

NEW MEXICO MINING COMMISSION

Received

MAR 07 2000

**IN THE MATTER OF AGRONICS, INC.
Notice of Violation N98-10-15**

No. 00-01

New Mexico Mining Commission

INTERIM ORDER

This matter is before the New Mexico Mining Commission (Commission) in case No. 00-01, on motion by Agronics, Inc. (Agronics) to stay cessation order C-00-11-1, issued by the Mining and Minerals Division (MMD).

Having considered the motion by Agronics, arguments of counsel, and being fully advised of all evidence before the Commission, the Commission finds that Agronics' motion fails to make the required evidentiary showing pursuant to 19 NMAC 10.2 Subparts 1407.C and 1406.G.3(a-f), and hereby DENIES Agronics' motion to stay cessation order C-00-11-1.

This order is an interim order, pending a final adjudication of the merits of appeal

00-01 by this Commission.

DATED: ~~2/07/00~~
3/07/00

Terry L. Fletcher
Terry L. Fletcher, Chair
New Mexico Mining Commission

*Per Telephone instructions
of Terry Fletcher to
correct date written
in error.*

John Pfeil

NEW MEXICO MINING COMMISSION

IN THE MATTER OF AGRONICS, INC.

Notice of Violation N98-10-15

No. 00-01

ORDER

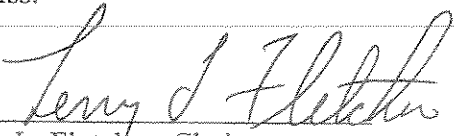
This matter is before the New Mexico Mining Commission (Commission) in case no. 00-01, on motion by Agronics, Inc. (Agronics) to dismiss NOV-99-10-3, Cessation Order CO-11-11-1 and the related penalty assessment.

Having considered the motion by Agronics, arguments of counsel, and being fully advised of all evidence before the Commission, the Commission finds that:

- (1) humate is a mineral subject to the Act;
- (2) incidental mining of clays at Agronics' mining site do not remove the such mining site from the jurisdiction of the Mining Act; and
- (3) the humate mined by Agronics is not a "construction material" as contemplated under the Mining Act.

The Commission further finds that Agronics' motion to dismiss otherwise lacks merit, and **HEREBY DENIES** Agronics' motion to dismiss.

DATED: 4/12/00


Terry L. Fletcher, Chair
New Mexico Mining Commission

NEW MEXICO MINING COMMISSION

In re appeal of

AGRONICS, INC., FROM A DECISION OF THE
DIRECTOR OF THE MINERALS AND MINING
DIVISION

No. 00-01

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter is before the Commission on the petition of Agronics, Inc. (Agronics) for appeal of a Notice of Violation NOV-99-10-3 ("NOV"), a Cessation Order CO-00-11-1 ("CO"), and a related Penalty Assessment ("Penalty") issued by the Director of the Minerals and Mining Division (the Division). The New Mexico Mining Commission held a regular meeting on March 23, 2000, at Santa Fe, New Mexico, to deliberate on this matter. After consideration of all the testimony and other evidence submitted by the parties, and argument of counsel, and being otherwise duly advised, the Commission makes the following findings and conclusions:

I. FINDINGS OF FACT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE:

A. Findings of Fact generally relating to the Mining Act and Rules:

1. Agronics operates a humate mine on property commonly known as the "Clodbuster site," which is subject to the Act as an existing mining operation, and the sole mining operation at issue in this matter. Agronics continues to operate this site as of the date of this hearing.

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2. As of the date of the hearing, Agronics continues to operate the Clodbuster mine.

3. Twenty-two of twenty-eight active full-scale mines, excluding Agronics, successfully applied for and received permits since the effective date of the Mining Act. All six remaining operations successfully applied for extensions from the Division. All twelve minimal impact mining operations have applied for, and received permits from the Division.

4. The Division has applied the Mining Act fairly and equally to all mining operations subject to the jurisdiction of the Act.

