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HOUSE BILL 681

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO MINING; ENACTING THE CONSTRUCTION MATERIALS MINING ACT; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Construction Materials Mining Act".

Section 2. PURPOSE. -- The purpose of the Construction Materials Mining Act is to promote responsible utilization and reclamation of lands affected by exploration, mining or the extraction of construction materials that are vital to the welfare of New Mexico.

Section 3. DEFINITIONS. -- As used in the Construction Materials Mining Act:

A. "commission" means the mining commission established pursuant to the Mining Act;

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1 B. "construction materials" means any rock that is
2 typically excavated or quarried for use in construction or
3 road building, including clay, silt, sand, gravel, limestone,
4 dimension stone, marble, shale, flagstone, scoria or base
5 course, but not including coal or caliche;

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

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

11 E. "Mining Act" means the New Mexico Mining Act;

12 F. "mining operation" means an operation that
13 engages in the process of obtaining construction materials
14 from the earth's crust or from previously disposed or
15 abandoned mining wastes, including exploration, open-cut
16 mining and surface operation, and any on-site transportation
17 or processing activities, but does not include:

18 (1) transportation, concentrating, milling,
19 cleaning, preparation and other off-site processing activities
20 not conducted on the permit area;

21 (2) the excavation or grading of construction
22 materials by the owners of the property, or the lessees or
23 permittees of the owner, solely for on-site purposes not
24 associated with a mining operation; or

25 (3) any operation regulated under the Mining

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1 Act;

2 G. "permit area" means the geographical area
3 defined in the permit for a mining operation on which mining
4 is conducted or is expected to cause a disturbance;

5 H. "reclamation" means the employment during and
6 after a mining operation of measures designed to mitigate the
7 disturbance caused by the mining operation and to create a
8 post-mining land use as approved by the director; and

9 I. "secretary" means the secretary of energy,
10 minerals and natural resources.

11 Section 4. MINING OPERATION PERMITS REQUIRED. --

12 A. After December 31, 2003, no person shall
13 conduct a mining operation without a permit issued by the
14 director. For good cause shown, the director may allow a
15 mining operation to operate without a permit for a period of
16 no more than twelve months after December 31, 2003 if the
17 director has received a timely and complete permit
18 application, including the permit application fee, for the
19 mining operation.

20 B. The secretary may establish by rule a schedule
21 for the submission of permit applications. Prior to receiving
22 a permit for a mining operation, an applicant shall submit an
23 application to the director that includes:

24 (1) disclosure of ownership and controlling
25 interests in the mining operation or submission of the

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1 applicant's most recent form 10K required by the federal
2 securities exchange commission;

3 (2) a map showing the location of the mining
4 operation, a description of the type and method of mining, a
5 description of the mining deposit, overburden and topsoil and
6 how the mining operation will be designed and operated to meet
7 reclamation requirements;

8 (3) the anticipated starting and termination
9 dates of each phase of the mining operation, the anticipated
10 life of the mining operation and the number of acres of land
11 to be disturbed;

12 (4) the location of surface waters within
13 one-half mile of the permit area and the estimated depth to
14 ground water;

15 (5) a reclamation plan that includes a
16 detailed description of the proposed post-mining land use and
17 how that use is to be achieved, assurances for the protection
18 of human health and safety and the environment and that
19 provides:

20 (a) that the land will be reclaimed to
21 a post-mining land use that is consistent with local
22 ordinances, approved by the director and accompanied by a copy
23 of the comments concerning the proposed use by the legal or
24 equitable owner of record of the surface of the proposed
25 permit area;

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1 (b) a final topography that will take
2 into consideration the post-mining land use, surrounding areas
3 and the pre- and post-mine watershed size and drainages;

4 (c) that to accomplish practical
5 utilization of soil materials, the topsoil or suitable
6 material will be salvaged, and a description of how the
7 topsoil will be salvaged during mining operations and the
8 depth of topsoil or suitable material to be placed on
9 disturbed areas;

10 (d) that metal and other mine-generated
11 waste will be removed, or buried in accordance with the Solid
12 Waste Act;

13 (e) that reclamation will support the
14 post-mining land use and will stabilize the site and control
15 erosion and, where revegetation is necessary for the post-
16 mining land use, there must be an effective and long-lasting
17 vegetative cover that is capable of self-regeneration; and

18 (f) a schedule of when reclamation
19 operations will begin and end;

20 (6) evidence that other applicable local,
21 state and federal permits and land use approvals required to
22 be obtained by the mining operation have been issued and that
23 the applicant has the right to enter the permit area to
24 conduct mining and reclamation; and

25 (7) the permit application fee.

