

**DRAFT MINUTES OF THE  
NEW MEXICO MINING COMMISSION  
REGULAR MEETING AND HEARING  
MONDAY, MARCH 23, 2009**

*Note: Draft minutes subject to review and approval by the Commission*

The New Mexico Mining Commission meeting was convened at 9:08 A.M. March 23, 2008 in Porter Hall on the first floor of the Wendell Chino building (Energy, Minerals and Natural Resources Department) located at 1220 South St. Francis Dr. in Santa Fe, NM. The meeting was audio recorded and the CDs are in the custody of the commission clerk.

The following members were present:

Jon Goldstein	Chair, Environment Department
Andy Core	State Engineer's Office
John Bemis	State Land Office
Doug Bland	NM Bureau of Geology and Mineral Resources
Matthew Wunder	Department of Game and Fish
Leroy Dugger	Industry Alternate
Sally Malavé	Commission Attorney

The following members were absent:

Leroy Apodaca	Public Representative - Industry
Vacant	NM Soil and Water Conservation Comm.
Steve Loring	NM Agricultural Experiment Station

**Roll call**

The Clerk takes the roll call. Attendance is as shown above.

**Approval of the agenda**

Chairman Goldstein asks if there are any changes to the agenda. Mr. Bemis moves to adopt the agenda as provided, with second by Mr. Core. Motion passes unanimously on a voice vote.

**Continuation of February 17, 2009 rule-making hearing, deliberation and action on MMD's Petition for 08-02, Petition for the Revision of Regulations, NMAC 19.10 Part 3 - Minimal Impact Operations; NMAC 19.10 Part 4 - Exploration; and NMAC 19.10 Part 12 – Financial Assurance Requirements.**

Chairman Goldstein swears in participants who will be providing testimony.

Motion to Reconsider Admitting Community Groups' Proposed Regulatory Changes. Mr. Jantz provides introductory comments on the motion for reconsideration. Chairman Goldstein asks for any responses to the motion. Mark Smith (MMD), Jennifer Evans (Modrall-Sperling representing BE Resources, Inc), Tracy Hughes (NMED) and Mark Adams (Rodey Law

Firm representing Neutron Energy, Inc.) all provide comments opposing reconsideration. Doug Bland moves to deny the motion for reconsideration with second by Mr. Dugger. Mr. Bland's motion passes on a unanimous roll call vote 6-0, and the Motion to Reconsider is denied.

Mr. Jantz requests and receives a 5-minute recess to set up the PowerPoint and to contact Dr. Abitz after which Dr. Abitz is sworn in. Dr. Abitz testifies as to his education and experience. Mr. Jantz states that Dr. Abitz qualifies as an expert. Chair Goldstein asks if there are any objections from the Commission. There are none. Mr. Jantz moves that the curriculum vitae of Dr. Abitz be moved into the record. Chairman Goldstein so orders.

Dr. Abitz testifies with the assistance of Mr. Jantz who runs a concurrent PowerPoint presentation. After the testimony several of the commissioners ask questions of Dr. Abitz. Doug Rappuhn of the OSE provides comments whose focus is hole-plugging and abandonment. Dr. Abitz is released. Public comments are taken from Jennifer Evans (attorney for BE Resources) and Brian Shields (Amigos Bravos) and Terry Fletcher (NM Mining Association).

Tracy Hughes calls rebuttal witness Kurt Vollbrecht who testifies until about 11:30 A. M.

Chairman Goldstein calls for a lunch break until 1:00 P.M. The session is called back into session about 1:06 P. M.

Mr. Jantz makes a motion to defer a decision on issues and keep the record open and allow for written closings. Mark Smith, on behalf of MMD, opposes the motion. Chairman Goldstein denies the motion and states the hearing will proceed. The Chairman explains that the discussion will take place by examining, discussing and voting on proposed changes to each part, one revision at time. The results are provided below. In all cases the original underline/strikeout version proposed by MMD is provided and any amendments approved by the Commission are provided in brackets [ ]

### **PART 3 MINIMAL IMPACT OPERATIONS**

#### **19.10.3.302 MINIMAL IMPACT EXPLORATION OPERATIONS**

**A.** A minimal impact exploration operation will not exceed 1000 cubic yards of excavation~~[, excluding drill hole materials,]~~ per permit.

