confidence by the director.

**History:** Laws 1979, ch. 291, § 12.

## ANNOTATIONS

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

### **69-25A-13. Performance bonds.**

A. After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the director, on a form prescribed and furnished by the director, a bond for performance payable to the state, and conditioned upon faithful performance of all the requirements of the Surface Mining Act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration of such factors as topography, geology of the site, hydrology and revegetation potential, and shall be determined by the director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the director in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than ten thousand dollars (\$10,000).

B. Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act. The bond shall be executed by the operator and a corporate surety licensed to do business in the state, except that the operator may elect to deposit cash, negotiable bonds of the United States government or the state or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. The director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process in New Mexico, and:

(1) a history of financial solvency and continuous operation within or without New Mexico sufficient for authorization to self-insure such amount;

(2) the existence of other corporate bond coverage maintained by the applicant and arising from an insurance exchange such as Lloyd's of London, a mutual insurance association or a reciprocal insurance association, provided that such other corporate coverage be legally enforceable within New Mexico, notwithstanding that some or all member companies of such associations or exchanges may not be companies authorized to do business in the United States, provided that the director may require periodic review of the coverage maintained by the applicant pursuant to this provision following the issuance of a permit; or

(3) the existence of a letter of credit constituting a binding commitment to extend credit in such amount, issued by a national or state bank chartered to do business within the United States or within any one of the states. The letter of credit shall provide for payment to the state upon such conditions as the director shall make at the time of the granting of the permit, provided that no payment pursuant to such letter of credit shall be required prior to a hearing before the commission at which the operator shall have an opportunity to contest the requirement of payment, which hearing shall be held pursuant to the requirements of Section 29 [69-25A-29 NMSA 1978] of the Surface Mining Act.

D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited.

E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

**History:** Laws 1979, ch. 291, § 13.

## **ANNOTATIONS**

### **69-25A-14. Permit approval or denial.**

A. Upon the basis of a complete mining application and reclamation plan or a revision or a renewal thereof, as required by the Surface Mining Act, including public notification and an opportunity for a public hearing as required by Section 17 [69-25A-17 NMSA 1978] of that act, the director shall grant, require modification of or deny the application for a permit in a reasonable time not to exceed the time limitations set forth in Section 18 [69-25A-18 NMSA 1978] of that act and notify the applicant in writing. The applicant for a permit, or revision of a permit, shall have the burden of establishing that his application is in compliance with all the requirements of that act. Within ten days after the granting of a permit, the director shall notify the local governmental officials in the municipality, if any, and county, in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates and the director finds in writing on the basis of the



information set forth in the application or from information otherwise available which will be documented in the approval, and made available to the applicant, that:

(1) the permit application is accurate and complete and that all the requirements of the Surface Mining Act have been complied with;

(2) the applicant has demonstrated that reclamation as required by the Surface Mining Act can be accomplished under the reclamation plan contained in the permit application;

(3) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic regime specified in Subsection B of Section 10 [69-25A-10 B NMSA 1978] of the Surface Mining Act has been made by the director and the proposed operation thereof has been designed to prevent material damage to the water supply outside the permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to Section 26 [69-25A-26 NMSA 1978] of the Surface Mining Act or is not within an area under study for such designation in an administrative proceeding commenced pursuant to that section (unless in such an area as to which an administrative proceeding has commenced pursuant to Section 26 [69-25A-26 NMSA 1978] of that act, the operator making the permit application demonstrates that prior to January 1, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit);

(5) the proposed surface coal mining operation would:

(a) not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, but, excluding undeveloped range lands which are not significant to farming on such alluvial valley floors and those lands as to which the director finds that if the farming that will be interrupted, discontinued or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(b) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors in Subparagraph (a) of this paragraph. Provided, that this paragraph shall not affect those surface coal mining operations which, in the twelve-month period immediately preceding August 3, 1977: (1) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors; or (2) had obtained specific permit approval to conduct surface coal mining operations within the alluvial valley floors; and

(6) in cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the director:

(a) the written consent of the surface owner to the extraction of coal by surface mining methods; or

(b) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law. Provided, that nothing in the Surface Mining Act shall be construed to authorize the director or the commission to adjudicate property rights disputes.

C. The applicant shall file with his permit application a schedule listing any and all notices of violations of the Surface Mining Act and any law, rule or regulation of the United States, or of any department or agency in the United States, pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the director indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of that act or such other laws, rules or regulations referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director, department or agency which has jurisdiction over such violation and no permit shall be issued to an applicant after finding by the director, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Surface Mining Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of that act.

D. In addition to finding the application in compliance with Subsection B of this section, if the area proposed to be mined contains prime farmland pursuant to Section 10 [69-25A-10 NMSA 1978] of the Surface Mining Act, the director shall, after consultation with the United States secretary of interior with the concurrence of the United States secretary of agriculture, grant a permit to mine on prime farmland if the director finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in Section 19 [69-25A-19 NMSA 1978] of that act. Except for compliance with Subsection B of this section, the requirements of this subsection shall apply to all permits issued after August 3, 1977. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface coal mining operations for which a permit was issued prior to August 3, 1977.

**History:** Laws 1979, ch. 291, § 14.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

### **69-25A-15. Revision of permits.**

A. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the director. An application for a revision of a permit shall not be approved unless the director finds that reclamation as required by the Surface Mining Act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within the period of time established in Section 14 [69-25A-14 NMSA 1978] of that act. The director shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Provided, that any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by application for another permit.

B. No transfer, assignment or sale of the rights granted under any permit issued pursuant to the Surface Mining Act shall be made without the written approval of the director.

C. The director shall, within a time limit prescribed in regulations promulgated by the commission, review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit. Provided, that such revision or modification shall be based upon a written finding and subject to notice and hearing requirements established by the Surface Mining Act.

**History:** Laws 1979, ch. 291, § 15.

### **ANNOTATIONS**

### **69-25A-16. Coal exploration.**

A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the commission. Such regulations shall include, at a minimum: the requirement that prior to conducting any exploration under this section, any person must file with the director notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration; and provisions for reclamation in accordance with the performance standards in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act of all lands disturbed in exploration, including excavations, roads, drill holes and the removal of necessary facilities and equipment.

B. Information submitted to the director pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates

to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

C. Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of Section 22 [69-25A-22 NMSA 1978] of the Surface Mining Act.

D. No operator shall remove more than two hundred fifty tons of coal without the specific written approval of the director.

**History:** Laws 1979, ch. 291, § 16.

### **ANNOTATIONS**

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

### **69-25A-17. Public notice and public hearings.**

A. At the time of submission of an application for a surface coal mining and reclamation permit, or revision of an existing permit, pursuant to the provisions of the Surface Mining Act, the applicant shall submit to the director a copy of his advertisement of the ownership, precise location and boundaries of the land to be affected. At the time of submission, such advertisement shall be placed by the applicant in a local newspaper of general circulation in the county of the proposed surface mine at least once a week for four consecutive weeks. The director shall notify various local governmental bodies, planning agencies and sewage and water treatment authorities, and water companies in the locality in which the proposed surface mining will take place, of the operator's intention to surface mine a particularly described tract of land and indicating the application number, if any, and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments with respect to the effects of the proposed operation on the environment which are within their area of responsibility within thirty days following the last publication of the above notice. Such comments shall immediately be transmitted to the applicant by the director and shall be made available to the public at the same locations as are the mining applications.

B. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state or local governmental agency or authority may file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operations with the director within thirty days after the last publication of the notice as provided in Subsection A of this section. Such objections shall immediately be transmitted to the applicant by the director and shall be made available to the public. If written objections are filed and an informal conference requested by the objector within the thirty-day period, the director shall then designate a

hearing officer who shall preside at an informal conference in the locality of the proposed mining within a reasonable time after the receipt of such objections and request. The informal conference shall also be held if requested at any time by the applicant, or upon the director's own motion. The date, time and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The hearing officer may arrange with the applicant, upon request by any party to the administrative proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the applicant's performance bond. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, the informal conference need not be held.

**History:** Laws 1979, ch. 291, § 17.

## **ANNOTATIONS**

### **69-25A-18. Decisions of director and appeals.**

A. If an informal conference has been held pursuant to Section 69-25A-17 NMSA 1978, the director, after receiving the recommendation of the hearing officer, shall issue and furnish the applicant for a permit and persons who are parties to the administrative proceedings with the written finding of the director, granting or denying the permit in whole or in part and stating the reasons therefor, within sixty days of the informal conference.

B. If there has been no informal conference held pursuant to Section 69-25A-17 NMSA 1978, the director shall notify the applicant for a permit within ninety days of the last publication required by Subsection A of Section 69-25A-17 NMSA 1978, whether the application has been approved or disapproved in whole or in part. Upon good cause shown, the time may be extended an additional ninety days.