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1 C. The director shall issue the permit for a
2 mining operation if the director finds that:

- 3 (1) the permit application is complete;
- 4 (2) the financial assurance is adequate and
5 has been provided;
- 6 (3) the proposed reclamation plan conforms to
7 the requirements imposed by the Construction Materials Mining
8 Act and the rules adopted pursuant to that act and is
9 economically and technically feasible;
- 10 (4) the proposed mining operation, or any
11 part thereof, is not contrary to the requirements imposed by
12 the Construction Materials Mining Act, the rules adopted
13 pursuant to that act or any applicable federal, state or local
14 laws or regulations;
- 15 (5) the mining operation is designed to meet
16 without perpetual care all requirements imposed by the
17 Construction Materials Mining Act and rules adopted pursuant
18 to that act following closure; and
- 19 (6) the applicant, the operator or owner of
20 the mining operation or any persons or entities directly
21 controlled by the applicant, operator, owner or any persons or
22 entities that directly control the applicant, operator or
23 owner:
- 24 (a) are not currently charged under the
25 terms of another permit issued by the division with a

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1 violation that is unabated and is not under appeal, and have
2 not forfeited or had forfeited financial assurance required
3 for any mining, reclamation or exploration permit in the
4 United States, unless the violation occurred prior to the
5 initiation of a legal relationship between the permit
6 applicant and the violator; and

7 (b) have not demonstrated a pattern of
8 willful violations of the Construction Materials Mining Act,
9 the Mining Act or other New Mexico environmental statutes,
10 unless the violations occurred prior to the initiation of a
11 legal relationship between the permit applicant and the
12 violator.

13 D. The director shall establish a streamlined
14 permit application review process for:

15 (1) mining operations to be conducted on less
16 than five acres; and

17 (2) mining operations to be conducted on less
18 than ten acres when the operation is conducted solely to
19 obtain materials for road, utility or similar construction
20 purposes under a federal, state or local government contract
21 that requires work to commence within a specified short period
22 of time.

23 E. No mining operation located within a one-half
24 mile radius of another mining operation operated by the same
25 entity shall receive a streamlined permit application review

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1 process, and the secretary shall exclude from the streamlined
2 process any proposed facility or portion of a facility that is
3 located in an inhabited or an environmentally sensitive area
4 as defined by rule.

5 F. Permits shall be issued for a term not to
6 exceed five years. Each permit may be subject to an annual
7 review by the director.

8 G. Each permit holder shall submit an annual
9 report to the director that contains the information on the
10 status of the mining operation required by rule of the
11 secretary, including information on annual production,
12 disturbed acreage and reclaimed acreage.

13 H. A permit may be revoked or suspended by order
14 of the director for violation of its terms or conditions, a
15 rule of the secretary or a provision of the Construction
16 Materials Mining Act.

17 Section 5. SECRETARY--DUTIES.--The secretary shall,
18 within one year after the effective date of the Construction
19 Materials Mining Act, adopt rules consistent with the purposes
20 of the Construction Materials Mining Act to implement that
21 act, including rules:

22 A. for the permit application process that may
23 provide different application requirements for different
24 categories of mining operations, and rules for the streamlined
25 permit application review process that may include:

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1 (1) a requirement that the director issue or
2 deny the permit within sixty days after submittal of a
3 completed application unless a public hearing is conducted;

4 (2) a simplified application and public
5 notification process, but every application shall include a
6 reclamation plan and financial assurance;

7 (3) a schedule for calculating financial
8 assurance amounts that shall not be less than two thousand
9 five hundred dollars (\$2,500) per acre; and

10 (4) a requirement that the director develop
11 standardized forms and instructions for applications, public
12 notices, financial assurance instruments, reclamation plans
13 and permits to simplify the process for both the applicants
14 and the division;

