

NEW MEXICO MINING COMMISSION

Received
MAR 23 2000
New Mexico Mining Commission

In re appeal of

AGRONICS, INC., FROM A DECISION OF THE
DIRECTOR OF THE MINERALS AND MINING
DIVISION

No. 99-09

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

This matter is before the Commission on the petition of Agronics, Inc. (Agronics) for appeal of a decision issued by the Director of the Minerals and Mining Division (the Division) issued November 23, 1999. The New Mexico Mining Commission held a regular meeting on February 23, 2000, at Santa Fe, New Mexico, to deliberate on this matter. After consideration of all the testimony and other evidence submitted by the parties, statements from interested persons, and argument of counsel, and being otherwise duly advised, the Commission makes the following findings and conclusions:

I.

**FINDINGS OF FACT SUPPORTED BY A PREPONDERANCE OF THE
EVIDENCE, AND CONCLUSIONS OF LAW:**

A. Findings and conclusions relating to the Mining Act Rules:

1. Pursuant to Mining Act Rule 501.C, as amended, the deadline for permit and closeout plan approval for existing mining operations is December 31, 1998.

2. Mining Act Rule 501.D allows applicants seeking permits and closeout plan approvals for existing mining operations to request an additional non-renewable extension of the deadline for approval of mandatory permits and closeout plans by September 22, 1999.

3. Any extension request pursuant to Rule 501.D requires payment of a \$5,000 non-refundable fee to accompany any such application for extension, in addition to the requirements listed in Rule 501.D.2.

4. Before approving any extension request pursuant to Rule 501.D, the Division must obtain concurrence from the Secretary of the New Mexico Environment Department if the extension would affect programs managed by that department, and must hold a public meeting to obtain comment on the extension request.

5. As an alternative to an extension request pursuant to Rule 501.D, a mining operation may seek a variance pursuant to Rule 1002 from the requirements of Subpart 5.

6. As part of any variance application pursuant to Rule 1002, the applicant must include a \$500 fee for a variance application, and satisfy the other requirements of Rule 1002.

7. As part of any variance application pursuant to Rule 1002, the Division shall provide public notice and opportunity for a public hearing.

8. The \$5000 and \$500 fees required pursuant to Rules 501.D and 1002, respectively, are reasonable and necessary to cover the costs of processing requests under those rules.

9. The applicable standards of Rule 501.D for approving extensions reasonably apprise the applicant of the information requested, allow a reasonable opportunity for success, and are otherwise reasonable and necessary.

10. The applicable standards for approving permits and close-out plans reasonably apprise the applicant of the information requested, allow a reasonable opportunity for success, and are otherwise reasonable and necessary.

11. The applicable standards of Rule 1002 for approving variances reasonably apprise the applicant of the information requested, allow a reasonable opportunity for success, and are otherwise reasonable and necessary.

12. Six mining operations submitted extension requests pursuant to 501.D, with the required supporting information and fee. Each of those operations received an extension request pursuant to Rule 501.D.

B. Findings and conclusions relating to Agronics' extension request and variance application:

13. Agronics operates a humate mine on property commonly known as the "Clodbuster site," which is subject to the Act as an existing mine, and the sole mining operation at issue in this matter.

14. Agronics did not submit any application pursuant to Rule 502.D for an extension of the deadline for permits and closeout plan approvals prior by September 22, 1999.

15. By letter dated September 24, 1999 and postmarked October 1, 1999, Agronics sent a letter to the Division requesting an extension pursuant to 501.D. This letter failed to include any of the information required by Rule 501.D to support an extension application or the \$5,000 fee, but instead contested the reasonableness of the \$5,000 fee. Nor did this letter suggest an alternate means to calculate the fee it should be charged, or offer any justification for the dilatory nature of its submission.

16. By letter dated November 3, 1999, the Division advised Agronics that its extension request was incomplete, of the alternative of a variance to an extension, and

further advised Agronics that it had to submit its variance request by November 18, 1999 so that there would be adequate time to consider such request.

17. Agronics failed to submit any information satisfying the requirements of Rule 501.

18. Agronics failed to apply for a variance from the requirements of Rule 501, or otherwise satisfy the requirements of Rule 1002.

19. Agronics submitted a letter dated November 18, 1999, which failed to include either the fees or information required under either Rule 501.D or Rule 1002.

20. By letter dated November 23, 1999, the Division denied Agronics' putative application for an extension pursuant to Rule 501.D, and its putative application for a variance.

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

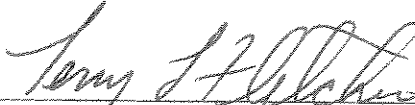
22. The Division properly denied Agronics' request for either an extension or a variance.

23. The Division's decision was in accordance with the Act and all applicable Mining Act Rules.

II. FINAL ORDER

Based on the foregoing findings and conclusions, the Commission votes to **AFFIRM** the decision of the Division dated November 23, 1999.

DATED: 3/23/00


Terry L. Fletcher, Chair
New Mexico Mining Commission

NEW MEXICO MINING COMMISSION

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AUG 15 2000
New Mexico Mining Commission

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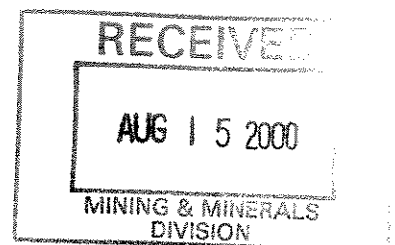
No. 99-09

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

This matter is before the Commission on the petition of Agronics, Inc. (Agronics) for appeal of a notice of violation (NOV) N98-10-15 and related penalty assessment issued by the Director of the Minerals and Mining Division (the Division). The New Mexico Mining Commission held a regular meeting on August 2, 2000, at Santa Fe, New Mexico, to deliberate on this matter. After consideration of all the testimony and other evidence submitted by the parties, statements from interested persons, and argument of counsel, and being otherwise duly advised, the Commission makes the following findings and conclusions:

**I.
FINDINGS OF FACT SUPPORTED BY A PREPONDERANCE OF THE
EVIDENCE, AND CONCLUSIONS OF LAW:**

1. The Commission has jurisdiction over this matter.
2. Humate is a mineral.
3. Agronics' Clodbuster site, at issue in this case, mines humate and is thus a mining operation subject to the Mining Act (the Act), and required to pay all annual fees as applicable under 19 NMAC 10.2 Subpart 2 (the Rules).
4. The Rules are reasonable and permissible pursuant to the Act.



5. The Act is constitutional.

6. NOV N98-10-15 and the related penalty assessment are in accordance with all applicable provisions of the Act and Rules.


7. Furthermore, all issues raised by Agronics relating to the Division's fee assessment in this matter have been rejected by the Thirteenth Judicial District Court, and affirmed by all higher New Mexico appellate courts, in appeals from the Commission's decision in Agronics' appeals nos. 96-07 and 97-02.

8. Agronics appeal otherwise lacks merit.

II. FINAL ORDER

Based on the foregoing findings and conclusions, the Commission votes to **AFFIRM** NOV N98-10-15 and the related penalty assessment.

DATED: 8/7/00



Terry L. Fletcher, Chair
New Mexico Mining Commission