C. If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons for the disapproval shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the director on the permit application, the applicant or any person, with an interest that is or may be adversely affected, may request a hearing on the reasons for the final determination. The director shall hold a hearing within thirty days of the request and provide notification to all interested parties at the time that the applicant is notified. The hearing shall be of record, adjudicatory in nature, and a person who presided at a conference under Section 69-25A-17 NMSA 1978 shall not preside at the hearing or participate in the decision or in any administrative appeal from the decision. Within thirty days after the hearing, the director shall issue and furnish the applicant, and all persons who

participated in the hearing, with the written decision of the director granting or denying the permit in whole or in part and stating the reasons therefor.

D. Where a hearing is requested pursuant to Subsection C of this section, the director may, under such conditions as the director may prescribe, grant such temporary relief as the director deems appropriate pending final determination of the proceeding if:

(1) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(3) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

E. For the purpose of the hearing, the director may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials and take evidence, including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each public hearing required by the Surface Mining Act shall be made and a transcript made available on the motion of any party or by order of the director.

F. Any applicant or any person with an interest that is or may be adversely affected, who has participated in the administrative proceedings as an objector and who is aggrieved by the decision of the director or the director's failure to act within the time limits specified in the Surface Mining Act has the right to seek judicial review in accordance with Section 69-25A-30 NMSA 1978.

**History:** Laws 1979, ch. 291, § 18; 2005, ch. 209, § 1.

## ANNOTATIONS

**The 2005 amendment**, effective June 17, 2005, provided in Subsection C that a person who presided at a conference shall not preside at the hearing or participate in the decision or any administrative appeal; and provided in Subsection F that an applicant or interested person has the right to judicial review in accordance with Section 69-25A-30 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 334 et seq.

## **69-25A-19. Environmental protection performance standards; surface coal mining operations.**

A. Any permit issued under the Surface Mining Act to conduct surface coal mining operations shall require that the surface coal mining operations meet all applicable performance standards of that act, and such other requirements as the commission shall promulgate by regulation.

B. General performance standards shall be promulgated by regulation of the commission and shall be applicable to all surface coal mining and reclamation operations and shall require the operator as a minimum to:

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical and unreasonable, to be inconsistent with applicable land use policies and plans promulgated by the legislature or any political subdivision, or planning districts established by the legislature, to involve unreasonable delay in implementation, or to be violative of federal, state or local law;

(3) except as provided in Subsection C of this section with respect to all surface coal mining operations, backfill compact (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to the Surface Mining Act). Provided, that in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and provided further, that in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials

removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. Such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion and water pollution and shall be revegetated in accordance with the requirements of the Surface Mining Act;

(4) stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or, if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner such other strata which are best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farmlands to be mined and reclaimed, specifications for soil removal, storage, replacement and reconstruction shall be established by regulation of the commission after considering specifications established by the secretary of the United States department of agriculture, and the operator shall, as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other soil and provide needed protection from wind and water erosion contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed



in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(c) replace and regrade the root zone material described in Subparagraph (b) of this paragraph with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in Subparagraph (a) of this paragraph;

(8) create, if authorized in the approved mining and reclamation plan and permit and by the state engineer, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(a) the size of the impoundment is adequate for its intended purposes;

(b) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under 16 U.S.C. § 1006;

(c) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(d) the level of water will be reasonably stable if necessary for the intended use;

(e) final grading will provide adequate safety and access for proposed water users; and

(f) such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses;

(9) conduct any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage, unless the director determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety. Provided, that the director may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic regime specified in Subsection B of Section 14 [69-25A-14 NMSA 1978] of the Surface Mining Act at the mine site and in associated off-site areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

(a) avoiding acid or other toxic mine drainage by such measures as, but not limited to: 1) preventing or removing water from contact with toxic producing deposits; 2) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and 3) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters;

(b) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by state or federal law;

(c) constructing any siltation structures pursuant to Subparagraph (b) of this paragraph prior to commencement of surface coal mining operations, such structures to be certified by a qualified professional engineer registered in New Mexico, to be constructed as designed and as approved in the reclamation plan; provided that such siltation structure shall, if otherwise required by state law, be approved by the state engineer;

(d) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director;

(e) restoring recharge capacity of the mined area to approximate premining conditions;

(f) avoiding channel deepening or enlargement the discharge of water from mines;

(g) preserving throughout the mining and reclamation process in operations requiring the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of New Mexico; and

(h) such other actions as promulgated by regulation of the commission;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site

can and will be stabilized and revegetated according to the provisions of the Surface Mining Act;

(12) refrain from surface coal mining within five hundred feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health and safety of miners. Provided, that the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the director and the state mine inspector; and such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standard and criteria established by regulation of the commission, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commission, which shall include provisions to:

(a) provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such area prior to any blasting;

(b) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(c) limit the type of explosives and detonating equipment and the size, timing and frequency of blasts based upon the physical conditions of the site so as to prevent: injury to persons; damage to public and private property outside the permit area; adverse impacts on any underground mine; and change in the course, channel or availability of ground or surface water outside the permit area;

(d) require that all blasting operations be conducted by trained and competent persons as certified and examined by the director pursuant to regulations promulgated by the commission with the written concurrence of the state mine inspector;

(e) provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a preblasting survey of such structures and submit the survey to the director and a copy to the resident or owner making the request. The area of the survey shall be decided by the director;

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. Provided, that where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resource, the director may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(a) if the director finds in writing that: 1) the applicant has presented, as a part of the permit application, specific, feasible plans for the proposed underground mining operations; 2) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface; 3) the applicant has satisfactorily demonstrated that the plan for the underground mining operation conforms to requirements for underground mining in New Mexico and that permits necessary for the underground mining operations have been or will be issued by the director as a condition precedent to commencement of underground mining; 4) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations; 5) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by the Surface Mining Act; and 6) provisions for the off-site storage of spoil will comply with Paragraph (22) of this subsection;

(b) if the commission has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this paragraph and the director has imposed such additional requirements as he deems necessary;

(c) if variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from either the date of issuance of the permit or the date of approval of the variance; and

(d) if liability under the bond filed by the applicant with the director pursuant to Section 13 [69-25A-13 NMSA 1978] of the Surface Mining Act shall be for the duration of the underground mining operations and until the requirements of Paragraph (13) of

this subsection and Section 23 [69-25A-23 NMSA 1978] of the Surface Mining Act have been fully complied with;

(17) insure that the construction, maintenance and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water or damage to fish or wildlife or their habitat or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation as required by Paragraph (19) of this subsection, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with Paragraph (19) of this subsection, except in those areas or regions of New Mexico where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation or other work. Provided, that when the director approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term intensive agricultural postmining land use. Provided further, that when the director issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the director may grant exception to the provisions of Paragraph (19) of this subsection;

(21) protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from surface coal mining and reclamation activities in such a manner that:

(a) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(b) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(c) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(d) the disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(e) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of the Surface Mining Act, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if such placement provides additional stability and prevents mass movement;

(f) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed;

(g) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(h) design of the spoil disposal area is certified by a qualified professional engineer registered in New Mexico to be in conformance with professional standards; and

(i) all other provisions of the Surface Mining Act are met;

(23) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of the Surface Mining Act, taking into consideration the physical, climatological and other characteristics of the site;

(24) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as the director shall determine to be necessary to be retained in place as a barrier to slides and erosion.

C. (1) Where an applicant meets the requirements of Paragraphs (2) and (3) of this subsection a permit without regard to the requirement to restore to approximate original contour set forth in Paragraph (3) of Subsection B or Paragraphs (2) and (3) of Subsection D of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill (except as provided in Subparagraph (a) of

Paragraph (3) of this subsection) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(2) In cases where an industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed for the postmining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in Paragraph (1) of this subsection where:

(a) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(b) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be: 1) compatible with adjacent land uses; 2) obtainable according to data regarding expected need and market; 3) assured of investment in necessary public facilities; 4) supported by commitments from public agencies where appropriate; 5) practicable with respect to private financial capability for completion of the proposed use; 6) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and 7) designed by a professional engineer registered in New Mexico in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site;

(c) the proposed use would be consistent with adjacent land uses, and existing state and local land use plans and programs promulgated by the legislature or any political subdivision, or planning districts established by the legislature;

(d) the director provides the governing bodies of the municipality and county in which the land is located and any state or federal agency which the director, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and

(e) all other requirements of the Surface Mining Act will be met.

(3) In granting any permit pursuant to this subsection the director shall require that:

(a) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(b) the reclaimed area is stable;

(c) the resulting plateau or rolling contour drains inward from the out slopes except as specified points;

(d) no damage will be done to natural water courses;

(e) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use. Provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Paragraph (22) of Subsection B of this section; and

(f) insure stability of the spoil retained on the mountaintop and meet the other requirements of the Surface Mining Act.

(4) The commission shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection, and may impose such additional requirements as it deems necessary consistent with the purposes of [the] Surface Mining Act.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

D. The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section. Provided, that the provisions of this subsection shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection C of this section:

(1) insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material or waste mineral matter be placed on the downslope below the bench or mining cut. Provided, that the spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Paragraph (3) of Subsection B of this section or Paragraph (2) of this subsection shall be permanently stored pursuant to Paragraph (22) of Subsection B of this section;

(2) complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation;

(3) the operator may not disturb land above the top of the highwall unless the director finds that such disturbance will facilitate compliance with the environmental protection standards of this section. Provided, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate the compliance;



(4) for the purposes of this subsection, the term "steep slope" is any slope above twenty degrees or such lesser slope as may be defined by the director after consideration of soil, climate and other characteristics of the region or the state.

