

BEFORE THE NEW MEXICO MINING COMMISSION



IN THE MATTER TO AMEND

No. 15-02 (R)

19.10.3 NMAC (Minimal Impact Operations)

**FINAL ORDER**

**THIS MATTER** came before the New Mexico Mining Commission (the “Commission”) on the petition filed on October 27, 2015 by the New Mexico Mining Association to amend 19.10.3.303(A) NMAC and 19.10.3.304(A) NMAC of the Commission’s Regulations, “to expand the disturbance area for minimal impact mining operations for non-energy fuel minerals that lack the potential for significant acid rock drainage from ten acres to forty acres in all areas of New Mexico except Bernalillo County, Dona Ana County, and Santa Fe County” (the “Original Proposal”). 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 recorded and copies of the audio recording are in the custody of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

**Statement of Proceedings**

In accordance with the Commission’s Guidelines for Rulemaking, the New Mexico Mining Association filed its Notice of Intent to Present Technical Testimony in support of its petition on April 6, 2016. The Mining Association’s Notice of Intent included as exhibits a

summary of the direct testimony of and Curriculum Vitae for Tim J. Leftwich and a summary of the direct testimony of and resume for Michael Farmar. It also included a Modification of Proposed Amendment to 19.10.3, which appears to narrow the scope of the Original Proposal to five specific commodities and further requires the Director of the Mining and Minerals Division (the “Director”) to conduct on-site inspections of operations permitted under 19.10.3.303 NMAC (“Rule 303”) or 19.10.3.304 NMAC (“Rule 304”), as amended, for more than 10 acres of disturbance during the term of the permit. (“Modified Proposal”). On the same date, the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department filed its Notice of Intent to Present Technical Testimony and Pre-hearing Statement, indicating that “[i]t is the MMD’s opinion that the limit placed on proposed amendments (specific counties exempt from the expansion of acreage, the limit to specific mineral operations, and the 40 acre size limit) as well as concurrent reclamation and annual inspections will allow economically viable operations to be conducted while ensuring minimal impact to the environment.” Also on the same date, Amigos Bravos filed its Notice of Intent to Present Statement of Position, stating that “the Modified Proposal represents a compromise between the position asserted by the Mining Association in its Original Proposal and Amigos Bravos’ position concerning the Original Proposal. For that reason . . . it will not oppose the New Mexico Mining Association’s Modified Proposal.”

The Commission heard the Mining Association’s Modified Proposal on April 20, 2016. The hearing included the direct testimony of Tim J. Leftwich and Michael Farmar on behalf of the Mining Association and, at the Commission’s request, MMD Director Fernando Martínez, as well as the opportunity for cross-examination and questioning from members of the Commission and the public. State Mine Inspector Terrence Foreback provided public comment in favor of the

Modified Proposal. At the conclusion of the hearing and upon deliberation, the Commission voted to adopt the Modified Proposal.

### **Modified Proposal**

The Modified Proposal, relating specifically to Rule 303 and Rule 304 of the Commission's regulations, would increase the permissible acreage of disturbed land from ten (10) acres to forty (40) acres for minimal impact existing mining operations and minimal impact new mining operations extracting dolomite, garnet, humate, perlite and zeolite in all areas of the state except Bernalillo, Dona Ana, and Santa Fe Counties. The Modified Proposal also would make two additional changes to the Commission's regulations for minimal impact mining operations. First, in order to determine whether a mining operation that includes between 10 and 40 acres of disturbance is eligible to be permitted as an existing minimal mining operation or a new minimal impact mining operation, the Director would be required to conduct an on-site inspection that may include other agencies. The second change would require the Director to conduct on-site inspections of operations permitted under the modified Rule 303 and Rule 304 for more than 10 acres but not more than 40 acres of disturbance at least once a year during the term of the permit.

The proposed revisions considered at the hearing read as follows:

#### **19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS**

A. An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations except that: (1) are located outside Bernalillo, Dona Ana and Santa Fe Counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A

of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the Act and 19.10 NMAC will be major factors in the Director's determination of minimal impact status. Notwithstanding the frequency for inspections of minimal impact mining operations specified in 19.10.11.1101.A(4) NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

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J. The director shall determine if an operation is eligible for a minimal impact operation. The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.