5. On March 23, 2000, Agronics received a full hearing before the Commission on the merits of the CO, the NOV, and the Penalty prior to any action by the Division to enforce same, and as of the date of the hearing before the Commission, the Division has not taken any action as of the date of this hearing.

6. All portions of the Mining Act and Rules that were applied to Agronics in this matter reasonably apprise any interested party of all information requested, allow a reasonable opportunity for success, and are otherwise reasonable and necessary.

7. The requirements of Section 502.D of the Rules are a fair, reasonable obligation placed on both existing and new mines, and are further designed to prevent circumvention of the Act and the Rules.

B. Findings of Fact relating to the NOV:

8. In 1994, Agronics submitted to the Division a site assesment dated June 30, 1994.

9. On December 24, 1994, Agronics submitted to the Division a permit application and the required permit application fee.

10. The initial deadline for permit and closeout plan ("CLOP") approval was December 31, 1997. On December 3, 1997, the Division granted Agronics an extension to December 31, 1998 to obtain permit and CLOP approval.

11. On September 18, 1998, the Division notified Agronics of the remaining deficiencies in his permit application.

12. On October 23, 1998, the Division notified Agronics of the remaining deficiencies in his CLOP.

13. Agronics did not obtain permit or CLOP approval by the December 31, 1998 deadline.

14. On March 4, 1999, the Division issued the NOV because of Agronics' failure to obtain permit and closeout plan approval. The notice informed Agronics that the NOV was issued pursuant to 1102.B of the Mining Act Rules (the Rules), and provided that "upon expiration of the period of time fixed for abatement, [if] the Director finds that the condition or practice has not been abated, the Director shall order a cessation of operations or a portion thereof."

15. The NOV, and the preceding letters of October 23 and September 18 listed all requested actions in specific, clear, and easily understandable terms, and clearly listed the dates by which each action needed to be completed.

16. As of March 4, 1999, the outstanding items listed in the NOV accurately reflected Agronics' failed efforts to obtain permit and CLOP approval and Agronics' failure to pay any outstanding annual fees.

B. Findings of Fact relating to the CO:

17. At all times since issuance of the NOV on March 4, 1999, representatives for Agronics and the Division engaged in repeated communications regarding the status of Agronics' permit and closeout plan applications. At all times relevant herein, representatives of the Division were accessible and forthcoming in response to any inquiries by Agronics.

18. By letter dated May 7, 1999, the Division informed Agronics which actions, as specified in the NOV as due by either April 15, 1999 or May 1, 1999, remained unsatisfied by Agronics, and which actions Agronics satisfied as of May 7.

19. On January 21, 2000, the Division issued the CO to Agronics. The CO directed Agronics to cease all mining and reclamation activities at the Clodbuster mine, other than health and safety and environmental protection-related activities agreed to by MMD.

20. The CO listed all actions that Agronics failed to satisfy in specific, clear, and easily understandable terms, and each such action corresponded to the initial list of required actions in the NOV.

21. The CO specified that it was issued pursuant to Rule 1102.B.2 of the Rules, and further specified that the reason for the CO was "the permittee or operator has failed to abate the Notice of Violation No. N99-10-3 within the time for abatement originally fixed or subsequently extended." The CO thus clearly specified the grounds for its issuance.

22. Prior to the issuance of the CO, the Division denied requests for a conference pursuant to Rule 1111.

23. Pursuant to Agronics' request of January 24, 2000, the Division held a conference pursuant to Rule 1111 on February 1, 2000 to review the merits of the CO and the underlying NOV. At the conference a hearing officer recommended that the CO, NOV and related penalties be upheld.

24. By letter dated February 3, 2000, the Division director affirmed the decision of the hearing officer, but granted Agronics a stay of any enforcement of the CO until February 23, 2000, in the event that Agronics requested a stay from the Commission at its February 23, 2000 meeting.

