

1 SENATE BILL 250

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 William E. Sharer

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10 AN ACT

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

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

6 (1) solid waste;

7 (2) hazardous waste or hazardous substances;

8 and

9 (3) any substance that, if discharged or
10 spilled, could alter the physical, chemical, biological or
11 radiological qualities of water or soil;

12 C. "department" means the department of
13 environment;

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

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

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

24 G. "release" means any spilling, leaking, pumping,
25 pouring, emitting, emptying, discharging, injecting, escaping,

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1 leaching, dumping or disposing into the environment, including
2 abandonment or discarding of any contaminant;

3 H. "remediation" means:

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

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

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

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

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

21 A. In addition to any federal or state laws or
22 rules or local ordinances requiring ongoing proper disposal of
23 contaminants on an industrial site, the owner of the industrial
24 facility shall remediate and restore the industrial site to its
25 pre-industrial condition when the industrial facility is no

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1 longer operational; provided that if the owner or land
2 titleholder offers the industrial site for sale as a continuing
3 operation, the owner or land titleholder may leave the
4 buildings and other structures on the industrial site intact
5 but must remediate them and restore the industrial site as
6 closely as possible to its pre-industrial condition as
7 determined by the department.

8 B. Every owner of an industrial facility in the
9 state shall file a remediation and restoration plan with the
10 department, whether the owner has closure or sale plans or not,
11 and the plan shall be updated periodically as required by
12 department rule. Owners of existing industrial facilities
13 shall have six months from the effective date of the Industrial
14 Facilities Remediation and Restoration Act to file a
15 remediation and restoration plan. The remediation and
16 restoration plan shall include:

17 (1) an assessment of the capability and use of
18 the land prior to the industrial facility, including:

19 (a) soil, surface and ground water,
20 topography and vegetative cover; and

21 (b) productive value for agriculture, as
22 open space and wildlife habitat, or governmental, residential
23 or commercial use;

24 (2) local physical environmental and
25 climatological conditions;

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1 (3) potential uses of the land post-
2 remediation and -restoration;

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

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

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

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

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

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

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

23 C. The remediation and restoration plan for an
24 industrial facility that is an ongoing business shall include a
25 detailed description of the measures to be taken during

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1 operation of the industrial facility to ensure that the land,
2 air and on- and off-site surface and ground water are protected
3 from contaminants.

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

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

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

19 B. the size of the industrial facility;

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

22 D. the estimated cost of remediation and
23 restoration.

24 SECTION 6. [NEW MATERIAL] ENFORCEMENT--ADMINISTRATIVE AND
25 CRIMINAL PENALTIES.--

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1 A. The department shall enforce the provisions of
2 the Industrial Facilities Remediation and Restoration Act
3 through administrative proceedings in the same manner as other
4 administrative proceedings of the department. The department
5 may assess an administrative penalty of up to one thousand
6 dollars (\$1,000) per day for failure to file original and
7 updated remediation and restoration plans or any orders issued
8 by the department pursuant to the Industrial Facilities
9 Remediation and Restoration Act.

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

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

21 "74-4G-5. APPLICATION AND FEE.--

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

- 24 (1) own the site;
25 (2) operate a facility located on the site;

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1 (3) be a prospective owner of the site; or
2 (4) be a prospective operator of a facility at
3 the site.

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

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

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

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

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

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

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

25 (5) the site has a state or federal permit

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1 that addresses a contaminant described in the application or a
2 permit is pending;

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) those parties that have requested
16 notification;

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

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

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

25 G. The department shall:

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

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

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

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

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

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