SENATE BILL 250

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE INDUSTRIAL FACILITIES REMEDIATION AND RESTORATION ACT; PROVIDING THE DEPARTMENT OF ENVIRONMENT WITH POWERS AND DUTIES; REQUIRING OWNERS OF INDUSTRIAL FACILITIES TO REMEDIATE AND RESTORE THE INDUSTRIAL SITE WHEN THE INDUSTRIAL FACILITY IS NO LONGER OPERATIONAL OR THE OWNER OR LAND TITLEHOLDER OFFERS THE PROPERTY FOR SALE; REQUIRING REMEDIATION AND RESTORATION PLANS; PROVIDING FOR ENFORCEMENT; PRESCRIBING ADMINISTRATIVE AND CRIMINAL PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Industrial Facilities Remediation and Restoration Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Industrial Facilities Remediation and Restoration Act:

.218257.1
A. "applicable standards" means federal, state or local standards, requirements, criteria or limitations that are legally applicable to an industrial facility;

B. "contaminant" means the following substances within the jurisdiction of the department:

(1) solid waste;
(2) hazardous waste or hazardous substances;
and
(3) any substance that, if discharged or spilled, could alter the physical, chemical, biological or radiological qualities of water or soil;

C. "department" means the department of environment;

D. "industrial facility" means a nongovernmental or nonresidential facility that is used for activities such as manufacturing, oil or gas refining, electric power generation or animal slaughtering for interstate or international commerce; provided that "industrial facility" does not include commercial warehousing;

E. "industrial site" means the parcel of real property on which an industrial facility is located;

F. "owner" means the person that has used the land for industrial purposes;

G. "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,
leaching, dumping or disposing into the environment, including abandonment or discarding of any contaminant;

H. "remediation" means:

(1) actions necessary to investigate, prevent, minimize or mitigate damages to public health or to the environment that may otherwise result from a release or threat of release; and

(2) the cleanup or removal of released contaminants to conform with applicable standards; and

I. "restoration" means the re-creation, creation or enhancement of wildlife habitats on the land and the return of the land to a healthy functioning ecosystem.

SECTION 3. [NEW MATERIAL] DEPARTMENT RULES.--The department shall promulgate rules in accordance with the Industrial Facilities Remediation and Restoration Act to carry out the provisions of that act.

SECTION 4. [NEW MATERIAL] INDUSTRIAL FACILITIES--REMEDIATION AND RESTORATION WHEN NO LONGER OPERATIONAL OR PROPERTY OFFERED FOR SALE--VOLUNTARY REMEDIATION ACT NOT APPLICABLE--FILING REMEDIATION AND RESTORATION PLANS.--

A. In addition to any federal or state laws or rules or local ordinances requiring ongoing proper disposal of contaminants on an industrial site, the owner of the industrial facility shall remediate and restore the industrial site to its pre-industrial condition when the industrial facility is no
longer operational; provided that if the owner or land

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titleholder offers the industrial site for sale as a continuing

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operation, the owner or land titleholder may leave the

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buildings and other structures on the industrial site intact

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but must remediate them and restore the industrial site as

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closely as possible to its pre-industrial condition as

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determined by the department.

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B. Every owner of an industrial facility in the

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state shall file a remediation and restoration plan with the

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department, whether the owner has closure or sale plans or not,

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and the plan shall be updated periodically as required by

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department rule. Owners of existing industrial facilities

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shall have six months from the effective date of the Industrial

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Facilities Remediation and Restoration Act to file a

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remediation and restoration plan. The remediation and

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restoration plan shall include:

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(1) an assessment of the capability and use of

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the land prior to the industrial facility, including:

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(a) soil, surface and ground water,

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topography and vegetative cover; and

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(b) productive value for agriculture, as

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open space and wildlife habitat, or governmental, residential

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or commercial use;

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(2) local physical environmental and

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climatological conditions;
(3) potential uses of the land post-remediation and -restoration;

(4) engineering techniques proposed to be used in reclamation and restoration;

(5) a plan for the control of surface water drainage and water accumulation, if applicable, and the need for backfilling, soil stabilization and compacting, grading and appropriate revegetation;

(6) a plan for soil reconstruction, replacement and stabilization;

(7) steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(8) a current estimate of the cost per acre of reclamation and restoration, including a statement as to how the owner plans to comply with the Industrial Facilities Remediation and Restoration Act;

(9) a detailed estimated timetable for the accomplishment of each major step in the reclamation and restoration plan; and

(10) such other requirements as the department shall prescribe by rule.

C. The remediation and restoration plan for an industrial facility that is an ongoing business shall include a detailed description of the measures to be taken during
operation of the industrial facility to ensure that the land,
air and on- and off-site surface and ground water are protected
from contaminants.