25. At a hearing on February 23, 2000, the Commission denied Agronics' request for a stay of either the CO, the NOV or the related penalty assessment, finding that Agronics failed to make the required evidentiary showing pursuant to 19 NMAC 10.2 Subparts 1407.C and 1406.G.3(a-f).

26. As of March 23, 2000, the items listed in the CO as remaining "unabated" accurately reflect Agronics' failed efforts to obtain permit and CLOP approval and Agronics' failure to pay any outstanding annual fees.

27. The items listed in the CO as remaining "unabated" fairly relate to the items contained in the NOV, and to all subsequent correspondence from the Division to Agronics prior to the issuance of the CO.

D. Findings of Fact relating to the related Penalty:

28. On or about January 21, 2000, the Division assessed penalties against Agronics relating to the NOV and CO. These penalties included a total fine of \$1,500.00 for failure to obtain an approved permit and CLOP by the December 31, 1998 deadline, and a total fine of \$2,600.00 for failure to abate the items listed in the NOV.

29. Agronics did not suffer any actual prejudice in the Division's failure to serve the proposed Penalty on or about January 21, 2000.

30. The Penalty is reasonable and accurately reflects the facts underlying both the NOV and the CO.

E. Findings of Fact relating to Willful Violations of the Mining Act:

31. Agronics willfully failed to obtain approval of a CLOP, as accurately set forth in the list of items specified in paragraph 5, pages 2-3 of the Division's attachment to the CO (MMD Exhibit 4), and Agronics' CLOP application remains technically and administratively incomplete as of March 23, 2000.

32. Agronics willfully failed to obtain a mining permit, as accurately set forth in the list of items specified in paragraph 5, pages 1-2 of the Division's attachment to the CO (MMD Exhibit 4), and its permit application remains technically and administratively incomplete as of March 23, 2000.

33. Agronics willfully failed to pay any annual fees for its continued operation of the Clodbuster mine site, and has not paid such fees as of March 23, 2000.

II. CONCLUSIONS OF LAW:

34. The Commission enjoys jurisdiction to hear and decide the matters presented in this case.

35. The NOV was issued pursuant to, and complied with, section 1102.B.1 of the Rules.

36. The CO was issued pursuant to, and complied with, section 1102.B.2 of the Rules.

37. The Penalty Assessment was issued pursuant to, and compliant with, sections 1105 through 1100 of the Rules.

38. The Division's decision was otherwise in accordance with the Act and all applicable Mining Act Rules.

39. The Division's decision comports with all applicable requirements of due process.

40. The Division did not subject Agronics to double jeopardy by virtue of the fact that the Division penalized it for violations of regulations administered by either the New Mexico Environment Department, or by any federal administrative agency, including the Environmental Protection Agency or the Occupational Health and Safety Administration.

41. The Division's assessment of penalties in this matter, and requiring of all fees to be paid by Agronics before issuance of a permit, did not subject Agronics to double jeopardy.

42. The Division properly exercised its discretion in interpreting the Act and the Rules as applied to Agronics.

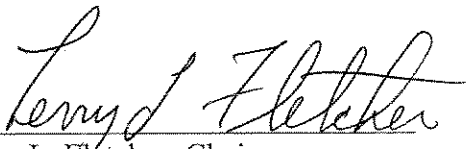
43. The Mining Act did not result in an administrative taking of property from Agronics as prohibited under the Fifth Amendment of the United States Constitution and Art. II, sec. 20 of the New Mexico Constitution.

44. Agronics has willfully violated the Mining Act and the Rules adopted by this Commission, in violation of Section 69-36-18 of the Act.

III. FINAL ORDER

Based on the foregoing findings and conclusions, the Commission votes to **AFFIRM** Notice of Violation N 99-10-3, Cessation Order C00-11-1, and the related penalty assessment by the Division.

DATED: 4/12/00


Terry L. Fletcher, Chair
New Mexico Mining Commission