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#### **19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS**

A. A minimal impact new mining operation will not exceed 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations except that: (1) are located outside Bernalillo, Dona Ana and Santa Fe Counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. In determining whether a proposed operation with between 10 and 40 acres of disturbed land is eligible for a minimal impact new mining operation permit, the director shall conduct a site visit that may include other agencies in accordance with 19.10.3.304(I) NMAC. Notwithstanding the frequency for inspections of minimal impact mining operations specified in 19.10.11.1101.A(4) NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

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disturbance, the director shall conduct an on-site inspection which may include other agencies.

After considering the evidence presented at the hearing, for the reasons outlined below, the Commission elected by a vote of 6 to 0 to adopt the Modified Proposal, as presented.

### **Statement of Reasons**

The Commission finds that the Modified Proposal is narrowly tailored and seeks specific and limited changes to Rule 303 and Rule 304. The Modified Proposal allows an increase in the disturbance area for five named minerals that lack the potential for significant acid drainage in all areas of the state, except in the more populated counties of the state, where the potential for conflict with other permitted uses of the land is greater. The Modified Proposal leaves intact the comprehensive permitting scheme for minimal impact mining operations found in the Commission's regulations and otherwise does not disturb MMD's permitting system.

The Commission finds that the Modified Proposal will encourage mineral mining for dolomite, garnet, humate, perlite and zeolite by eliminating the 10-acre limitation that may act as a barrier to many potential minimal impact mining operations, and allowing development in an environmentally responsible way. The Commission further finds that allowing minimal impact mining operations extracting dolomite, garnet, humate, perlite and zeolite to have a larger disturbance area will likely minimize the overall environmental disturbance by increasing the efficiency of said mining operations. It also would allow crushing facilities to be located near or next to mine sites, which would decrease the environmental disturbance of the mining operations by decreasing the amount of energy consumed and eliminating the need to double- or triple-handle materials during extraction and processing. As such, the Commission expects that the Modified Proposal will (a) allow economically viable operations to be conducted while ensuring minimal impact to the environment, and (b) create an economic stimulus in rural communities

that might benefit from mining investment through job growth and creation. New Mexico also would see an increase in revenues from the mineral extraction and production of dolomite, garnet, humate, perlite and zeolite.

### **Conclusion**

1. After hearing the testimony and considering the evidence and arguments presented by all parties, the Commission finds that the language of the Modified Proposal strikes an appropriate balance between the economic, environmental, natural resource optimization, and permitting efficiency concerns of mid-sized mining operations extracting dolomite, garnet, humate, perlite and zeolite, and the public.
2. Increasing the acreage of permitted disturbance areas for minimal impact mining operations engaged in extracting dolomite, garnet, humate, perlite and zeolite from 10 acres to 40 acres would allow those mine operators to employ better management, extraction and reclamation practices while meeting production demand.
3. Increasing the maximum allowable minimal impact mining acreage for dolomite, garnet, humate, perlite and zeolite mining operations from 10 acres to 40 acres strikes a satisfactory balance between the potential increased environmental impacts associated with larger minimum impact mines and the overall benefits afforded by more efficient and productive operations.
4. Increasing the maximum allowable minimal impact mining acreage for dolomite, garnet, humate, perlite and zeolite mining operations from 10 acres to 40 acres will not alter current Rule 303 or Rule 304 requirements regarding closeout plans; reclamation; financial assurance; notice to and solicitation of comments from the Environment Department, the Department of Game & Fish, the State Forestry Division, the State

Historic Preservation Office, the State Engineer, and the appropriate state or federal land administrator, if the operation is located on state or federal land; and a written determination from Secretary of Environment Department that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if permitted activities are carried out as described in the closeout plan.

5. The Commission notes that, in reaching its decision, it is bound by the factors delineated in NMSA 1978, Section 69-36-7(A). Therefore, the Commission specifically finds that: (1) small to mid-sized mining operations engaged in the extraction of dolomite, garnet, humate, perlite and zeolite have minimal impacts on the environment; (2) the environmental effects of mining for dolomite, garnet, humate, perlite and zeolite will improve with increased acreage; (3) the economics of mining for dolomite, garnet, humate, perlite and zeolite necessitates increased acreage in order to have viable dolomite, garnet, humate, perlite and zeolite industries in New Mexico; and (4) the Modified Proposal is consistent with the permitting requirements for minimal impact mines set out in NMSA 1978, Section 69-36-7(L).
6. The amendments approved by the Commission on April 20, 2016 are attached hereto as Exhibit A and incorporated by reference.

**NEW MEXICO MINING COMMISSION**

By:

  
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**John Heaton, Chairman**

Dated: April 25, 2016

**EXHIBIT A**

**19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS**

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