

STATE OF NEW MEXICO

MINING COMMISSION

**IN THE MATTER OF PETITION NO. 03-01
FOR THE REVISION OF REGULATIONS,
19 NMAC 10 Part 12 – FINANCIAL
ASSURANCE REQUIREMENTS**

ORDER

THIS MATTER came before the New Mexico Mining Commission (the “Commission”) for public hearing on September 18 and 19, 2003 on a Petition for the Revision of Regulations, 19 NMAC 10 Part 12 –Financial Assurance Requirements, filed on June 18, 2003 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 Amendments

Petitioner MMD in its Petition requested that the Commission consider revising Mining Act Rule, 19 NMAC 10 Part 12 – Financial Assurance Requirements to tighten and strengthen the protections afforded by financial assurance being provided to the state for mine closeout and reclamation.

Generally, the proposed rule changes would authorize the use of trusts funds and insurance as forms of financial assurance and would replace third-party guarantees

with corporate guarantees. The proposed changes would clarify certain provisions currently applicable to third-party guarantees and make those provisions applicable to corporate guarantees, if adopted by the Commission. MMD's proposal also would revise existing regulations with respect to the application of the alternative financial soundness tests which a guarantor must meet in order to be eligible to post a corporate guarantee. Corporate guarantees would not exceed seventy-five percent (75%) of the total financial assurance.

Finally, the proposed rule changes would (1) authorize the use of net present value calculation to establish the amount of financial assurance, (2) require a mine operator to pay the costs of any analysis and review required by the Director to establish the value of collateral or to evaluate a corporate guarantor's ability to provide a corporate guarantee, (3) set forth in more detail requirements for accepting real property as collateral, (4) specify compliance with state law governing deposits of cash by a state agency, and (5) authorize the Director to prescribe the form of documents that must be used by an operator or an operator's surety provider, bank, or guarantor to establish financial assurance.

II. Statement of Reasons

Upon consideration of the testimony and exhibits offered at the hearing, the Commission decided to bifurcate the hearing, proceed to adopt certain revisions as proposed by MMD and/or amended by the Commission, and give the interested parties more time to discuss and revise certain proposed amendments.

The Commission found that many of the proposed revisions were reasonable and consistent with the Mining Act, the Mining Act Rules, and MMD's duty to ensure that the form and amount of financial assurance posted by a mine operator is adequate for the State or a third-party contractor to undertake closeout and reclamation of mine sites in the event that an operator is unable to do so.

The Commission voted unanimously to approve the following proposed revisions:

- (1) 19 NMAC 10.12 Subpart 1201.D, as proposed by MMD and amended by MMD Exhibit E in the record;
- (2) 19 NMAC 10.12 Subpart 1203.A, as proposed by MMD and amended by the Commission, adding trusts and insurance as acceptable forms of financial assurance and changing “corporate guarantee” to “third-party guarantee”;
- (3) 19 NMAC 10.12 Subpart 1205.A, as proposed by MMD, adding contract administration to the estimated costs to be considered by the Director and prohibiting credit for salvage value;
- (4) 19 NMAC 10.12 Subpart 1208.C.3 (c), as proposed by MMD, authorizing the Director to waive certain requirements;
- (5) 19 NMAC 10.12 Subpart 1208.C.3 (c) (i), as proposed by MMD, authorizing the Director to request a site improvement survey plan;
- (6) 19 NMAC 10.12 Subpart 1208.C.3 (c) (iv), as proposed by MMD, authorizing the Director to request a current title binder;
- (7) 19 NMAC 10.12 Subpart 1208.C.3 (c) (v), as proposed by MMD and amended by MMD Exhibit G in the record;
- (8) 19 NMAC 10.12 Subpart 1208.C.3. (d), as proposed by MMD, authorizing the Director to accept water rights as collateral;
- (9) 19 NMAC 10.12 Subpart 1208.D.1 (d), as proposed by MMD, stating that individual cash accounts in excess of \$100,000 are prohibited, unless deposited with the State of New Mexico;
- (10) 19 NMAC 10.12 Subpart 1208.E.1 and 2 (a) through (c) and (e) through (h), as proposed by MMD, setting forth the conditions for accepting trusts as acceptable form of financial assurance;

- (11) 19 NMAC 10.12 Subpart 1208.E.2 (d), as proposed by MMD and amended by MMD Exhibit I in the record;
- (12) 19 NMAC 10.12 Subpart 1208.F, as proposed by MMD, setting forth the conditions for accepting insurance as acceptable form of financial assurance;
and
- (13) 19 NMAC 10.12 Subpart 1208.G.1, 2, 3, 4, 5, 6, 8, 10, 11, and 12, as proposed by MMD and amended by the Commission, changing “corporate guarantee” to “third-party guarantee” throughout the entire subpart, striking “portfolio” from subsection 1208.G.1 (b), and striking “including any form of self-guarantees” from subsections 1208.G.10 (a) and (b).

The Commission voted unanimously to reject the following proposed revisions:

- (1) 19 NMAC 10.12 Subpart 1203.B, as proposed by MMD, that would have allowed the Director to accept other forms of financial assurance;
- (2) 19 NMAC 10.12 Subpart 1205.C, as proposed by MMD, and directing the parties to discuss and submit new language regarding net present value calculations for the Commission’s consideration by October 27, 2003;
- (3) 19 NMAC 10.12 Subpart 1208.C.3 (c) (ii), as proposed by MMD, deleting new language that would have allowed the Director to request additional review and concurrence of independent appraisal;
- (4) 19 NMAC 10.12 Subpart 1208.G.7, as proposed by MMD, and directing the parties to discuss and submit new language regarding limitations, if any, on third-party guarantees for the Commission’s consideration by October 27, 2003;
- (5) 19 NMAC 10.12 Subpart 1208.G.9, as proposed by MMD.

The revisions approved by the Commission on September 19, 2003 are attached hereto as Exhibit A and incorporated by reference.

IT IS THEREFORE ORDERED THAT Petition No. 03-01 for the Revision of Regulations, 19 NMAC 10.2 Part 12 – Financial Assurance Requirements be and is hereby **GRANTED in part and REJECTED in part**, as noted in the foregoing Order.

IT IS FURTHER ORDERED THAT the parties shall submit revised language regarding (a) third-party guarantees, (2) net present value calculations for the Commission's consideration by October 27, 2003;

IT IS FURTHER ORDERED THAT the Commission shall reconvene on November 17, 2003 in Porter Hall, New Mexico Energy, Minerals, and Natural Resources Department, 1220 St. Francis Drive, Santa Fe, New Mexico to consider and possibly take action on the revised language submitted by the parties.

NEW MEXICO MINING COMMISSION

By: _____
Gary King, Chairman

Dated: _____