15 B. that provide reclamation requirements for all
16 mining operations that require reclamation be conducted
17 concurrently with the mining operation, to the extent
18 practicable, and that shall commence no later than one year
19 after the cessation of mining activity and be completed within
20 five years after the completion of the mining operation or of
21 each phase of the mining operation. The director may approve
22 a suspension of reclamation requirements for a period of not
23 greater than two years to allow for the resumption of mining
24 and may require the operator to take actions to stabilize the
25 site and control erosion during any period of suspension. The

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1 rules shall establish reclamation performance standards that
2 address erosion control, site stability, vegetation standards
3 and establishment of the post-mining land use;

4 C. that ensure the public receives notice of each
5 application for issuance, renewal or revision of a permit for
6 a mining operation, for a variance or for release of financial
7 assurance. If the director determines that there is
8 substantial public interest in the application, no action
9 shall be taken on the application until a public hearing is
10 held in the locality of the operation at which all interested
11 persons shall be given a reasonable chance to submit data,
12 views or arguments orally or in writing. These rules shall
13 require at a minimum that the applicant shall provide to the
14 director, at the time of filing the application, proof that
15 notice has been provided to:

16 (1) the owners of all properties located
17 within one-quarter mile of the permit area;

18 (2) all municipalities, counties and Indian
19 nations, tribes and pueblos within a ten-mile radius of the
20 property on which the mining operation is or will be located;

21 (3) the public by publishing in a newspaper
22 of general circulation in each county in which the property on
23 which the mining operation is or will be located and by
24 posting a notice in at least four publicly accessible and
25 conspicuous places; and

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1 (4) all persons who have made a written
2 request to the director for notice concerning this operation
3 or for notice of all applications pursuant to the Construction
4 Materials Mining Act;

5 D. that the applicant file with the director,
6 prior to the issuance of a permit, financial assurance
7 sufficient to assure the completion of the performance
8 requirements of the permit, including closure and reclamation,
9 if the work had to be performed by the director or a
10 third-party contractor, and including periodic review to
11 account for any inflationary increases and anticipated changes
12 in reclamation or closure costs. The rules shall specify that
13 financial assurance requirements shall neither duplicate nor
14 be less comprehensive than applicable federal financial
15 assurance requirements. The form and amount of the financial
16 assurance shall be subject to the approval of the director as
17 part of the permit application;

18 E. that the permittee may file an application with
19 the director for the release of all or part of the permittee's
20 financial assurance. The application shall describe the
21 reclamation measures completed and shall contain an estimate
22 of the costs of reclamation measures that have not been
23 completed. Prior to release of any portion of the permittee's
24 financial assurance, the director shall conduct an inspection
25 and evaluation of the reclamation work involved and shall

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1 coordinate with other agencies that have issued permits or
2 required financial assurance for the operation. The director
3 may release in whole or in part the financial assurance if the
4 reclamation covered by the financial assurance meets the
5 requirements of the Construction Materials Mining Act;
6 provided that the director shall retain financial assurance at
7 least equal to the approved estimated costs of completing
8 reclamation measures that have not been completed; and
9 provided further that for revegetated areas, the director
10 shall retain the amount of financial assurance necessary for a
11 third party to reestablish vegetation for a period of three
12 years after the last year of augmented seeding, fertilizing,
13 irrigation or other work;

14 F. establishing a schedule of annual
15 administrative and permit fees that cover no less than
16 one-half the estimated costs of administration,
17 implementation, enforcement, investigation and permitting
18 pursuant to the provisions of the Construction Materials
19 Mining Act. The size of the operation, anticipated inspection
20 frequency and other factors deemed relevant by the secretary
21 shall be considered in the determination of the fees. The
22 fees established pursuant to this subsection shall be
23 deposited in the Construction Materials Mining Act fund;

24 G. that provide for permit modifications,
25 including criteria to determine which significant permit

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1 modifications shall require public notice and an opportunity
2 for public hearing pursuant to the Construction Materials
3 Mining Act;

4 H. that govern the granting of variances by the
5 director, including provisions for public notice and an
6 opportunity for a hearing in the locality where the variance
7 will be operative, and requiring the petitioner to prove that
8 failing to grant a variance will impose an undue economic
9 burden and that granting the variance will not result in a
10 significant threat to human health, safety or the environment;
11 and

12 I. necessary and appropriate to carry out the
13 purposes and provisions of the Construction Materials Mining
14 Act.

15 Section 6. RULES--ADOPTION PROCESS.--

16 A. No rule shall be adopted, amended or repealed
17 without a public hearing before the secretary or a hearing
18 officer appointed by the secretary.

