

AN ACT

RELATING TO MINING; REVISING APPEAL PROVISIONS OF THE SURFACE
MINING ACT.

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

Section 1. Section 69-25A-18 NMSA 1978 (being Laws
1979, Chapter 291, Section 18) is amended to read:

"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."

Section 2. Section 69-25A-29 NMSA 1978 (being Laws 1979, Chapter 291, Section 29) is amended to read:

"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."

Section 3. Section 69-25A-30 NMSA 1978 (being Laws 1979, Chapter 291, Section 30, as amended) is amended to read:

"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 HB 311
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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. 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."
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