E. (1) The director may permit variances for the purposes set forth in Paragraph (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of Paragraphs (3) and (4) of this subsection a variance from the requirement to restore to approximate original contour set forth in Paragraph (2) of Subsection D of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application that such a variance be granted so as to render the land, after reclamation, suitable for an industrial commercial, residential or public use, including recreational facilities, in accord with the further provisions of Paragraphs (3) and (4) of this subsection.

(3) (a) After consultation with the appropriate land use planning agencies of the municipality, if any, and the country in which mining is to occur, the potential use of the affected land is deemed to constitute an equal or better economic or public use;

(b) is designed and certified by a qualified professional engineer registered in New Mexico in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site; and

(c) after approval of the soil and water conservation division of the natural resources department the watershed of the affected land is deemed to be improved.

(4) In granting a variance pursuant to this subsection, the director shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of the Surface Mining Act, and all spoil placement off the mine bench must comply with Paragraph (22) of Subsection B of this section.

(5) The commission shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection, and may impose such additional requirements as it deems necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

**History:** Laws 1979, ch. 291, § 19.

## ANNOTATIONS

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

### **69-25A-20. Environmental protection performance standards; surface effects of underground coal mining operations.**

A. The commission shall promulgate rules and regulations directed toward the surface effects of underground coal mining operations, embodying the following requirements and in accordance with the procedures established under Section 6 [69-25A-6 NMSA 1978] of the Surface Mining Act. Provided, that in adopting any rules and regulations, the commission shall consider the distinct difference between surface coal mining and underground coal mining.

B. Each permit issued pursuant to the Surface Mining Act and relating to underground coal mining shall require the operator to:

(1) adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible; maximize mine stability; and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. Provided, that nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;

(2) seal all portals, entryways, drifts, shafts or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(3) fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings and any other waste incident to the mining operation, to the mine workings or excavations;

(4) with respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary and assure that any leachate will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law, and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria established by regulation pursuant to Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(6) establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(7) protect off-site areas from damages which may result from such mining operations;

(8) eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) minimize the disturbances of the prevailing hydrologic regime at the mine site and in associated off-site areas and to the quantity of water in surface and ground water systems both during and after coal mining operations and during reclamation by:

(a) avoiding acid or other toxic mine drainage by such measures as, but not limited to: 1) preventing or removing water from contact with toxic producing deposits; 2) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and 3) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(b) conducting surface coal mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of limits set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(10) with respect to other surface impacts not specified in this subsection including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act for such effects which result from surface coal mining operations. Provided that the commission shall make such modifications in the requirements imposed by this paragraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

(11) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(12) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

C. In order to protect the stability of the land, the director shall suspend underground coal mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns and communities.

D. The provisions of the Surface Mining Act relating to permits, bonds, inspections and enforcement, public review and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The commission shall promulgate such modifications in accordance with the rule-making procedure established in Section 6 [69-25A-6 NMSA 1978] of the Surface Mining Act.

**History:** Laws 1979, ch. 291, § 20.

## ANNOTATIONS

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

### **69-25A-21. Inspection and monitoring.**

A. The commission, by regulation, shall require any permittee to:

- (1) establish and maintain appropriate records;
- (2) make monthly reports to the director;
- (3) install, use and maintain any necessary monitoring equipment or methods;
- (4) evaluate results in accordance with such manner as the commission shall prescribe by regulation; and

(5) provide such other information relative to surface coal mining and reclamation operations as the commission, by regulation, deems reasonable and necessary.

B. For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the water supply for water users either on or off the mining site, the director shall specify:

(1) monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence;

(2) monitoring sites to record level, amount and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined;

(3) records of well logs and borehole data to be maintained; and

(4) monitoring sites to record precipitation.

C. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by regulation of the commission in order to assure their reliability and validity.

D. The authorized representatives of the director without advance notice and upon presentation of appropriate credentials:

(1) shall have the right of entry to, upon or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under Subsection A of this section are located; and

(2) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under the Surface Mining Act.

E. The inspections by the director shall:

(1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and

(3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of the Surface Mining Act.

F. Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address and phone number of the permittee and the permit number of the surface coal mining and reclamation operation.

G. Each inspector, upon detection of each violation of any requirement of the Surface Mining Act, or regulation issued thereunder, shall forthwith inform the operator in writing, and shall report in writing any such violation to the director.

H. Copies of any records, reports, inspection materials or information obtained under the Surface Mining Act by the director, except for material required by law to be kept confidential, shall be made immediately available to the public at central and sufficient locations in the county, multicounty and state area of mining so that they are conveniently available to residents in the areas of mining.

**History:** Laws 1979, ch. 291, § 21.

## **ANNOTATIONS**

### **69-25A-22. Penalties and sanctions.**

A. Any permittee who violates any permit condition or any person who violates any provision of the Surface Mining Act may be assessed a civil penalty by the director, except that if such violation leads to the issuance of a cessation order under Section 25 [69-25A-25 NMSA 1978] of the Surface Mining Act, the civil penalty shall be assessed. Such penalty shall not exceed five thousand dollars (\$5,000) for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to:

(1) the permittee's history of previous violations at the particular surface coal mining operation;

(2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

(3) whether the permittee was negligent; and

(4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty shall be assessed by the director only after the person charged with a violation described under Subsection A of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the director shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid.

When appropriate, the director shall consolidate such hearings with other proceedings under Section 25 [69-25A-25 NMSA 1978] of the Surface Mining Act. Any hearing under this section shall be of record and adjudicatory in accordance with commission regulations. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the director after the director has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation of the Surface Mining Act has occurred, the director shall inform the operator within thirty days of the proposed amount of the penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the director for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount to the director for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent per annum, or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. Civil penalties owed under the Surface Mining Act may be recovered in a civil action brought by the attorney general at the request of the director in the district court of the county where the violation occurred.

E. Any person who willfully and knowingly violates a condition of a permit issued pursuant to the Surface Mining Act or fails or refuses to comply with any order issued, under Section 25 [69-25A-25 NMSA 1978] or Section 30 [69-25A-30 NMSA 1979] of that act, or any order incorporated in a final decision issued by the director or the commission with respect to which the time for appeal has expired or with respect to which the right of appeal has been exhausted, except an order incorporated in a decision issued under Subsection B of this section, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one year, or both.

F. Whenever a corporate permittee commits a violation as specified in Subsection E of this section, any director, officer or agent or [of] such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under Subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the

Surface Mining Act or any final order or decision issued by the director or the commission, with respect to which the time for appeal has expired or with respect to which the right of appeal has been exhausted shall upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than one year or both.

H. Any operator who fails to correct a violation for which a citation has been issued under Section 25 [69-25A-25 NMSA 1978] of the Surface Mining Act within the period permitted for its correction, (which period shall not end until the last to occur of :

(1) the entry of a final order by the director, in the case of any review proceedings under Section 29 [69-25A-29 NMSA 1978] of that act initiated by the operator wherein the director orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements;

(2) the commission's decision, in the case of an appeal initiated by the operator pursuant to Subsection G of Section 29 [69-25A-29 NMSA 1978] of the Surface Mining Act; or

(3) until the entry of an order of the court, in the case of any review proceedings under Section 30 [69-25A-30 NMSA 1978] of that act initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation)

shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which such failure or violation continues.

**History:** Laws 1979, ch. 291, § 22.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 257, 260.

58 C.J.S. Mines and Minerals § 334 et seq.

### **69-25A-23. Release of performance bonds.**

A. The permittee may file a request with the director for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the director, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres,



the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

B. Upon receipt of the notification and request, the director shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution and the estimated cost of abating such pollution. The director shall notify the permittee in writing of his decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to Subsection F of this section, and if there has been a public hearing held pursuant thereto, within thirty days thereafter.

C. The director may release in whole or in part the bond or deposit if he is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by the Surface Mining Act according to the following schedule:

(1) when the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable permit area;

(2) after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain that amount of the bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in Section 19 [69-25A-19 NMSA 1978] of the Surface Mining Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 19 of that act or until soil productivity for prime farmlands has returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 10 [69-25A-10 NMSA 1978] of that act. Where a silt dam is to be retained as a permanent impoundment pursuant to Section 19 of that act, the portion of bond which relates to reclamation of the silt dam may be released under this section so long as provisions for sound future maintenance by the operator or the landowner have been made with the director;

(3) when the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in Section 19 of the Surface Mining Act. Provided, that no bond shall be fully released until all reclamation requirements of that act are fully met.

D. If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

E. When any application for total or partial bond release is filed with the director, the director shall notify the municipality, if any, in which the surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

F. Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any federal, state and local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond to the director within thirty days after the last publication of the notice pursuant to Subsection A of this section. 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, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within thirty days of the request for such hearing. The date, time and location of such public hearing shall be advertised by the director in a newspaper of general circulation in the locality for two consecutive weeks, and shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release or at Santa Fe at the option of the objector, within thirty days of the request for such hearing.