19 B. Any person may submit proposed rules to the
20 secretary for adoption, amendment or repeal. The secretary
21 shall determine within sixty days of submission of a proposed
22 rule whether to hold a hearing. If the secretary determines
23 not to hold a hearing, the determination shall not be subject
24 to review.

25 C. The public hearing shall be held in Santa Fe,

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1 and a verbatim record shall be maintained of all proceedings.
2 Notice of the subject, time and place of the hearing, the
3 manner in which interested persons may present their views and
4 the method by which copies of the proposed rule or amendment
5 may be obtained shall be:

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

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

12 D. The secretary shall allow all interested
13 persons a reasonable opportunity to submit data or arguments
14 orally or in writing and to examine witnesses testifying at
15 the hearing. A person appearing or represented at the hearing
16 shall, upon a written request, be given written notice of the
17 secretary's action on the proposed rule.

18 E. No rule, its amendment or repeal adopted by the
19 secretary shall become effective except as provided by the
20 State Rules Act.

21 Section 7. DIRECTOR--DUTIES.--The director shall:

22 A. exercise all powers of enforcement and
23 administration arising under the Construction Materials Mining
24 Act not otherwise expressly delegated to the secretary or the
25 commission, execute and administer the secretary's rules and

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1 coordinate the review and issuance of permits for construction
2 materials mining operations with all other state or federal
3 permit processes applicable to the proposed operations;

4 B. have the right to enter any lands, without
5 prior notice, where a mining or reclamation operation is being
6 conducted for the purposes of enforcing applicable
7 requirements of the Construction Materials Mining Act, rules
8 adopted pursuant to that act and permit conditions for mining
9 operations and reclamation. The director shall conduct
10 inspections, on an irregular basis and without prior notice to
11 the permittee, when a mining operation is conducting
12 significant reclamation activities and following completion of
13 all significant reclamation activities, but prior to release
14 of financial assurance;

15 C. enter into agreements with appropriate federal
16 and state agencies for coordinating the review and issuance of
17 all necessary permits to conduct mining operations in New
18 Mexico; and

19 D. create an advisory committee, the membership of
20 which shall balance the interests of affected government
21 entities, the mining industry, environmental groups,
22 regulatory agencies and other persons as determined by the
23 director to represent a constituency that will be affected by
24 the provisions of the Construction Materials Mining Act.

25 Section 8. ENFORCEMENT-- CIVIL PENALTIES. --

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1 A. When the director determines that a condition
2 or practice exists that violates a requirement of the
3 Construction Materials Mining Act, a rule adopted pursuant to
4 that act or a permit issued pursuant to that act, and the
5 condition, practice or violation also creates an imminent
6 danger to the health or safety of the public or will cause
7 significant imminent environmental harm, the director shall
8 immediately order a cessation of the mining operation or the
9 portion of that operation relevant to the condition, practice
10 or violation. A cessation order issued by the director shall
11 remain in effect until the director determines that the
12 condition, practice or violation has been abated or until
13 modified, vacated or terminated by the director or the
14 commission.

15 B. When the director determines that an owner or
16 operator is in violation of a requirement of the Construction
17 Materials Mining Act, a rule adopted pursuant to that act or a
18 permit issued pursuant to that act and the violation does not
19 create an imminent danger to the health or safety of the
20 public or will not cause significant imminent environmental
21 harm, the director shall issue a notice to the owner or
22 operator fixing a reasonable time, not to exceed sixty days,
23 for the abatement of the violation. If, upon expiration of
24 the period of time as originally fixed or subsequently
25 extended for good cause shown, the director finds that the

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1 violation has not been abated, he shall immediately order a
2 cessation of the mining operation or the portion thereof
3 relevant to the violation. The cessation order of the
4 director shall remain in effect until the director determines
5 that the violation has been abated.