**Motion by Mr. Bland to accept revisions as proposed by MMD (see above), second by Dr. Wunder. Motion passes unanimously on a roll call vote 6-0.**

Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. A minimal impact exploration operation may not exceed twenty drill holes. ~~[However, the]~~The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.

**Motion by the Chairman to accept revisions as proposed by MMD (see above). Motion fails on a roll call vote 3-3** (Goldstein - yes, Bland - yes, Wunder – yes, Core – no, Bemis – no, Dugger – no).

**D.** The application shall include the following information:

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on or eligible for either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on the permit area; areas and types of proposed disturbances shall be indicated; the anticipated dimensions of each proposed disturbance shall also be provided;

**Motion by Mr. Bland to omit revisions as proposed by MMD (see above), second by Mr. Dugger. Motion passes on a roll call vote 4-2** (Goldstein - no, Bland - no, Wunder – yes, Core – yes, Bemis – yes, Dugger – yes).

**I.** No permit for a minimal impact exploration operation will be issued until the director finds the following:

(1) the application is complete and demonstrates that the proposed operation and reclamation will meet the requirements of reclamation, as defined in 19.10.1.7 NMAC; reclamation of the disturbed area will be initiated as soon as possible, and will be completed within the permit term [~~two years following the completion or abandonment of the exploration operation~~] unless the disturbed area is included within a complete permit application for a new mining operation;

**Motion by Mr. Bland to accept revisions as proposed by MMD (see above), second by Mr. Mr. Goldstein. Motion passes unanimously on a roll call vote 6-0.**

(3) the applicant has signed a statement indicating he agrees to comply with the reclamation requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area, without delay, for the purpose of conducting inspections during exploration and reclamation; [~~and~~]

(4) the applicant has certified he is not in violation of the New Mexico Mining Act or 19.10 NMAC[-]; and

(5) the applicant has provided satisfactory financial assurance in an amount determined by the Director; acceptable forms of financial assurance are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

**Motion by Mr. Bland to accept revisions as proposed by MMD (see above), second by Dr. Wunder. Motion passes on a roll call vote 4-2** (Goldstein - yes, Bland - yes, Wunder – yes, Core – yes, Bemis – no, Dugger – no).

**K.** Reclamation of the disturbed area shall be initiated as soon as possible and completed in accordance with the schedule in the permit. Topsoil or topdressing material

removal and stockpiling shall precede any excavation within the drill site area. All lands, including access roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition [COMMISSION AMENDMENT: unless otherwise requested by the landowner and applicant and approved by the director]. Where vegetation has been removed or destroyed within the permit area, vegetative cover shall be reestablished by seeding, planting, transplanting, or other adequate methods. All open mud pits shall be constructed in a manner to prevent wildlife entrapment, and shall be constructed to prevent any overflows. When drilling is completed, the mud pits shall be allowed to dry and then backfilled with native cover.

**Motion by Mr. Bland to accept revisions as proposed by MMD and as amended (see above), second by Dr. Wunder. Motion passes on a roll call vote 5-1**(Goldstein - yes, Bland - yes, Wunder – yes, Core – yes, Bemis – no, Dugger – yes).

L. Each drill hole shall be plugged from total depth to within 2 feet of the original ground surface or the collar of the hole, whichever is lower, with a column of cement, high-density bentonite clay or other materials specified in the permit. If the approved plugging material is not cement, then the top ten feet of the column must be a cement plug. The hole shall be backfill with topdressing or topsoil from above the cement plug to the original ground surface. [COMMISSION AMENDMENT: The ASTM standard D5299-99 (2005, or its most current version): “standard guide for decommissioning of ground water wells, vadose zone monitoring devices, boreholes, and other devices for environmental activities,” will be used to evaluate the proposed plugging method.] The hole shall be plugged as soon as practical after drilling is complete, but no later than 30 days after completion of drilling; however, if a water bearing stratum is encountered, the hole shall be plugged as soon as practical and satisfy the requirements of the Office of the State Engineer and the New Mexico Environment Department for proper plugging of such holes. This plugging requirement may be waived if the State Engineer issues a permit for a well for the exploration drill hole.