G. Without prejudice to the rights of the objectors, the applicant or the responsibilities of the director pursuant to this section, the director may establish an informal conference as provided in Section 17 [69-25A-17 NMSA 1978] of the Surface Mining Act to resolve such written objections.

H. For the purpose of such hearing, the director shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by the Surface Mining Act shall be made, and a transcript made available on the motion of any party or by order of the director.

**History:** Laws 1979, ch. 291, § 23.

## ANNOTATIONS

### 69-25A-24. Citizen suits.

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

(1) the director or the commission alleging a violation of the Surface Mining Act or of any rule, regulation, order or permit issued pursuant thereto;

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

(3) the director or commission alleging a failure to perform any nondiscretionary act or duty under the Surface Mining Act. Provided, however, that no action may be commenced if the director or the commission has commenced and is diligently prosecuting a civil action in a court of this state to require compliance with that act, but in any such action any person whose interest may be adversely affected may intervene as a matter of right.

B. No action may be commenced under this section prior to sixty days after the plaintiff has given written notice to the director, the commission, the attorney general and to any alleged violator of the Surface Mining Act. However, where 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 under this section may be brought immediately after notification of the proper parties.

C. Any action brought under this section alleging a violation of the Surface Mining Act or the regulations thereunder other than suits against the director or the commission shall be brought in the judicial district in which the surface mining operation complained of is located. Suits against the director or the commission shall be brought in the district court of Santa Fe.

D. In any action under this section, the director or commission, if not a party, may intervene as a matter of right.

E. The court in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees, to any 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.

F. Any person who is injured in his person or property through a violation, by any operator, of any rule, regulation, order or permit under the Surface Mining Act may bring

an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under the New Mexico Occupational Disease Disablement Law and the Workmen's Compensation Act [Chapter 52, Article 1 NMSA 1978].

G. Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of the Surface Mining Act and the regulations thereunder, or to seek any other relief.

**History:** Laws 1979, ch. 291, § 24.

## ANNOTATIONS

**Cross references.** — For the Occupational Disease Disablement Law, see 52-3-1 NMSA 1978 et seq.

### **69-25A-25. Enforcement.**

A. When the director determines that any condition or practices exist, or that any permittee is in violation of any requirements of the Surface Mining Act or any permit condition required by that act, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the director shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice or violation. Such 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, pursuant to Subsection D of this section. Where the director finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant imminent environmental harm to land, air or water resources, the director shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the director deems necessary to abate the imminent danger or the significant, imminent environmental harm.

B. When, on the basis of an inspection, the director determines that any permittee is in violation of any requirement of the Surface Mining Act or any permit condition required by that act, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air or water resources, the director shall issue a notice to the permittee or his agent fixing a reasonable time but not more than ninety days for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended for good cause shown and upon the written finding of the director, the director finds that the

violation has not been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the director determines that the violation has been abated or until modified, vacated or terminated by the director pursuant to Subsection D of this section. In the order of cessation issued by the director under this subsection, the director shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

C. When, on the basis of an inspection, the director determines that a pattern of violations of any requirements of the Surface Mining Act or any permit conditions 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 permittee to comply with any requirements of that act or any permit conditions, or that such violations are willfully caused by the permittee, the director shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall hold a public hearing pursuant to the provisions of Subsection E of Section 29 [69-25A-29E NMSA 1978] of that act.

D. Notices and orders issued pursuant to this section shall set forth with reasonable specificity, the nature of the violation and the remedial action required, the period of time established for abatement and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the director who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by the director. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the director. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the public hearing.

E. The director may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order in the district court for the county in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal New Mexico office, whenever such permittee or his agent:

(1) violates or fails or refuses to comply with any order or decision issued by the director under the Surfacing [Surface] Mining Act;

(2) interferes with, hinders or delays the director or his authorized representatives in carrying out the provisions of that act;

(3) refuses to admit such authorized representative to the mine;

(4) refuses to permit inspection of the mine by such authorized representative;

(5) refuses to furnish any information or report requested by the director in furtherance of the provisions of that act; or

(6) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of that act. The court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with the New Mexico Rules of Civil Procedure, as amended. Any relief granted by the court to enforce an order under Paragraph (1) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of such order unless, prior thereto, the district court granting such relief sets it aside or modifies it.

**History:** Laws 1979, ch. 291, § 25.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **69-25A-26. Areas unsuitable for surface coal mining; petitions; exclusions.**

A. Subject to valid existing rights, no surface coal mining operations except those which existed on August 3, 1977, shall be permitted:

(1) which will adversely affect any publicly owned park or place included in the national register of historic sites unless approved jointly by the director and the federal, state or local agency with jurisdiction over the part or the historic site;

(2) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-wayline and except that the director may permit such roads to be relocated or the area affected to lie within one hundred feet of such road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected;

(3) within three hundred feet from any occupied dwelling, unless waived by the owner thereof;

(4) within three hundred feet of any public building, school, church, community or institutional building or public park; or

(5) within one hundred feet of a cemetery as defined in Section 58-17-3 NMSA 1978.

B. By regulation, the commission shall establish a planning process for objectively determining which, if any, additional land areas are unsuitable for all or certain types of surface coal mining, based upon competent and scientifically sound data and information. The process shall include:

(1) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(2) a method for implementing land use planning decisions concerning surface coal mining operations so that determinations of the unsuitability of land for surface coal mining will be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state and local levels; and

(3) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation.

C. Any person having an interest which is or may be adversely affected may petition the director to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition, the director shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After an interested person has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after the hearing, the director shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

D. Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of such designation on the environment, the economy and the supply of coal.

E. Upon petition pursuant to Subsection C of this section, the director, pursuant to the commission's regulations:

(1) shall designate an area as unsuitable for all or certain types of surface coal mining operations if he determines that reclamation pursuant to the requirements of the Surface Mining Act is not technologically and economically feasible; and

(2) may designate an area as unsuitable for certain types of surface coal mining operations if he determines that such operations will:

(a) be incompatible with existing state or local land use plans or programs;

(b) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems;

(c) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(d) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

F. The requirements of this section do not apply:

(1) to lands on which surface coal mining operations were being conducted on August 3, 1977;

(2) to lands on which surface coal mining operations are being conducted under a permit issued pursuant to the Surface Mining Act; or

(3) where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

G. The designation of lands as unsuitable for mining pursuant to this section shall not prevent the mineral exploration pursuant to the Surface Mining Act of any area so designated.

**History:** Laws 1979, ch. 291, § 26.

### **ANNOTATIONS**

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

**69-25A-27. Cooperative agreement between the state of New Mexico and the United States.**



The governor is authorized to enter into a cooperative agreement with the secretary of the United States department of the interior for regulation by New Mexico of surface coal mining and reclamation operations on federal lands within New Mexico. Such cooperative agreement shall be on such terms as the governor deems appropriate, consistent with applicable state and federal law.

**History:** Laws 1979, ch. 291, § 27.

#### **ANNOTATIONS**

### **69-25A-28. Applicability to public agencies, public utilities and public corporations.**

Any agency, unit or instrumentality of federal, state or local government, including any publicly owned utility or publicly owned corporation of federal, state or local government, which proposes to engage in surface coal mining operations which are subject to the requirements of the Surface Mining Act shall comply with the provisions of that act.

**History:** Laws 1979, ch. 291, § 28.

#### **ANNOTATIONS**

### **69-25A-29. Administrative review.**

A. A permittee issued a notice or order by the director pursuant to the provisions of Section 69-25A-25 NMSA 1978, or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation or termination of the notice or order, may apply to the director for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation or termination. Upon receipt of the application, the director shall cause such investigation to be made as the director deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the permittee or the person having an interest that is or may be adversely affected, to enable the permittee or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any hearing shall be of record and adjudicatory in nature in accordance with the commission's rules.

C. Upon receiving the report of the investigation, the director shall make findings of fact and shall issue a written decision, incorporating an order vacating, affirming, modifying or terminating the notice or order or the modification, vacation or termination

of the notice or order complained of and incorporate the director's findings in the decision. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Section 69-25A-25 NMSA 1978, the director shall issue the written decision within thirty days of the receipt of the application for review, unless temporary relief has been granted by the director pursuant to Subsection D of this section or by the court pursuant to Section 69-25A-30 NMSA 1978.

D. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under Section 69-25A-25 NMSA 1978, together with a detailed statement giving reasons for granting the relief. The director shall issue an order or decision granting or denying the relief expeditiously. If the applicant requests relief from an order for cessation of coal mining and reclamation operations issued pursuant to Section 69-25A-25 NMSA 1978, the order or decision on the request shall be issued within five days of its receipt. The director may grant the relief, under such conditions as the director may prescribe, if:

(1) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

(3) the relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

E. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to Section 69-25A-25 NMSA 1978, the director shall hold a public hearing after giving written notice of the time, place and date of the hearing. Any hearing shall be of record and adjudicatory in nature in accordance with the commission's rules. Within sixty days following the public hearing, the director shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons for the decision, concerning suspension or revocation of the permit. If the director revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and complete reclamation within a period specified by the director, or the director shall declare as forfeited the performance bonds for the operation. Any order issued pursuant to this subsection shall be appealable directly to the court pursuant to Section 69-25A-30 NMSA 1978 without further review by the director.