6 C. When the director determines that a pattern of
7 violations of the requirements of the Construction Materials
8 Mining Act or of the rules adopted pursuant to that act or the
9 permit required by that act exists or has existed and, if the
10 director also finds that such violations are caused by the
11 unwarranted failure of the owner or operator to comply with
12 the requirements of that act, rule or permit or that such
13 violations are willfully caused by the owner or operator, the
14 director shall immediately issue an order to the owner or
15 operator to show cause as to why the permit should not be
16 suspended or revoked.

17 D. A civil penalty, not to exceed ten thousand
18 dollars (\$10,000) per day of noncompliance for each violation,
19 may be assessed by the director or the commission for
20 violations of the Construction Materials Mining Act, a rule of
21 the secretary, an order of the director, a permit condition or
22 an order resulting from a hearing.

23 E. Circumstances to be considered by the
24 commission or the director in determining the amount of the
25 penalty to be assessed shall be the seriousness of the

1 violation, efforts to comply with the requirements of the
2 Construction Materials Mining Act, recent history of
3 violations and other relevant factors provided in rules
4 adopted by the secretary.

5 F. Any order or penalty imposed by the director
6 may be appealed to the commission.

7 G. In determining whether significant imminent
8 environmental harm may occur, the director may consider:

9 (1) whether the condition, practice or
10 violation creates a reasonable probability of serious or
11 widespread adverse environmental impact;

12 (2) whether the condition, practice or
13 violation threatens important habitat, important wildlife or
14 domestic animals; or

15 (3) whether mining that requires a permit is
16 conducted either:

17 (a) without a permit;

18 (b) outside of a permit area; or

19 (c) on previously undisturbed land
20 within a permit area where mining is not authorized by the
21 permit.

22 H. In addition to the remedies provided in this
23 section, whenever the director determines that a person has
24 violated or is violating a requirement of the Construction
25 Materials Mining Act, a rule adopted pursuant to that act or a

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1 permit or order issued pursuant to that act, the director may
2 commence a civil action in the district court of Santa Fe
3 county for appropriate relief to compel compliance, including
4 injunctive relief.

5 Section 9. ADMINISTRATIVE REVIEW. --

6 A. A person who is adversely affected by an order,
7 penalty assessment or issuance or denial of a permit by the
8 director pursuant to the Construction Materials Mining Act may
9 file a written petition for review before the commission. The
10 director's decision shall become final unless the petition for
11 review is filed with the commission within thirty days from
12 the date notice is given of the director's decision.

13 B. The commission shall hold a hearing no later
14 than sixty days after receipt of the petition. The commission
15 shall ensure that the public receives notice of the date, time
16 and place of the hearing. The chairman of the commission may
17 issue subpoenas to compel attendance of witnesses and for
18 documents relevant to the action to be heard before the
19 commission. The commission may designate a hearing officer to
20 take evidence at the hearing and may request that the hearing
21 officer provide a recommendation to the commission.

22 C. Based upon the record made before the
23 commission, the commission shall affirm, reverse, modify or
24 remand the decision of the director. Within sixty days after
25 the close of the hearing record, the commission shall issue

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1 findings of fact and a final decision in the proceedings.

2 Section 10. JUDICIAL REVIEW. --

3 A. A person who is affected by a rule adopted by
4 the secretary may appeal the action of the secretary by filing
5 a notice of appeal with the court of appeals within thirty
6 days from the filing date of the rule with the state records
7 center. All appeals of rules shall be taken on the record
8 made before the secretary.

9 B. A person who is affected by a final decision of
10 the commission may appeal the decision of the commission by
11 filing a notice of appeal with the district court pursuant to
12 the provisions of Section 39-3-1.1 NMSA 1978.

13 C. After a hearing and a showing of good cause by
14 the appellant, a stay of the action being appealed may be
15 granted:

16 (1) by the commission or the secretary,
17 whichever took the action being appealed; or

18 (2) by the court if the commission or the
19 secretary denies a stay or fails to act upon an application
20 for a stay within sixty days after receipt.

21 Section 11. CITIZEN SUITS. --

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

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1 (1) an entity or a person other than the
2 director, the division, the secretary or the commission who is
3 alleged to be in violation of a rule, order or permit issued
4 pursuant to the Construction Materials Mining Act; or

5 (2) the director, the division, the secretary
6 or the commission only when there is alleged a failure to
7 perform any nondiscretionary act under the Construction
8 Materials Mining Act.

