

STATE OF NEW MEXICO
MINING COMMISSION

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE MINING
ACT RULES, 19 NMAC 10.2,
SUBPARTS 1, 3 and 12

Public Hearing November 12, 1996

STATEMENT OF REASONS FOR AMENDMENT OF REGULATIONS

THIS MATTER came before the New Mexico Mining Commission ("Commission") for a public hearing in November 1996. During a meeting held November 12 and 13, 1996, 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 rulemaking proceeding had its beginnings in February 1996 when the Commission directed that public meetings be held to determine if regulatory changes were necessary (Minutes of 2/27/96). The Mining and Minerals Division of the Energy, Minerals and Natural Resources Department ("MMD") conducted the meetings and reported to the Commission that regulatory changes may be necessary for provisions affecting small miners. (Minutes of 4/3/96 and 7/16/96). MMD submitted a Petition for Revision of Regulations covering Subparts 1, 3 and 12 of the Mining Act Rules.

At its meeting of August 20, 1996, the Commission scheduled a rulemaking hearing to occur on November 12, 1996. 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 MMD, St. Cloud Mining Company, Abe Jacobson and the Environment Department.

A public hearing was held on November 12, 1996 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 the hearing, the Commission closed the record and then deliberated and took action on the proposed regulatory changes at a public meeting on November 13, 1996.

II. Proposals

MMD's proposed amendments were designed to simplify and reduce the regulatory burden on the smallest mining operations, including recreational miners, that have a minimal impact on the environment. MMD found, during its public meetings across the state, that small miners felt the current regulations were burdensome. MMD argued that the proposed changes would lessen some burdens without sacrificing environmental protection.

In Subpart 1, MMD proposed to add some flexibility into the definition of "minimal impact mining operation". MMD argued that the rigidity of the current definition excluded some operations that truly had minimal impacts.

In Subpart 3, MMD proposed to eliminate the "permit by rule" provision and replace it with a "general permit". The general permit category would be broader than the permit by rule, but would also require any operation seeking a general permit to submit an application. This would allow MMD to track the smallest operations while keeping their permitting requirements simple. In addition, all operations less than 2 acres would not be required to provide financial assurance, but larger operations must now provide an

amount sufficient to cover the cost of reclaiming the site by a third party.

In Subpart 12, MMD proposed amending the requirements for surety bonds and letters of credit so that such instruments may be more easily obtained by small operators.

At the hearing, MMD provided testimony in support of its proposals. Support for the proposals was also provided by the New Mexico Environment Department, Santa Fe Pacific Gold Company and the New Mexico Mining Association. Testimony in opposition was provided by some environmental organizations and private citizens. The opposition focused on impacts of recreational miners and on the dangers of removing financial assurance requirements. St. Cloud Mining Company also provided testimony in support of further amendments to benefit small miners.

III. Deliberation and Decision

The Commission deliberated on the proposals at the close of the hearings. The Commission is required, under the Mining Act, to consider the economic and environmental effects of its regulations, Section 69-36-7(A), and for operations that have minimal impact on the environment, to require only general plans and "otherwise reduce the permitting requirements of the Mining Act", Section 69-36-7(L).

The Commission found, in general, that the amendments proposed by MMD satisfied the requirement of the Act to reduce the permitting requirements of operations that have a minimal impact on the environment. The Commissioners also found that the proposal

would provide the Director and the Commission with more information on the number, location and activities of the smallest miners. The Commission then reviewed the proposal section by section and made a number of changes.

The Commission amended Section 107.W.2 to require written consultation with the Office of Cultural Affairs. In Section 302, the Commission made a number of changes to clarify the requirements. The Commission also added some protection for domestic animals from these operations and added a requirement for a \$50 application fee. The fee is designed to offset the costs of administering the general permit program, see Section 69-36-7(M), but is set at a level well below other minimal impact operation fees.

After adopting the MMD proposal as amended, the Commission instructed MMD to require photographs with each general permit application, and to compile statistics on small miners and report the results to the Commission after one year. The Commission remanded the proposed amendments of St. Cloud Mining Company to MMD for further consideration.

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.

MINING COMMISSION

DATE

Art Montana

Art Montana
Chair

November 20, 1996