

**STATE OF NEW MEXICO
COAL SURFACE MINING COMMISSION**

**IN THE MATTER OF PETITION FOR THE
AMENDMENT OF NMAC 19.8 Part 11 and 19.8 Part 12**

ORDER

THIS MATTER came before the New Mexico Coal Surface Mining Commission (the "Commission") for public hearing on November 16, 2005 on a petition for the revision of certain regulations by the Mining & Minerals Division of the Energy, Minerals and Natural Resources Department ("MMD"). 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, § 69-25A-6. 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 the tapes are in the custody of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

I. Proposed Amendments

Petitioner MMD requested that the Commission consider amending (1) Coal Surface Mining Rule 19.8.11 NMAC Subparts 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117 and 1118 to make certain grammatical and

stylistic changes to comply with formatting requirements of the New Mexico Records Center; (2) Coal Surface Mining Rule 19.8.12 NMAC Subpart 1201, Administrative Review by the Commission, to delete this subpart in order to conform with the Surface Mining Act, as amended during the 2005 regular legislative session; (3) Coal Surface Mining Rule 19.8.12 NMAC Subpart 1202, Judicial Review, to make clear that any appeal of a Director's decision shall be pursuant to NMSA 1978, § 39-3-1.1 (1999); (4) Coal Surface Mining Rule 19.8.12 Subpart 1203, Formal Review of Notices of Violation, Cessation Orders, and Show Cause Orders by the Director, to make certain grammatical and stylistic changes to comply with formatting requirements of the New Mexico Records Center; and (5) Coal Surface Mining Rule 19.8.12 Subpart 1204, Petitions for Awards of Legal Costs and Expenses, to create a process for the payment by the Director of legal costs and expenses, including attorney's fees, to participants in administrative reviews under certain circumstances.

II. Statement of Reasons

The Commission deliberated on the proposed rule amendments at the close of the hearing.

The Commission found that many of the proposed amendments were reasonable and necessary to bring the rules into compliance with the formatting requirements of the New Mexico Records Center and the Coal Surface Mining Act, as amended during the 2005 regular legislative session. The Commission further found that the certain amendments

were necessary to bring MMD into compliance with federal regulations promulgated by the Office of Surface Mining concerning the payment of attorney's fees.

The Commission therefore voted unanimously to approve the following proposed revisions:

- (1) 19. 8.11 NMAC Subparts 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, and 1118, as proposed by MMD, making certain grammatical and stylistic changes to comply with certain formatting requirements of the New Mexico Records Center;
- (2) 19. 8.12 NMAC Subpart 1201, as proposed by MMD, deleting the administrative review by the Commission in order to conform with the Surface Mining Act, as amended during the 2005 regular legislative session;
- (3) 19. 8.12 NMAC Subpart 1202, as proposed by MMD, to conform with NMSA 1978, § 39-3-1.1 (1999);
- (4) 19. 8.12 NMAC Subpart 1203, as proposed by MMD, making certain grammatical and stylistic changes to comply with certain formatting requirements of the New Mexico Records Center; and
- (5) 19. 8.12 NMAC Subpart 1204, as proposed by MMD, creating a process for the payment by the Director of legal costs and expenses, including attorney's fees, in compliance with federal Office of Surface Mining regulations regarding the same.

The amendments approved by the Commission on November 16, 2005 are attached hereto as Exhibit A and incorporated by reference.

IT IS THEREFORE ORDERED THAT MMD's petition for the amendment of 19. 8 NMAC Parts 11 and 12, be and is hereby **GRANTED**, as noted in the foregoing Order.

**NEW MEXICO COAL SURFACE
MINING COMMISSION**

By: 
Jamie Bailey, Chairperson

Dated: November 18, 2005