

SUBMITTED VIA DOCKET PORTAL

AA:26:01756

April 7, 2026

New Mexico Environmental Department Board
1190 S. St. Francis Dr.
Santa Fe, NM, 87505

Dear Hearing Officer Orth, Chair Suina, and Board Members,

In accordance with 20.1.1.304 NMAC, Salado Isolation Mining Contractors, LLC (“SIMCO”) hereby submits the following public comment to the record in Environmental Improvement Board (“EIB”) Rulemaking No. EIB 25-81. SIMCO is submitting this comment as a follow up to its discussions with attorneys for the New Mexico Environment Department (“NMED”) to formally express concern over the ramifications of the proposed omission of 40 C.F.R. § 260, specifically 40 C.F.R. § 260.2(b), from 20.4.1.101.C(2) NMAC.

From discussions with NMED, SIMCO understands that the U.S. Environmental Protection Agency (“EPA”) has recommended the removal of all of 40 CFR Part 260 but does not require the removal as part of NMED’s Resource Conservation and Recovery Act (“RCRA”) authorization reapproval process and leaves that decision up to the state of New Mexico.

At present, the inclusion of 40 C.F.R. § 260.2(b) currently provides companies submitting information to NMED under its delegated RCRA authority with the ability to protect confidential business information. This protection allows companies to more freely share information with NMED without having to worry about that information being disclosed to the public, competitors, etc.

Removing 40 C.F.R. § 260.2(b) leaves only the New Mexico Inspection of Public Records Act (“IPRA”) to govern what disclosed information can be protected. This would change the definition of what can be consider confidential from: “[information that contains]the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retrain business advances it derives from its right to the information” (See 40 C.F.R. § 260.1 (incorporating the definition in 40 C.F.R. § 2.201)) to “information including a formula, pattern, compilation, program device, method, technique or process that derives independent actual or potential economic value from not being generally known or readily ascertainable by proper means to others who could profit from its disclosure or use.; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”(See NMSA 1978 § 14-2-6 (incorporating the definition in NMSA 1978 § 57-3A-2)). This represents a drastic narrowing of what kinds of information can be protected under the umbrella of confidentiality without the protections found in 40 C.F.R. § 260.2(b).

This change may not only make companies more reluctant to share information with NMED but would create inconsistencies with how information submitted to NMED is treated under the law. For example, both the Air Quality Control Act (See NMSA 1978 § 74-2-11) and the Water Quality

Act (See NMSA1978 § 74-6-15) provide protection for confidential business records in addition to processes entitled to protection as trade secrets.

SIMCO respectfully requests that the proposed change be amended so that 40 C.F.R. § 260.2(b) is retained within 20.4.1 NMAC. Alternatively, SIMCO requests that, if 40 C.F.R. § 260 must be removed in full, language be added to 20.4.1 NMAC that creates a protection for business confidential information, similar to the New Mexico Air Quality regulations at 20.2.1.115 NMAC.

Either of these options would continue to promote more open communication between regulated entities and NMED and create a consistent standard by which information submitted to NMED is treated across different environmental frameworks.

Sincerely,

Jennifer Hower
General Counsel
Salado Isolation Mining Contractors, LLC