F. Whenever an order is issued under this section or as a result of any administrative proceeding under the Surface Mining Act, at the request of any person a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the director to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial

review of agency actions, may be assessed against either party as the director or the court deems proper.

**History:** Laws 1979, ch. 291, § 29; 2005, ch. 209, § 2.

### **ANNOTATIONS**

**The 2005 amendment**, effective June 17, 2005, changed "regulations" to "rules" in Subsections B and E; provided in Subsection E that any order shall be appealable directly to the court pursuant to Section 69-25A-30 NMSA 1978; provided in Subsection F that the director shall determine the amount of costs and expenses that will be assessed, deleted the former provision in Subsection F that no assessment shall be imposed on the director or commission; and deleted former Subsection G which related to the appeals to the commission.

### **69-25A-30. Judicial review.**

A. A party to a proceeding before the director who is aggrieved by a decision of the director issued after a hearing may obtain a review of that decision, other than a promulgation of a rule, by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person who is or may be aggrieved by any rule, or any amendment or repeal of a rule, adopted by the commission may appeal to the court of appeals for relief. All appeals shall be based upon the record made at the hearing before the commission and shall be filed with the court of appeals within thirty days after filing of the rule under the State Rules Act [Chapter 14, Article 4 NMSA 1978]. An appeal to the court of appeals under this subsection is perfected by the timely filing of a notice of appeal with the court of appeals with a copy attached of the rule from which the appeal is taken. The appellant shall certify in the appellant's notice of appeal that satisfactory arrangements have been made with the commission for preparation of transcripts of the record of the hearing at the expense of the appellant for filing with the court. Upon appeal, the court of appeals shall set aside the rule only if determined to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) contrary to law; or
- (3) unsupported by substantial evidence on the entire record as submitted.

**History:** Laws 1979, ch. 291, § 30; 1999, ch. 265, § 85; 2005, ch. 209, § 3.

### **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 2005 amendment**, effective June 17, 2005, deleted reference to "regulations"; provided in Subsection A that a party to a proceeding before the director who is aggrieved by a decision of the director may obtain a review of the decision, other than a promulgation of a rule, by appeal to the district court; and provided in Subsection B that a person aggrieved by a rule or amendment of a rule may appeal to the court of appeals.

**The 1999 amendment**, effective July 1, 1999, in Subsection A, substituted "by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978" for "in the district court of Santa Fe county. In order to obtain a review such party must, within thirty days after the decision is rendered, file with the court a petition for review, a copy of which shall be served upon the chairman of the commission and the attorney general. The petition shall state all exceptions to the decision, and the court shall not consider any exceptions not contained in the petition. Failure to file such petition in the manner and within the time specified shall operate as a waiver of the right to judicial review"; deleted former Subsections B to D, which set forth steps to be taken after service of a copy of petition for review; and redesignated former Subsection E as Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 257.

58 C.J.S. Mines and Minerals § 334 et seq.

## **69-25A-31. Exclusions.**

The provisions of the Surface Mining Act do not apply to the extraction of coal:

A. by a landowner for his own noncommercial use from land owned or leased by him; or

B. as an incidental part of federal, state or local government-financed highway or other construction under regulations established by the commission.

**History:** Laws 1979, ch. 291, § 31; 1992, ch. 18, § 1.

### **ANNOTATIONS**

**Cross references.** — For regulation of lands affected by mining "hard rock" minerals, see Chapter 69, Article 36 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, deleted former Subsection B, which read: "for commercial purposes where the surface mining operation affects two acres or less"; and redesignated former Subsection C as present Subsection B.

### **69-25A-32. Conflict of interest; penalty; disclosure.**

A. It is unlawful for a state employee who performs any function or duty under the Surface Mining Act to have a direct or indirect financial interest in any underground or surface coal mining operation.

B. Whoever knowingly violates the provisions of Subsection A of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment of not more than one year, or both.

C. The commission shall promulgate regulations to establish methods by which the provisions of this section shall be monitored and enforced, including appropriate provisions for the filing by such employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this section.

**History:** Laws 1979, ch. 291, § 32.

#### **ANNOTATIONS**

### **69-25A-33. Experimental practices or other use.**

To encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential or public use, including recreational facilities, the director may, with the approval by the secretary of the United States department of the interior, authorize departures in individual cases on an experimental basis from the environmental protection standards established under Sections 19 and 20 [69-25A-19 and 69-25A-20 NMSA 1978] of the Surface Mining Act. Such departures may be authorized if :

A. the experimental practices are potentially at least as environmentally protective, during and after mining operations, as the performance standards of Sections 19 and 20 of the Surface Mining Act;

B. the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

C. the experimental practices do not reduce the protection afforded public health and safety below that provided by the performance standards of Sections 19 and 20 of the Surface Mining Act.

**History:** Laws 1979, ch. 291, § 33.

#### **ANNOTATIONS**

## **69-25A-34. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1980, ch. 12, § 1, repealed 69-25A-34 NMSA 1978, relating to the automatic termination of the Surface Mining Act, effective February 13, 1980.

## **69-25A-35. Administrative procedures; applicability.**

The administrative procedures provided in the Surface Mining Act are exclusive. The director and commission, when performing any function under the Surface Mining Act, are exempt from the provisions of the Administrative Procedures Act [12-8-1 through 12-8-25 NMSA 1978].

**History:** Laws 1979, ch. 291, § 35.

### **ANNOTATIONS**

**Severability.** — Laws 1979, ch. 291, § 39, provided for the severability of the act if any part or application thereof is held invalid.

**Compiler's notes.** — Laws 1979, ch. 291, § 36, provided that all regulations issued pursuant to any act repealed by the Surface Mining Act shall continue in full force and effect until replaced by regulations issued pursuant to the Surface Mining Act.

## **69-25A-36. Termination of agency life; delayed repeal.**

The coal surface mining commission is terminated on July 1, 2019 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of the Surface Mining Act until July 1, 2020. Effective July 1, 2020, Section 69-25A-4 NMSA 1978 is repealed.

**History:** 1978 Comp., § 69-25A-34.1, enacted by Laws 1987, ch. 333, § 14; 1993, ch. 157, § 2; 2000, ch. 4, § 20; 2005, ch. 208, § 25; 2013, ch. 166, § 7.

### **ANNOTATIONS**

**The 2013 amendment,** effective June 14, 2013, changed the coal surface mining commission termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

**The 2005 amendment,** effective June 17, 2005, changed the termination, operation and repeal dates.

**The 2000 amendment**, effective February 15, 2000, substituted "2005" for "1999" in the first sentence, and in the second sentence substituted "the Surface Mining Act" for "Chapter 69, Article 25A NMSA 1978" and "2006" for "2000" in two places.

**The 1993 amendment**, effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence, "July 1, 2000" for "July 1, 1994" in the second and third sentences, and revised the style of the statutory reference in the third sentence.

## **ARTICLE 25B**

### **Abandoned Mine Reclamation**

#### **69-25B-1. Short title.**

This act [69-25B-1 to 69-25B-11 NMSA 1978] may be cited as the "Abandoned Mine Reclamation Act."

**History:** Laws 1980, ch. 87, § 1.

#### **69-25B-2. Purpose.**

The purpose of the Abandoned Mine Reclamation Act [69-25B-1 to 69-25B-11 NMSA 1978] is to provide a means whereby New Mexico may develop and implement a state program pursuant to Title 4 of the Surface Mining Control and Reclamation Act of 1977, as amended, and thereby to enable New Mexico to receive federal assistance to promote the reclamation of mined areas left without adequate reclamation that continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources or endanger the health or safety of the public.

**History:** Laws 1980, ch. 87, § 2; 1992, ch. 18, § 2.

### **ANNOTATIONS**

**Cross references.** — For Title 4 of the federal Surface Mining Control and Reclamation Act of 1977, see 30 U.S.C. §§ 1231 to 1243.

**The 1992 amendment**, effective May 20, 1992, substituted "as amended" for "30 U.S.C. Sections 1201 through 1328 (1977)" and "that continue" for "prior to the enactment of that act and which continue" near the middle of the section.

#### **69-25B-3. Definitions.**

As used in the Abandoned Mine Reclamation Act:

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

B. "eligible lands and water" means all lands and water eligible for expenditures pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended;

C. "emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to health, safety or general welfare of people before the danger can be abated under normal program procedures; and

D. "fund" means the abandoned mine reclamation fund.

History: Laws 1980, ch. 87, § 3; 1985, ch. 42, § 1; 1987, ch. 234, § 55; 1992, ch. 18, § 3; 2011, ch. 65, § 1.

### ANNOTATIONS

**The 2011 amendment**, effective June 17, 2011, clarified the application of the act by redefining "eligible lands and water".

