

STATE OF NEW MEXICO

MINING COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE MINING
ACT RULES (Rule 1 and Reformat)

STATEMENT OF REASONS FOR AMENDMENT OF REGULATIONS

THESE MATTERS came before the New Mexico Mining Commission ("Commission") for public hearings in October, 1995. During meetings held October 27 and November 29, 1995, the Commission reviewed the record, deliberated and voted to amend the Mining Act Rules for the reasons set forth below.

This Statement of Reasons is intended by the Commission to fulfill the requirement that rulemaking bodies "must give some indication of their reasoning and of the basis upon which the regulations were adopted". New Mexico Mun. League, Inc. v. New Mexico Env'tl. Improvement Bd., 88 N.M. 201, 539 P.2d 221 (Ct. App. 1975). See also Bokum Resources Corp. v. New Mexico Water Quality Control Comm'n, 93 N.M. 546, 603 P.2d 285 (1979); Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n, 107 N.M. 469, 760 P.2d 161 (Ct. App. 1987).

This summary of the Commission's deliberation should be read in conjunction with the Minutes of the Commission meetings which list the specific actions taken by the Commission.

I. Process

The New Mexico Mining Act, NMSA 1978 Sections 69-36-1 to 69-36-20 ("Act"), authorizes the Commission to adopt regulations to

implement the Act and allows any person to propose regulatory changes to the Commission. Section 69-36-8(A).

This Statement of Reasons covers two proposed regulatory changes initiated by different persons:

A. The New Mexico Mining Association ("Association") proposed to amend Mining Act Rule 1 to add a definition of "obtaining useful minerals"; and

B. The Mining and Minerals Division of the Energy, Minerals and Natural Resources Department ("MMD") proposed to reformat the Mining Act Rules to comply with the requirements of the New Mexico Administrative Code, 1 NMAC 3.1.

At its meeting of August 4, 1995, the Commission scheduled a rulemaking hearing to occur on October 27, 1995. The hearing was conducted in accordance with the requirements of the Act and with the Guidelines for Rulemaking adopted by the Commission. Public notice of the hearing, which included publishing in newspapers and in the New Mexico Register and mailing to persons on the Commission mailing list, was provided in advance of the hearing.

The notice required persons who intended to present "technical testimony" at the hearing to provide the Commission notice of their intent at least 10 working days prior to the hearing. Notices of intent were received from the Association, MMD and the Environment Department.

Public hearings were held on October 27, 1995 in Santa Fe. A quorum of the Commission was present throughout the hearing,

and the Commission Chairman acted as hearing officer. At the hearing, all persons who wished to present written or oral comments or to question witnesses were allowed to do so. At the end of each hearing, the Commission deliberated and took action on the proposed regulatory changes.

II. Proposals

A. The Association proposed to add a definition of the term "obtaining useful minerals" to clarify the scope of the Act and the Rules. The term is found in the definition of "mining" in the Act and the Rules:

"mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes...

Section 69-36-3(H); Mining Act Rule 1.1. (emphasis added).

The proposed definition clarifies when certain actions to recover minerals from previously disposed or abandoned mining wastes do not constitute "obtaining useful minerals". These actions involve the removal of such wastes from a non-permitted site to a permitted site for processing when such removal is required for an environmental cleanup. The Association argued that this would clarify that environmental cleanups would not trigger an unnecessary permitting requirement.

No one opposed the proposed amendment. The Environment Department, in its Notice of Intent, offered wording changes to further clarify the proposal. At the hearing, the Association did not oppose the Environment Department's amendments.

B. Reformat. MMD proposed to reformat the Mining Act Rules in the format required under the New Mexico Administrative Code. The Code is mandated under the State Rules Act, Section 14-4-7.2, and the regulations of the State Records Center, 1 NMAC 3.1. The changes included codifying the Rules as a Part under Title 19, Chapter 10 of the Code. The Code also requires sections that state the issuing agency, scope, statutory authority, duration, effective date and objective of the Part. MMD also proposed to change the numbering system of sections.

No one opposed the proposed regulatory changes.

III. Deliberation and Decision

The Commission deliberated on each proposal at the close of the hearings.

A. The Commission found that the addition of a definition of "obtaining useful minerals" clarified the scope of the Act and the Rules in a manner that reasonably implements the intent of the Act. The Commission also found that the Environment Department's language further clarifies the proposal. The Commission voted to adopt the Association's proposal for the definition of "obtaining useful minerals" with the changes proposed by the Environment Department.

B. The Commission found that the reformatting of the Rules is necessary to comply with the State Rules Act. The Commission reviewed the specific changes and amended the proposed "Objective" section to use the specific "puroses" language from the Act, Section 69-36-2.

IV. Conclusion

After deliberation, the Commission adopted the proposed changes to the Mining Act Rules as amended by the Commission for the following reasons:

1. The process followed in adopting the amendments complied with all procedural requirements;

2. The amendments are supported by substantial evidence in the record, and are reasonable regulations that are consistent with the purposes and intent of the Act, that are necessary to implement the Act, and that consider the economic and environmental effects of their implementation.

Adopted: November 29, 1995

MINING COMMISSION

Art Montana
Chair