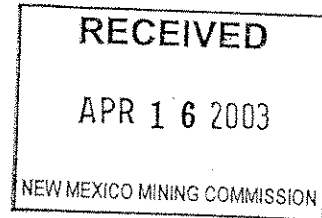


STATE OF NEW MEXICO
MINING COMMISSION



IN THE MATTER OF PETITION NO. 02-05
FOR THE REVISION OF REGULATIONS,
19 NMAC 10.2 Subpart 2 - FEES

FINAL ORDER

THIS MATTER came before the New Mexico Mining Commission (the "Commission") for public hearing on a Petition for the Revision of Regulations, 19 NMAC 10.2 Subpart 2 - Fees, filed on November 27, 2002 by the Mining & Minerals Division of the Energy, Minerals and Natural Resources Department ("MMD"). Notice of the subject, time and place of hearing, the manner in which any interested persons could present their views, and the method by which the public could obtain copies of the proposed revisions was published and mailed as required by NMSA 1978, § 69-36-8(C). All interested persons and the general public were provided with a reasonable opportunity to present their views and to examine witnesses testifying at the hearing. The hearing was tape-recorded and the tapes are in the custody of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

I. **Proposed Amendment**

Petitioner MMD in its Petition requested that the Commission consider revising Mining Act Rule, 19 NMAC 10.2 Subpart 2 - Fees to extend annual fee collections to March 31, 2006 and to increase surcharges for certain mines in order to ensure the continuity of the Mining Act Reclamation Program and to ensure that MMD will be able to address the statutory and regulatory needs it is charged with administering.

II. **Statement of Reasons**

The Commission deliberated on the Petition at the close of the hearing.

The Commission found that the three-year extension was reasonable and consistent with the Mining Act, the Mining Act Rules, and MMD's ongoing role in mining permit compliance and enforcement activities, approval of closeout plans and reclamation activities, mine site inspections, permit modifications and revisions, and financial assurance oversight. The Commission further found that the revised surcharges for existing mining operations are reasonable and necessary, based on the estimated costs of administration, implementation, enforcement, investigation, and permitting relating to mining reclamation activities.

The Commission voted unanimously to approve the amendments to 19 NMAC 10.2 Subpart 2 proposed by MMD because these are consistent with the purposes and intent of the Mining Act. The amendments approved by the Commission on March 25, 2003 are attached hereto as Exhibit A and incorporated by reference.

IT IS THEREFORE ORDERED THAT Joint Petition No. 02-05 for the Revision of Regulations, 19 NMAC 10.2 Subpart 2 – Fees be and is hereby **GRANTED**.

NEW MEXICO MINING COMMISSION

By: 

RON CURRY, Vice Chairman

Dated: 04-15-03

Exhibit A.

The following is an amendment to Subsections A and E of 19.10.2.202 NMAC; and Subsection A of 19.10.2.205 NMAC.

19.10.2.202 ANNUAL FEES

A. The annual fee for an existing mining operation shall be determined by adding:

- (1) \$800.00 base fee;
- (2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres[~~and~~];
- (3) a fee determined in accordance with 19.10.2.203 NMAC;
- (4) a surcharge of ~~[25%]~~75% shall be added to the total annual fees for existing mining operations that obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, but did not obtain closeout plan approval in 2002;
- (5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, have obtained closeout plan approval and produced minerals in 2002;
- (6) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and

~~(5)~~(7) The annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before ~~[June 30, 2001, and]~~ June 30th of each [subsequent] year until all Mining Act requirements are met. ~~[For fees due on June 30, 2001, the permittee may elect to pay half the fees on June 30, 2001 and half the fees on or before December 31, 2001.]~~

B. The annual fee for the new mining operation shall be determined by adding:

- (1) \$1,000.00 base fee,
- (2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres, and
- (3) a fee determined in accordance with 19.10.2.203 NMAC; and
- (4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before June 30, 2001 and June 30th of each subsequent year for the duration of the permit.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before December 31, 1995, and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June 30th of each year.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before December 31st of the year following the permit application and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June 30th of each year.

E. The provisions in Subsection A through D of 19.10.2.202 NMAC and Subsection F of 19.10.2.202 NMAC shall not be applicable to any fees due after March 31, ~~[2003]~~2006.

F. Formula for Reducing Fees for Substantially Reclaimed Acreage.

(1) For the purposes of 19.10.2 NMAC, "Substantially Reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = Pre-reclamation Fee - (AR/AT) * (Pre-reclamation Fee), where AT = Total Acreage and AR = Reclaimed Acreage.

[7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03]

19.10.2.205 SURCHARGE FOR DEPARTMENT OF GAME AND FISH ACTIVITIES

A. To compensate the Department of Game and Fish for its costs required to implement its involvement in implementing the Act, a percentage surcharge shall be added in the same percentage to each of the above application and annual fees. This surcharge shall be 4.5 percent of fees collected in FY 96 to be used in FY 97

and FY 98. This surcharge shall be 4.2 percent of fees collected in FY 98 and FY 99, to be used in FY 99 and FY 2000. This surcharge shall be 3.2 percent of fees collected in FY2000 to be used in FY 2001. No percentage surcharge shall be assessed in FY 2001 or FY 2002; instead, the balance of the surcharges assessed during FY 1996 through FY 2002 shall be used in FY 2002[and], FY 2003, FY 2004, FY 2005 and FY 2006.

B. Payment. On a quarterly basis, the Director shall reimburse the Department of Game and Fish, only from this surcharge, for its reasonably necessary costs incurred under the Department's involvement with implementation of the Act.

[11-15-95, 12-15-95, 2-15-96, 5-31-97, 6-30-99; 19.10.2.205 NMAC -- Rn, 19 NMAC 10.2.2.205, 05-15-2001; A, 12-28-01; A, 04-30-03]