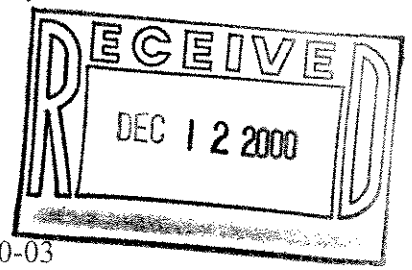


**NEW MEXICO MINING COMMISSION**

IN THE MATTER OF CHALLENGE MINING'S  
PETITION FOR REVIEW OF THE DIRECTOR'S  
ORDER ON PENALTIES FOR NOTICE OF  
VIOLATION NO. N00-7-1 AND N00-7-2

No. 00-03



**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND FINAL ORDER**

This matter is before the Commission on the petition of Challenge Mining Company for review of an order by the Director of the Mining and Minerals Division (the Division) upholding notice of violation nos. N00-7-1 and N00-7-2. The New Mexico Mining Commission held a regular meeting on November 28, 2000, at Santa Fe, New Mexico, to deliberate on this matter. After consideration of all the evidence submitted by the parties and argument of counsel, and being otherwise duly advised, the Commission makes the following findings and conclusions.

**A. Findings of fact supported by a preponderance of the evidence:**

1. The Division issued Notice of Violation N00-7-1 and N00-7-2 to Challenge Mining Company effective August 19, 2000, for failure to pay annual permit fees for 1998 and 1999, assessing penalties against Challenge Mining Company in the amount of \$500 for each violation, for a total amount of \$1,000.

2. Challenge Mining Company did not request a conference with MMD concerning the penalty assessments.

3. Challenge Mining Company timely appealed the Division's decision to this Commission.

4. The complex issues involved in approving permits and close-out plans pursuant to the Act often result in the Division not approving such permits and plans for months, or even years.

5. During the pendency of an application, an applicant may commence or continue to conduct mining operations or both, in the absence of any contrary order by an administrative or judicial authority with jurisdiction over such matters.

6. By collecting fees annually, the Division better matches actual expenses with fees, and recovers a steady stream of revenue to pay the costs of implementing the Act.

7. If fees were not collected annually, the Division would have to estimate the total expenses incurred in processing the permit, and would have to require payment in a large lump sum, up front, which would create an economic obstacle for many mining operations.

8. The collection of annual fees prevents an applicant from having the incentive to delay the permit process.

9. The mere fact that an annual permit fee can be assessed even when the mine owner does not yet have a permit does not result in a blurring between the annual and permit fees, or a *de facto* increase in the schedule of application fees set forth in Mining Act Rule 201.

#### **B. CONCLUSIONS OF LAW**

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

11. Section 69-36-7(M) of the New Mexico Mining Act, (the Act) authorizes the Commission to establish annual administrative and permit fees “which shall not exceed

the estimated costs of administration, implementation, enforcement, investigation and permitting pursuant to the New Mexico Mining Act.”

12. Subpart 2 of the Mining Act Rules outlines three types of fees to be assessed by the Division, namely: application fees pursuant to section 201, annual permit fees pursuant to section 202, and facility-related fees pursuant to section 203.

13. The permit fee is submitted at the same time as the permit application.

14. Pursuant to sections 202.A.3 and 202.B.3 of the Mining Act Rules, the annual permit fee for both existing mining operations and new mining operations, respectively, “shall be due on or before December 31, 1995, and each subsequent year for the duration of the permit.”

15. In the separate case of Challenge Mining Company. v. The New Mexico Minerals & the Natural Resources Department, the New Mexico Mining Commission, and the Mining and Minerals Division, First Judicial District Court, No. D-0101 CV2000 00466, the court found, by order dated August 9, 2000, that Mining Act Rule 202 does not violate the Act or the Mining Act Rules. In that case, the court rejected the same arguments presented by Challenge Mining Company in this appeal.

16. Pursuant to Old Abe Co. v. New Mexico Mining Commission, 121 N.M. 83, 90, 908 P.2d 776, 783 (Ct. App. 1995), the Mining Act Rules require a schedule from which an applicant can determine the amount of the applicable annual and application fees.

17. Mining Act Rules 201 and 202 do not violate the requirements for fee structures as set forth in Old Abe Co. v. New Mexico Mining Commission, 121 N.M. 83, 90, 908 P.2d 776, 783 (Ct. App. 1995), both as written and as applied in this case.

18. The Division assessed all annual and permit fees against Challenge Mining Company in accordance with the Mining Act and with all applicable Mining Act Rules, including Rules 201 and 202.

19. Mining Act Rules 201 and 202 satisfy all applicable due process requirements, both as written and as applied to Challenge Mining Company in this case.

20. Mining Act Rules 201 and 202 are consistent with the language and purpose of both the Act and the Mining Act Rules, both as written and as applied in this case.

21. The judicial decision in Challenge Mining Company, v. The New Mexico Minerals & the Natural Resources Department, the New Mexico Mining Commission, and the Mining and Minerals Division further supports, and is consistent with, the foregoing conclusions of law in this case.

### C. ORDER

Based on the foregoing findings and conclusions, the Commission votes to **AFFIRM** notice of violation nos. N00-7-1 and N00-7-2 as issued by the Division, and **AFFIRM** the Division's decision to assess total penalties of \$1,000 against Challenge Mining Company. Pursuant to Mining Act Rule 1442, the Commission further **ORDERS** that Challenge Mining Company shall pay the full amount of the civil penalty within sixty days after receipt of this order by forwarding a cashier's check or certified check in the amount of \$1,000 to the Hearing Clerk.

DATED: 12/11/00

  
Terry L. Fletcher, Chair  
New Mexico Mining Commission