9 B. No action pursuant to this section shall be
10 commenced if the director, the division, the secretary or the
11 commission has commenced and is diligently prosecuting a civil
12 action in a court of this state or an administrative
13 enforcement proceeding to require compliance with the
14 Construction Materials Mining Act. In an administrative or
15 court action commenced by the director, the division, the
16 secretary or the commission, a person whose interest may be
17 adversely affected and who has provided notice pursuant to
18 this section prior to the initiation of the action may
19 intervene as a matter of right.

20 C. No action shall be commenced pursuant to this
21 section prior to sixty days after the plaintiff has given
22 written notice to the secretary, the division, the commission,
23 the attorney general and the alleged violator of the
24 Construction Materials Mining Act; provided, however, when the
25 violation or order complained of constitutes an immediate

1 threat to the health or safety of the plaintiff or would
2 immediately and irreversibly impair a legal interest of the
3 plaintiff, an action pursuant to this section may be brought
4 immediately after notification of the proper parties.

5 D. An action brought pursuant to this section
6 alleging a violation of the Construction Materials Mining Act
7 or the rules adopted pursuant to that act other than suits
8 against the director, the division, the secretary or the
9 commission shall be brought in the district court of the
10 judicial district in which the mining operation complained of
11 is located. Suits against the director, the division, the
12 secretary or the commission shall be brought in the district
13 court of Santa Fe.

14 E. In an action brought pursuant to this section,
15 the director, the division, the secretary or the commission,
16 if not a party, may intervene as a matter of right.

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

25 Section 12. CRIMINAL PENALTIES. --

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1 A. Any person who knowingly or willfully violates
2 the Construction Materials Mining Act, rules adopted by the
3 secretary or a condition of a permit issued pursuant to the
4 Construction Materials Mining Act or fails or refuses to
5 comply with a final decision or order of the commission or the
6 director is guilty of a misdemeanor and is subject to a fine
7 not to exceed ten thousand dollars (\$10,000) per day of
8 violation or imprisonment of up to one year, or both.

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

11 C. Circumstances to be considered by the district
12 court in determining the sentence shall be the seriousness of
13 the violation, the efforts taken to comply with the
14 requirements of the Construction Materials Mining Act and the
15 recent history of violations of the defendant.

16 Section 13. FUND CREATED. -- The "Construction Materials
17 Mining Act fund" is created within the state treasury. All
18 money received by the state pursuant to the Construction
19 Materials Mining Act from permit applicants, permit holders,
20 the federal government, other state agencies or legislative
21 appropriations shall be delivered to the state treasurer and
22 deposited in the fund. Disbursements from the fund shall be
23 made upon warrants drawn by the secretary of finance and
24 administration pursuant to vouchers signed by the secretary of
25 energy, minerals and natural resources. Money in the fund is

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1 appropriated to the energy, minerals and natural resources
2 department to carry out the purposes of the Construction
3 Materials Mining Act. Any unexpended or unencumbered balance
4 remaining in the fund at the end of a fiscal year shall not
5 revert to the general fund but shall remain and accrue to the
6 benefit of the fund.

7 Section 14. LIMITATIONS.--

8 A. Nothing in the Construction Materials Mining
9 Act shall supersede current or future requirements and
10 standards of any other applicable federal or state law.

11 B. Nothing in the Construction Materials Mining
12 Act preempts the authority of political subdivisions to
13 regulate mining operations under the zoning and land use
14 authority of the local subdivisions, or to regulate the off-
15 site impacts of mining operations not regulated under that
16 act, including the impacts of dust, noise and vehicular
17 traffic.

18 C. Nothing in the Construction Materials Mining
19 Act shall limit any right that a person or class of persons
20 may have pursuant to a statute or common law to seek
21 enforcement of the Construction Materials Mining Act and the
22 rules adopted pursuant to that act, or to seek any other
23 relief.

24 Section 15. APPROPRIATION.--Two hundred fifty thousand
25 dollars (\$250,000) is appropriated from the general fund to

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1 the Construction Materials Mining Act fund for expenditure in
2 fiscal year 2002 for use by the energy, minerals and natural
3 resources department in carrying out the purposes of the
4 Construction Materials Mining Act. Any unexpended or
5 unencumbered balance remaining at the end of the fiscal year
6 2002 shall not revert.

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