D. The Voluntary Remediation Act does not apply to
industrial facilities.

SECTION 5. [NEW MATERIAL] PERFORMANCE BOND OR OTHER
SURETY.--The department may require the owner of an industrial
facility to post a performance bond or other surety of up to
ten million dollars ($10,000,000) to ensure that the industrial
site will be remediated and restored as required by the
Industrial Facilities Remediation and Restoration Act, rules
promulgated in accordance with that act and remediation and
restoration plans filed with and deemed responsive by the
department. The department shall determine the amount of the
required performance bond or other surety by an evaluation of:

A. the type of industrial facility and the amount
and kind of contaminants used or produced on the industrial
site;

B. the size of the industrial facility;

C. the age and condition of the industrial
facility; and

D. the estimated cost of remediation and
restoration.

SECTION 6. [NEW MATERIAL] ENFORCEMENT--ADMINISTRATIVE AND
CRIMINAL PENALTIES.--
A. The department shall enforce the provisions of the Industrial Facilities Remediation and Restoration Act through administrative proceedings in the same manner as other administrative proceedings of the department. The department may assess an administrative penalty of up to one thousand dollars ($1,000) per day for failure to file original and updated remediation and restoration plans or any orders issued by the department pursuant to the Industrial Facilities Remediation and Restoration Act.

B. An owner who fails to remediate and restore an industrial site as required by the Industrial Facilities Remediation and Restoration Act and rules adopted in accordance with that act or an owner or land titleholder who abandons the industrial facility or industrial site without remediating and restoring the site is guilty of a fourth degree felony and shall be punished by a fine not to exceed one hundred thousand dollars ($100,000) or by imprisonment for a definite term not to exceed eighteen months, or both.

SECTION 7. Section 74-4G-5 NMSA 1978 (being Laws 1997, Chapter 38, Section 5) is amended to read:

"74-4G-5. APPLICATION AND FEE.--

A. To be eligible for a voluntary remediation agreement an applicant must:

(1) own the site;

(2) operate a facility located on the site;
(3) be a prospective owner of the site; or

(4) be a prospective operator of a facility at the site.

B. An applicant shall pay at the time of submitting the application a reasonable, nonrefundable application fee determined by the department in advance that will pay for the costs to the department of processing the application.

C. The participant shall pay all costs of the department's oversight of the voluntary remediation.

D. The department shall reject an application for a voluntary remediation agreement if the department determines:

   (1) the contaminants at the site constitute, with reasonable evidence, an unreasonable threat to human health or the environment or Native American cultural or religious sites;

   (2) an administrative state or federal or judicial state or federal enforcement action is pending that concerns remediation of contamination described in the application;

   (3) a federal grant requires an enforcement action at the site;

   (4) the application is incomplete or inaccurate and the alleged incompleteness or inaccuracy cannot be remedied by the applicant within thirty days;

   (5) the site has a state or federal permit.
that addresses a contaminant described in the application or a permit is pending;

(6) an agreement between the department and the environmental protection agency precludes the site from being addressed under this statute; [or]

(7) the applicant has, within ten years immediately preceding the date of submission of the application:

(a) knowingly misrepresented a material fact in an application for a permit or plan submitted pursuant to state environmental laws;

(b) refused or failed to disclose any material information required under [this] the Voluntary Remediation Act;

(c) exhibited a history of willful disregard for environmental laws of any state or of the United States; or

(d) had an environmental permit revoked or permanently suspended for cause pursuant to provisions of any environmental laws of any state or of the United States; or

(8) the applicant is an industrial facility, remediation and restoration is required pursuant to the Industrial Facilities Remediation and Restoration Act.

E. The department shall determine, on a first-come, first-served basis and within a reasonable period defined by .218257.1

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regulation, whether the applicant is eligible to participate in a voluntary remediation agreement pursuant to provisions of the Voluntary Remediation Act.

F. Before the department approves a proposed voluntary remediation agreement, the applicant must:

(1) make the proposed voluntary remediation agreement available for public inspection at a location in reasonable proximity to the site;

(2) notify the following and advise them of the proposed voluntary remediation agreement and the opportunity to submit comments to the department:

(a) any local, state, federal, tribal or pueblo governmental agency potentially affected by the proposed voluntary remediation agreement;

(b) those parties that have requested notification;

(c) the general public by posting at the site on a form provided by the department; and

(d) the general public by publishing in a newspaper of general circulation in the community potentially affected by the voluntary remediation agreement; and

(3) submit to the department a copy of the public notice as well as an affidavit affirming that the applicant has complied with the provisions of this subsection.

G. The department shall:
(1) provide a comment period of at least thirty days following publication of the newspaper notice. During the comment period, interested persons may submit comments to the department concerning the proposed voluntary remediation agreement. The department shall consider public comments in deciding whether to enter into a voluntary remediation agreement;

(2) during the thirty-day comment period, allow any interested person to request a public meeting. The request shall be in writing and shall set forth the reasons why the meeting should be held. A public meeting will be held if the secretary of environment determines that there is significant public interest; and

(3) provide for appropriate public participation in the voluntary remediation work plan, including a public meeting if the secretary of environment determines that there is significant public interest.

H. If an agreement is not reached between an applicant and the department on or before the thirtieth day after the department determines an applicant to be eligible pursuant to the provisions of this section, the applicant or the department may withdraw from the negotiations."

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.