

BEFORE THE NEW MEXICO MINING COMMISSION

In re the Appeal of

AGRONICS, INC.

No. 96-07

FINDINGS AND CONCLUSIONS

THIS MATTER was heard by the Commission at a regular meeting on February 4, 1997, at 2040 S. Pacheco Street in Santa Fe, New Mexico. The Commission, after consideration of the testimony and exhibits, makes the following findings and conclusions.

FINDINGS

1. Appellant owns an open-pit humate mine in Sandoval County, New Mexico, called the Clodbuster Mine, which mine was in operation for more than two years since 1970, ~~but is not now operational.~~ *JM*
2. On February 13, 1996, the New Mexico Energy, Minerals & Natural Resources Department, Mining and Minerals Division (MMD) mailed, by certified mail, a letter informing Appellant of its failure to pay the 1996 annual permit fee.
3. On February 13, 1996, MMD also mailed, by certified mail, a Notice of Violation no. N96-4-9.
4. On August 12, 1996, MMD issued a proposed penalty assessment of \$100 to Appellant.
5. On October 2, 1996, MMD held a penalty conference at Appellant's request to mediate the penalty assessment.
6. On November 8, 1996, MMD mailed, by certified mail, a letter to Appellant stating that MMD was upholding the Notice of Violation after review of a conference report and the permit file, and imposing a \$500 revised fine against Appellant.

7. On December 19, 1996, Appellant timely filed a Petition for Review of Penalty Assessment, which petition sought review of the November 8, 1996, assessment.

8. On February 4, 1997, the Commission timely heard this matter within 60 days of the filing of the Petition for Review.

9. Appellant wilfully refused to pay his 1996 annual permit fee, and his failure to pay the annual fee is the basis of the imposition of the fine.

10. Appellant refused to pay the annual permit fee because, in part, he believed the permit application requirements are too uncertain for compliance.

11. Appellant and MMD engaged in a dialogue regarding the information MMD required for the permit application, but this process did not result in the filing of a satisfactory permit application.

12. Permit application requirements are, especially with the assistance of MMD, reasonably ascertainable.

13. Appellant refused to pay the annual permit fee because, in part, he believed the chances of receiving an approved permit were too speculative to justify the expenditure of the fee.

14. MMD incurs expenses as a result of consideration of any permit application regardless of whether MMD eventually approves the permit.

15. MMD employs exacting, rational criteria for establishing the level of a penalty, as evidenced by the attachment to the November 8, 1996, letter to Appellant.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to consider this Petition for Review pursuant to NMSA 1978; § 69-36-15(A) (1993 Repl. Pamp.).

2. MMD did not err in considering the Clodbuster Mine an existing mining operation pursuant to NMSA 1978, § 69-36-3(E) (1993 Repl. Pamp.) and applicable regulations.

3. The Mining Act and Mining Act Rules apply to existing, ongoing and new mining operations, and must meet due process requirements by having a rational legislative purpose.

4. The New Mexico legislature's purposes of assuring responsible use and reclamation of lands affected by mining operations as well as establishing MMD's duties of oversight over all mines are rational.

5. The Mining Act Rules ensure that all mining operations pay a fair share of MMD's costs of oversight, and also ensure that mining operations provide all necessary information for proper reclamation of mining sites.

6. The requirements of the Mining Act Rules related to filing of information accompanying a permit application, 10 NMAC 2.501, are specific enough for a person of common intelligence to understand them.

7. The penalty assessment system that MMD uses is a rational and predictable system for determining the relative damage from and egregiousness of a Mining Act violation.

8. Appellant failed to carry its burden of demonstrating how any provision of the Mining Act irreconcilably conflicted with any

provision of the federal law by citing to no provisions of the federal law or explaining how any conflict arises with those laws.

9. NMSA 1978, Section 69-36-7(M) (1993 Repl. Pamp.), and Old Abe Co. v. New Mexico Mining Comm'n, 121 N.M. 83, 908 P.2d 776 (Ct. App.), cert. denied 120 N.M. 828, 907 P.2d 1009 (1995), require the Commission to set a schedule of fees for specific permit requirements, and 10 NMAC 202 and 203 are consistent with that requirement.

ORDER

After due consideration, it is the Order, Judgment and Decree of the New Mexico Mining Commission that the Notice of Violation N96-4-9, together with the \$500 penalty be, and hereby is, **AFFIRMED.**

DATED March 4, 1997.

BY: Art Montana  
ART MONTANA, Chairman  
NEW MEXICO MINING COMMISSION