

**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 (NET PRESENT VALUE  
AND THIRD-PARTY GUARANTEES)**

**FINAL ORDER**

**THIS MATTER** came before the New Mexico Mining Commission (the “Commission”) for public hearing on September 18 and 19, 2003 and continued on November 17, 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. Statement of Proceedings**

On September 18 and 19, 2003, the Commission heard MMD’s Petition for the Revision of Regulations, 19 NMAC 10 Part 12 – Financial Assurance

Requirements. After consideration of the testimony and exhibits offered at the hearing, the Commission bifurcated the hearing and issued an Order dated September 29, 2003, wherein the Commission adopted certain revisions as proposed by MMD and/or amended by the Commission, directed the parties to submit for the Commission's consideration revised language regarding net present value calculations and third-party guarantees, and ordered that the rule-making hearing be continued on November 17, 2003 for the limited purpose of hearing, considering and possibly taking action on the revised language submitted by the parties.

On October 27, 2003, Petitioner MMD, the Gila Resources Information Project (hereinafter "GRIP"), and the Rio Grande Chapter of the Sierra Club (hereinafter "Sierra Club") each submitted for the Commission's consideration proposed revised language regarding net present value calculations and third-party guarantees. With its Supplemental Notice of Intent to Present Technical Testimony, Phelps Dodge Corporation commented on the language proposed by MMD and GRIP and, based on those comments, requested certain changes to the language submitted by MMD. During the course of the hearing, GRIP withdrew its proposed revised language and stood in support of the language proposed by MMD, as modified by the Sierra Club.

## **II. Proposed Amendments**

First, proposed revisions to Section 1205.C would authorize the use of net present value ("NPV") for the amount of financial assurance, indicate how NPV is calculated, provide limits on when NPV may be used, and authorize the

Director's periodic review of NPV calculations. Second, proposed revisions to Sections 1206.B and 1210.F would correct erroneous paragraph citations. Third, proposed revisions to Section 1208.G.1 would define the term "third-party guarantees" and limit the amount of financial assurance provided in the form of a third-party guarantee to seventy-five percent (75%) of the total financial assurance package. Finally, proposed revisions to Sections 1208.G(3) and 1208.G(8) would define the term "guarantee" as used in the financial soundness test.

### **III. Statement of Reasons**

Upon consideration of the testimony and exhibits offered at the hearing, the Commission found that 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, as well as MMD's duty to ensure that any financial assurance provided does not include any type or variety of self-guarantee or self-insurance.

The Commission voted unanimously to approve the following proposed revisions:

- (1) 19 NMAC 10.12 Subpart 1205.C, as proposed by MMD, and amended by the Commission, authorizing the use of net present value calculations for establishing the amount of financial assurance;

- (2) 19 NMAC 10.12 Subpart 1208.G.1, as proposed by MMD, defining third-party guarantees; and
- (3) 19 NMAC 10.12 Subparts 1206.B and 1210.F, as proposed by MMD, and further authorizing the Director to correct paragraph citations whenever necessary.

The Commission voted unanimously to reject the following proposed revisions:

- (1) 19 NMAC 10.12 Subpart 1208.G.3, as proposed by MMD;
- (2) 19 NMAC 10.12 Subpart 1208.G.8(c), as proposed by MMD; and
- (3) 19 NMAC 10.12 Subpart 1208.G.8(d), as proposed by the Sierra Club.

The revisions approved by the Commission on November 17, 2003 are attached hereto as Exhibit A and incorporated by reference.

**IT IS THEREFORE ORDERED THAT** the remaining revisions proposed under Petition No. 03-01 for the Revision of Regulations, 19 NMAC 10.2 Part 12, relating to third-party guarantees and net present value be and are hereby **GRANTED in part and REJECTED in part**, as noted in the foregoing Order.

**NEW MEXICO MINING COMMISSION**

By: \_\_\_\_\_  
**Gary King, Chairman**

Dated: \_\_\_\_\_