**The 1992 amendment**, effective May 20, 1992, in Subsection B, deleted "for coal" following "mined", deleted "coal" preceding "processing" and preceding "mining", deleted "prior to August 3, 1977" following "status", and made minor stylistic changes throughout the subsection.

**The 1987 amendment**, effective July 1, 1987, in Subsection A, substituted "energy, minerals and natural resources" for "energy and minerals."

**The 1985 amendment** added present Subsection C and redesignated former Subsection C as present Subsection D.

### **69-25B-4. Abandoned mine reclamation fund; created.**

There is created within the state treasury the "abandoned mine reclamation fund". All money received by the state pursuant to Title 4 of the Surface Mining Control and Reclamation Act of 1977, as amended, shall be delivered to the state treasurer and be deposited in the fund. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources in order to carry out the purposes of the Abandoned Mine Reclamation Act [69-25B-1 to 69-25B-11 NMSA 1978].

**History:** Laws 1980, ch. 87, § 4; 1987, ch. 234, § 56; 1992, ch. 18, § 4.

### ANNOTATIONS



**Cross references.** — For Title 4 of the federal Surface Mining Control and Reclamation Act of 1977, see 30 U.S.C. §§ 1231 to 1243.

**The 1992 amendment,** effective May 20, 1992, added "created" to the section catchline and substituted "as amended" for "30 U.S.C. Sections 1201 through 1328 (1977)" in the second sentence.

**The 1987 amendment,** effective July 1, 1987, near the end of the last sentence substituted "energy, minerals and natural resources" for "energy and minerals."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability for reclamation fees under § 402 of Surface Mining Control and Reclamation Act (30 USCS § 1232), 117 A.L.R. Fed. 377.

### **69-25B-5. State reclamation plan; application for support.**

A. The director shall develop and submit to the United States secretary of the interior a state reclamation plan. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform such work in conformance with the provisions of federal law and regulations.

B. After approval by the United States secretary of the interior of the state plan, the director shall submit, on an annual basis, an application for the support of the state program and implementation of specific reclamation projects. The annual applications shall include such information as may be requested by the United States secretary of the interior.

**History:** Laws 1980, ch. 87, § 5.

### **69-25B-6. Objectives of the fund; duties of the director.**

A. Pursuant to the state reclamation plan, expenditures from the fund shall be used by the director on eligible lands and water and shall reflect the priorities and objectives in the federal Surface Mining Control and Reclamation Act of 1977, as amended.

B. The legislature declares that voids and open and abandoned tunnels, shafts and entryways resulting from any previous mining operation constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operations may degrade the environment. Notwithstanding the provisions of Subsection A of this section, the director, with the prior approval of the governor and the United States secretary of the interior, may use expenditures from the fund to fill the voids, seal the abandoned tunnels, shafts and entryways and reclaim surface impacts of underground or surface mines that could endanger life and property, constitute a hazard

to the public health and safety or degrade the environment. In those instances where mine waste piles are being reworked for conservation purposes, expenditures from the fund may be used to pay the incremental costs of disposing of the wastes from those operations by filling voids and sealing tunnels if the disposal of these wastes meets the purposes of this subsection.

History: Laws 1980, ch. 87, § 6; 1992, ch. 18, § 5; 2011, ch. 65, § 2.

## ANNOTATIONS

**The 2011 amendment**, effective June 17, 2011, clarified the priorities and objectives of expenditures from the fund by adopting the priorities and objectives of the Surface Mining Control and Reclamation Act of 1977 and eliminating the authority to spend funds to construct public facilities in communities impacted by mining; and eliminated the three year time limit for the expenditure of federal funds.

**The 1992 amendment**, effective May 20, 1992, substituted "mining development" for "coal development" in the introductory paragraph of Subsection C, deleted "coal" preceding "mining practices" throughout the section, and made minor stylistic changes throughout the section.

### **69-25B-7. Acquisition and reclamation of land adversely affected by past mining practices; powers of the director.**

A. If the director, pursuant to the state reclamation plan, makes a finding of fact that:

- (1) land or water resources have been adversely affected by past mining practices;
- (2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken; and
- (3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past mining practices are not known or readily available; or
- (4) the owners will not give permission for the director, his agents, employees or contractors to enter upon the property to restore, reclaim, abate, control or prevent the adverse effects of past mining practices; then, upon giving notice by mail to the owners if known, or, if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his agents, employees or contractors may enter upon the property adversely affected by past mining practices and any other property to have access to that property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an

act of condemnation of property nor of trespass thereon. The money expended for the work and the benefits accruing to any premises so entered upon shall be chargeable against that land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. Provided that this provision is not intended to create new rights of action or eliminate existing immunities.

B. The director, pursuant to the state reclamation plan, may enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of the adverse effects. The entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

C. The director, pursuant to the state reclamation plan, may acquire any land, by purchase or donation, that is adversely affected by past mining practices if he determines that acquisition of the land is necessary to successful reclamation and that:

(1) the acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices; or

(3) acquisition of refuse disposal sites and all refuse thereon will serve the purposes of the Abandoned Mine Reclamation Act [69-25B-1 to 69-25B-11 NMSA 1978] or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

D. Title to all lands acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past mining practices.

E. The director may transfer any lands acquired under this section to the United States secretary of the interior and, after reclamation, may purchase the lands in the name of the state pursuant to regulations promulgated by the United States secretary of the interior.

F. Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential or recreational development, the director, with the prior authorization of the United States secretary of the interior, may sell the land by public sale under a system of competitive bidding at not less than fair market value.

G. The director, pursuant to the state reclamation plan, when requested after appropriate public notice shall hold a public hearing, with the appropriate notice, in the counties or the appropriate subdivisions of the state in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices.

**History:** Laws 1980, ch. 87, § 7; 1992, ch. 18, § 6.

## **ANNOTATIONS**

**The 1992 amendment**, effective May 20, 1992, deleted "coal" preceding "mining practices" in the section catchline and throughout the section, twice deleted "coal" preceding "refuse" in Subsection C(3), and made minor stylistic changes throughout the section.

### **69-25B-8. Liens.**

A. Within six months after the completion of projects to restore, reclaim, abate, control or prevent adverse effects of past mining practices on privately owned land, the director shall itemize the money so expended and may file a statement thereof in the office of the county clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past mining practices if the money so expended results in a significant increase in property value. The statement shall constitute a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices. No lien shall be filed against the property of any person in accordance with this subsection who neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation performed pursuant to the provisions of the Abandoned Mine Reclamation Act.

B. The landowner may proceed to petition the district court for the county in which the land lies within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices. The amount found by the court to be the increase in value of the premises shall constitute the amount of the lien and be recorded with the statement provided for in this section. Any party aggrieved by the decision of the district court may appeal to the supreme court.

C. The lien provided in this section shall be entered in the office of the county clerk of the county in which the land lies. The statement shall constitute a lien upon the land

as of the date of the expenditure of the money and have priority as a lien second only to the lien of ad valorem taxes imposed upon the land.

History: Laws 1980, ch. 87, § 8; 1992, ch. 18, § 7; 2011, ch. 65, § 3.

## **ANNOTATIONS**

**The 2011 amendment**, effective June 17, 2011, in Subsection A, eliminated the prohibition on the filing of liens on property of a person who owned the surface of the property prior to May 2, 1977.

**The 1992 amendment**, effective May 20, 1992, deleted "coal" preceding "mining practices" several times throughout the section, substituted "performed pursuant to the provisions of the Abandoned Mine Reclamation Act" for "performed hereunder" in the last sentence of Subsection A, and made minor stylistic changes throughout the section.

### **69-25B-9. Reports.**

The director shall report annually to the United States congress and to the United States secretary of the interior on operations under the fund together with his recommendations as to future uses of the fund.

History: Laws 1980, ch. 87, § 9.

### **69-25B-10. Additional powers.**

A. The director may engage in any work and do all things necessary or expedient to implement and administer the provisions of the Abandoned Mine Reclamation Act [69-25B-1 to 69-25B-11 NMSA 1978].

B. The director may adopt rules and regulations which are necessary to effectuate the provisions of the Abandoned Mine Reclamation Act, taking into account appropriate federal rules and regulations.

C. If necessary, the director may engage in cooperative projects under the Abandoned Mine Reclamation Act with any agency of the United States and with any other agency of the state or its political subdivisions.

D. The director may request the attorney general who is hereby authorized to initiate an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in the Abandoned Mine Reclamation Act.

E. The director may construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

**History:** Laws 1980, ch. 87, § 10.

### **69-25B-11. Appeal of director's decision.**

Except as provided in Subsection B of Section 8 [69-25B-8 NMSA 1978] of the Abandoned Mine Reclamation Act, any party aggrieved by a decision of the director may file a petition for review of the director's decision with the district court of Santa Fe county within thirty days of the date of the decision appealed from. Appeals from the decision of the district court may be taken in the same manner as is provided by law for appeals in civil cases.