**Motion by Mr. Core to accept revisions as proposed by MMD and as amended (see above), second by Mr. Bland. Motion passes unanimously on a roll call vote 6-0.**

M. Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the Director has determined, after inspection, that the reclamation requirements of this section and the permit have been satisfied.

**Motion by Dr. Wunder to accept revisions as proposed by MMD (see above), second by Mr. Goldstein. Motion passes on a roll call vote 4-2** (Goldstein - yes, Bland - yes, Wunder – yes, Core – yes, Bemis – no, Dugger – no).

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

E. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. [~~Operations less than two acres total disturbance are not required to provide financial assurance.~~]

**Motion by Mr. Bland to accept revisions as proposed by MMD (see above), second by Mr. Goldstein. Motion fails on a roll call vote 3-3** (Goldstein - yes, Bland - yes, Wunder – yes, Core – no, Bemis – no, Dugger – no)..

## **PART 4 EXPLORATION**

### **19.10.4.403 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:**

A. Reclamation of the disturbed area shall be initiated and completed [COMMISSION AMENDMENT: within the permit term as soon as possible and shall be completed within two years following the completion or abandonment of the exploration operation], unless the disturbed area is included within a complete permit application for a new mining operation. Drill holes shall be plugged in accordance with Subsections K and L of 19.10.3.302 NMAC.

**Motion by Mr. Bland to accept revisions as proposed by MMD and as amended (see above), second by Mr. Goldstein. Motion passes unanimously on a roll call vote 6-0.**

### **19.10.4.407 TERMINATION REPORT:**

C. identify on an approved map, the disturbed area including the number and the location of the disturbed acres, and the location, including identification number, of all drill holes and excavation sites[~~;~~]; and

D. Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.4.403 NMAC and the permit have been satisfied.

**Motion by Mr. Core to accept revisions as proposed by MMD (see above), second by Dr. Wunder. Motion passes on a roll call vote 5-1** (Goldstein - yes, Bland - yes, Wunder – yes, Core – yes, Bemis – no, Dugger – yes).

## **PART 12 FINANCIAL ASSURANCE REQUIREMENTS**

### **19.10.12.1201 REQUIREMENT TO FILE FINANCIAL ASSURANCE:**

A. Except for existing mining operations without new units [~~and minimal impact explorations~~], the applicant for a permit shall provide a financial assurance proposal to the director following the director's determination that the permit application is approvable, but prior to the permit issuance. [COMMISSION AMENDMENT: An applicant's financial assurance proposal shall be based upon estimates for a third-party contractor to complete reclamation

work.]The permit shall not be issued until receipt of the approved financial assurance by the director.

**19.10.12.1204 PERIOD OF LIABILITY:**

**D.** For exploration permits, financial assurance may be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the Director has determined, after inspection, that the reclamation requirements of Part 3 or Part 4, as applicable, and the permit have been satisfied.

**Motion by Mr. Bland to accept revisions as proposed by MMD and amended for all of the Part 12 (see above), second by Dr. Wunder. Motion passes on a roll call vote 4-2 (Goldstein - yes, Bland - yes, Wunder – yes, Core – yes, Bemis – no, Dugger – no)..**

The Hearing ends and the meeting continues.

**MMD’s Mining Act Reclamation Program (MARF) annual report**

Holland Shepherd provides the MARF annual report to the Commission through a PowerPoint presentation and a discussion. Susan Lucas Kamat provides statistical overview for calendar year 2007 and Chris Eustice discusses the initiation of reclamation activities at Chino.

**Other business**

None

**Adjourn**

The meeting/hearing adjourns at 3:38 P. M.

Approved:

\_\_\_\_\_ Date \_\_\_\_\_  
Jon Goldstein, Chairman

Minutes by:

\_\_\_\_\_  
John J. Pfeil, Commission Clerk