**History:** Laws 1980, ch. 87, § 11.

### **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).

### **69-25B-12. Emergency powers.**

A. The director is authorized to expend money from the fund for the emergency restoration, reclamation, abatement, control or prevention of adverse effects of mining practices on eligible lands if the director makes a finding of fact that:

- (1) the land upon which the emergency is situated is eligible land;
- (2) an emergency exists that is an imminent danger to the public health, safety or general welfare;
- (3) no other person or agency will act expeditiously to restore, reclaim, abate, control or prevent the adverse effects of mining practices; and
- (4) sufficient funds are available to abate the emergency.

B. The director, his agents, employees and contractors shall have the right to enter upon any land where an emergency exists and any other land providing access to the land where the emergency exists to restore, reclaim, abate, control or prevent the adverse effects of mining practices and to do all things necessary or expedient to protect the public health, safety or general welfare. Such entry shall be an exercise of state police power and shall not be construed as an act of condemnation or trespass of property.

C. The money expended for work to abate an emergency shall be chargeable through the lien procedure provided in the Abandoned Mine Reclamation Act [69-25B-1 to 69-25B-11 NMSA 1978] against the land upon which the emergency was abated.

D. The money charged against the land shall mitigate or offset any claim in any action brought by any owner claiming any interest in the property for any damage alleged to result from emergency entry under this section. This provision does not create any new right of action or eliminate any existing state immunity.

**History:** 1978 Comp., § 69-25B-12, enacted by Laws 1985, ch. 42, § 2; 1992, ch. 18, § 8.

### **ANNOTATIONS**

**The 1992 amendment**, effective May 20, 1992, deleted "coal" preceding "mining practices" in three places.

## **ARTICLE 26**

### **Mines Other Than Coal - Registration and Statistical Information**

#### **69-26-1. Annual registration; data required; operations; notice of suspension; reactivation to state mine inspector.**

A. Each operation in New Mexico shall register with the mining and minerals division of the energy minerals and natural resources department annually and upon the start of operations. The registration shall include:

- (1) the name of the operations;
- (2) post office address;
- (3) the name of the operator or person in charge; and
- (4) the character of operation such as the mineral produced or sought.

B. It is the duty of every mine operator to notify the mining and minerals division in writing of the suspension of operations, whether of a temporary or permanent nature. Upon reactivating the mine, or any mine which may have been shut down three months or more, the operator, ten days prior to the reactivation, shall notify the mining and minerals division in writing of intention to reactivate the mine, giving information as to the name and location of the property and the name and address of the party who will be in charge of the work.

C. The mining and minerals division shall provide a copy of the registration to the state mine inspector.

**History:** Laws 1933, ch. 153, § 191; 1941 Comp., § 67-1901; 1953 Comp., § 63-19-1; Laws 1955, ch. 133, § 1; 1957, ch. 45, § 1; 1963, ch. 229, § 3; 1989, ch. 193, § 14.

### ANNOTATIONS

**The 1989 amendment**, effective July 1, 1989, added the section heading; designated the formerly undesignated first sentence as Subsection A, restructuring it into two sentences, substituting the present language of the first sentence for "Each operation in New Mexico shall register with the state mine inspector annually before February 15 of each year, or upon start of operations", and making minor stylistic changes throughout the subsection; designated the formerly undesignated second and third sentences Subsection B while substituting "mining and minerals division" for "mine inspector" in the first sentence and "mining and minerals division" for "state inspector of mines" in the second sentence therein; and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 237.

### **69-26-2. Production information; confidential nature.**

Each mining, milling or smelting operation shall furnish each year to the mining and minerals division of the energy, minerals and natural resources department information regarding production and value of production, persons employed, mining equipment and methods and any other information as may be reasonably required for the previous calendar year on blank forms to be furnished the operator for that purpose. Any information regarding production of individual mines is to be held confidential and not published unless agreed to by the operator; except that the information may be provided to the state mine inspector. Concerning any information so provided, the secretary and employees of the energy and minerals department and the state mine inspector are subject to the provisions of Section 71-2-8 NMSA 1978.

**History:** Laws 1933, ch. 153, § 192; 1941 Comp., § 67-1902; Laws 1951, ch. 231, § 1; 1953 Comp., § 63-19-2; Laws 1963, ch. 229, § 4; 1973, ch. 218, § 48; 1979, ch. 325, § 2; 1987, ch. 234, § 57; 1989, ch. 193, § 15.

### ANNOTATIONS

**The 1989 amendment**, effective July 1, 1989, rewrote the first and second sentences, which formerly read: "Each mining operation shall furnish to the state mine inspector on or before February 15 of each year information regarding estimated production and value of estimated production, persons employed, mining equipment and methods and



any other information as may be reasonably required for the previous calendar year on blank forms to be furnished the operator by the state mine inspector for that purpose" and "Any information regarding production of individual mines is to be held confidential and not published by the inspector unless agreed to by the operator; provided that the inspector may reveal the information to the secretary of energy, minerals and natural resources", respectively; and inserted "and the state mine inspector" in the last sentence.

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources" for "energy and minerals" both places it appears and made minor changes in language throughout the section.

**The 1979 amendment** inserted "state" preceding "mine inspector" near the beginning of the section, substituted "state mine inspector" for "state inspector of mines" near the end of the first sentence, added the proviso at the end of the second sentence and added the third sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 237.

### **69-26-3. Request for information.**

The mine operator shall at any time, upon written request, furnish any reasonable information or data desired by the director of the mining and minerals division of the energy, minerals and natural resources department.

**History:** Laws 1933, ch. 153, § 193; 1941 Comp., § 67-1903; 1953 Comp., § 63-19-3; Laws 1989, ch. 193, § 16.

### **ANNOTATIONS**

**The 1989 amendment**, effective July 1, 1989, added the section heading, deleted "the mine inspector's" preceding "written request", and substituted "director of the mining and minerals division of the energy, minerals and natural resources department" for "mine inspector".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 237.

## **ARTICLE 27**

# **General Duties of Operators and Employees in Other Than Coal Mines**

### **69-27-1. [Safety measures required of operators.]**

Every mine employer shall furnish such employment and such place of employment as shall be reasonably safe for the employees therein, and shall furnish and use safety devices and safeguards, adopt and use methods and processes reasonably adequate to render such employment and place of employment safe and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees.

**History:** Laws 1933, ch. 153, § 194; 1941 Comp., § 67-2001; 1953 Comp., § 63-20-1.

#### **ANNOTATIONS**

**Cross references.** — For provision that certain indemnity agreements void, see 56-7-2 NMSA 1978.

**Safety statute not applicable to delinquency regarding safety practices.** — When workman (worker) has been killed or injured, delinquency of employer with respect to specific safety practices required by statute (as opposed to safety devices) does not subject employer to imposition of penalty award under safety statute (52-1-10 NMSA 1978) because safety statute does not so provide. *Montoya v. Kennecott Copper Corp.*, 1956-NMSC-062, 61 N.M. 268, 299 P.2d 84.

**Requirement of safe place to work is not "safety device"** within meaning of 52-1-10 NMSA 1978. *Montoya v. Kennecott Copper Corp.*, 1956-NMSC-062, 61 N.M. 268, 299 P.2d 84.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 328, 329, 335, 336, 337, 338, 339, 349 et seq., 357 et seq., 362 et seq.

Dangerous places discovered in examination of mine, master's duty as to marking, 15 A.L.R. 1480.

58 C.J.S. Mines and Minerals § 229.

### **69-27-2. [Presence of official with complete authority required.]**

The mine operator shall at all times during the operation of the mine have a person on the ground with authority over all branches and phases of the operation of the mine during the time he is on duty. Provided, however, that nothing herein contained shall

prevent the owner or operator from personally having such charge of the mine, provided he can qualify under all other provisions of this act.

**History:** Laws 1933, ch. 153, § 195; 1941 Comp., § 67-2002; 1953 Comp., § 63-20-2.

## ANNOTATIONS

**Compiler's notes.** — The term "this act" refers to Laws 1933, ch. 153, the provisions of which are presently compiled as 69-4-1 to 69-4-10, 69-5-2, 69-5-7, 69-5-9 to 69-5-18, 69-6-1, 69-6-2, 69-11-1 to 69-11-3, 69-12-1 to 69-12-7, 69-13-1 to 69-13-3, 69-14-1 to 69-14-17, 69-15-1 to 69-15-15, 69-16-1 to 69-16-7, 69-17-1 to 69-17-10, 69-18-1 to 69-18-14, 69-19-1 to 69-19-19, 69-20-1 to 69-20-21, 69-21-1 to 69-21-6, 69-22-1 to 69-22-6, 69-23-1 to 69-23-19, 69-24-1 to 69-24-14, 69-26-1 to 69-26-3, 69-27-1 to 69-27-7, 69-28-1 to 69-28-9, 69-28-11 to 69-28-14, 69-29-1 to 69-29-7, 69-30-1 to 69-30-9, 69-31-1 to 69-31-13, 69-31-16, 69-32-1 to 69-32-3, 69-32-5 to 69-32-21, 69-33-1 to 69-33-8, 69-34-1 to 69-34-12 and 69-35-1 to 69-35-20 NMSA 1978.

**When several mines owned by one company are in operation,** there must be a person of authority in charge at each mine at all times during any phase or branch of the mine operation. 1963-64 Op. Att'y Gen. No. 63-69.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 328.

58 C.J.S. Mines and Minerals § 236.

### **69-27-3. Mine abandonment; precautions.**

Upon abandonment of a mine and thereafter, the owner or operator must effectively close or fence off all surface openings down which persons could fall or through which persons could enter. Upon or near all those safeguards, trespass warnings and appropriate danger notices shall be posted. The director of the mining and minerals division of the energy, minerals and natural resources department may bring an action in district court to compel the safeguarding of an abandoned mine. In the event of immediate danger to public health and safety, the director of the mining and minerals division may take all action necessary to safeguard the abandoned mine and recover reasonable costs for such work from the owner of the mine.

**History:** Laws 1933, ch. 153, § 196; 1941 Comp., § 67-2003; 1953 Comp., § 63-20-3; Laws 1989, ch. 193, § 17.

## ANNOTATIONS

**The 1989 amendment,** effective July 1, 1989, added the section heading, inserted "and thereafter" in the first sentence, made minor stylistic changes in the second sentence, and added the last two sentences.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of landowner for injury or death of adult falling down unhoused mine shaft or the like, 46 A.L.R.2d 1069.

Duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 A.L.R.3d 240.

58 C.J.S. Mines and Minerals § 231.

#### **69-27-4. [Gas or other serious condition; operator to report promptly to mine inspector.]**

The operator shall report promptly to the mine inspector by telegraph or telephone the occurrence in and about the mines of serious outbursts of gas or other serious conditions threatening to cause the loss of lives.

**History:** Laws 1933, ch. 153, § 197; 1941 Comp., § 67-2004; 1953 Comp., § 63-20-4.

#### **ANNOTATIONS**

**Compiler's notes.** — The N.M. Const., art. XVII, § 1, provided for the position of state mine inspector, whose duties shall be prescribed by law. See Chapter 69, Article 5 NMSA 1978.

For state inspector duties and status, see 69-1-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals § 274 et seq.

58 C.J.S. Mines and Minerals § 237.

#### **69-27-5. [Operator's report of compensable mine accidents; contents.]**

A report in writing shall be made to the mine inspector of each compensable mine accident. Such reports shall give the name, age and occupation of the injured person, the date of accident, name and location of mine, the cause of accident, actual work being performed when injured, nature or result of injury, probable length of disability; this report shall be made within one month of the date of injury.

**History:** Laws 1933, ch. 153, § 198; 1941 Comp., § 67-2005; 1953 Comp., § 63-20-5.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 261 et seq., 274 et seq., 390 et seq., 419.

58 C.J.S. Mines and Minerals §§ 229, 237.

### **69-27-6. [Safety devices and orders; employees' duty.]**

No mine employee or other person shall remove, displace, damage, destroy, carry off or fail to use any safety device, safeguard notice or warning provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or the mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety and welfare of employees, including himself.

**History:** Laws 1933, ch. 153, § 199; 1941 Comp., § 67-2006; 1953 Comp., § 63-20-6.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 261 et seq., 274 et seq.

58 C.J.S. Mines and Minerals §§ 229, 236.

### **69-27-7. [Misdemeanors, punishment; intoxicants, damage to equipment, violation of danger signs and unauthorized travel prohibited.]**

Any employee violating the provisions of Section 199 of Article 34 [69-27-6 NMSA 1978] shall be deemed guilty of a misdemeanor punishable by fine or imprisonment or both as set forth in another section of this act. No miner or other person shall carry into a mine intoxicating liquors or alcoholic beverages or enter the mine under the influence of intoxicating liquor; he shall not destroy any part of the machinery or equipment of the mine; no unauthorized person shall enter any part of the mine against a danger sign nor travel any haulageway in a mine where a manway is provided.

**History:** Laws 1933, ch. 153, § 200; 1941 Comp., § 67-2007; 1953 Comp., § 63-20-7.

#### **ANNOTATIONS**

**Compiler's notes.** — For meaning of "this act", see 69-27-2 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 C.J.S. Mines and Minerals § 241.

## **ARTICLE 28**

### **Safety and Fire Regulations in Other Than Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

**69-28-1 to 69-28-14. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-28-1 to 69-28-14 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 206, 207, and 215, and as amended by Laws 1953, ch. 47, § 3, Laws 1973, ch. 218, §§ 50 to 57, Laws 1973, ch. 263, § 2, and Laws 1975, ch. 115, § 1, relating to safety and fire regulations in other than coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 29**

### **Ladderways in Other Than Coal Mines**

(Repealed by Laws 1987, ch. 234, § 84.)

**69-29-1 to 69-29-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-29-1 to 69-29-7 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 216 and 218 to 222, and as amended by Laws 1973, ch. 263, § 4, relating to ladderways in other than coal mines, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 30**

### **Underground Haulage for Mines Other Than Coal**

(Repealed by Laws 1987, ch. 234, § 84.)

**69-30-1 to 69-30-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-30-1 to 69-30-9 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 224 and 226 to 231, and as amended by Laws 1973, ch. 218, §§ 58 and 59, relating to underground haulage for mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 31**

### **Hoisting Equipment in Mines Other Than Coal**

**69-31-1 to 69-31-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-31-1 to 69-31-15 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 239 and 244, and as amended by Laws 1955, ch. 95, § 1, Laws 1955, ch. 96, § 1, Laws 1957, ch. 40, § 1, Laws 1973, ch. 218, §§ 61 to 70, and Laws 1973, ch. 263, § 5, relating to hoisting equipment in mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

**69-31-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-31-16 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to hoist engineer qualifications, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## **ARTICLE 32**

### **Explosives for Mines Other Than Coal**

(Repealed by Laws 1987, ch. 234, § 84.)

**69-32-1 to 69-32-21. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-32-1 to 69-32-21 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 246 to 250, 255, 256, 258, 259, 261, and 263 to 265 and Laws 1975, ch. 63, § 1 and as amended by Laws 1973, ch. 218, §§ 71 to 76 and Laws 1975, ch. 112, §§ 2 and 3, relating to explosives for mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 33**

### **Ventilation of Gases in Mines Other Than Coal**

(Repealed by Laws 1987, ch. 234, § 84.)

## **69-33-1 to 69-33-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-33-1 to 69-33-8 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 267, 268, 270, and 273, and as amended by Laws 1973, ch. 218, §§ 77 to 80, relating to ventilation of gases in mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 34 Electrical Equipment in Mines Other Than Coal**

(Repealed by Laws 1987, ch. 234, § 84.)

## **69-34-1 to 69-34-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-34-1 to 69-34-12 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 275, 278 to 280, 282, 284, and 285, and as amended by Laws 1963, ch. 319, §§ 2 and 3, Laws 1964 (first S.S.), ch. 5, § 1, and Laws 1973, ch. 218, §§ 81 and 82, relating to electrical equipment in mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **ARTICLE 35 General Regulatory Provisions in Mines Other Than Coal**

## **69-35-1 to 69-35-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 69-35-1 to 69-35-17 NMSA 1978, as enacted by Laws 1933, ch. 153, §§ 288, 290 to 300, and 305, and as amended by Laws 1955, ch. 208, § 1, Laws 1955, ch. 210, § 1, Laws 1961, ch. 131, §§ 1 and 2, and Laws 1973, ch. 218, §§ 83 to 85, relating to general safety provisions in mines other than coal, effective July 1, 1987. For present comparable provisions, see 69-8-1 to 69-8-15 NMSA 1978.

## **69-35-18. Repealed.**



## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-35-18 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to inexperienced workers, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-35-19. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-35-19 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to first aid training, equipment and supplies, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

### 69-35-20. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 2007, ch. 301, § 18 and Laws 2007, ch. 302, § 18 repealed 69-35-20 NMSA 1978, as enacted by Laws 1933, ch. 153, § 1, relating to first aid equipment and supplies, effective June 15, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMONESOURCE.COM*.

## 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 [69-36-1 to 69-36-20 NMSA 1978] 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 [69-36-1 to 69-36-20 NMSA 1978]:

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 [69-36-1 to 69-36-20 NMSA 1978] 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 [69-36-1 to 69-36-20 NMSA 1978] 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 of the New Mexico Mining Act [69-36-16 NMSA 1978].

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 [69-36-1 to 69-36-20 NMSA 1978] 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 of the New Mexico Mining Act [69-36-7 NMSA 1978].

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 [69-36-1 to 69-36-20 NMSA 1978].

**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 [69-36-1 to 69-36-20 NMSA 1978] 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 [69-36-1 to 69-36-20 NMSA 1978].

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 [69-36-1 to 69-36-20 NMSA 1978]. 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 [69-36-1 to 69-36-20 NMSA 1978] 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 [69-36-1 to 69-36-20 NMSA 1978], 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 [69-36-1 to 69-36-20 NMSA 1978] 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 [69-36-1 to 69-36-20 NMSA 1978]. 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.

**History:** Laws 1993, ch. 315, § 19.

## ANNOTATIONS

**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 [69-36-1 to 69-36-20 NMSA 1978] 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.