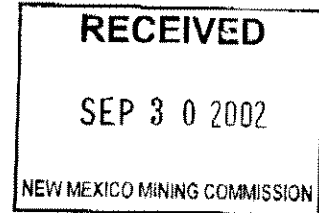


STATE OF NEW MEXICO
MINING COMMISSION



**IN THE MATTER OF JOINT PETITION
NO. 02-01 FOR THE REVISION OF EXISTING
REGULATIONS, 19.10 NMAC Part 5**

**ORDER DENYING JOINT PETITION
NO. 02-01 TO AMEND REGULATIONS**

THIS MATTER came before the New Mexico Mining Commission (the "Commission") for public hearing on a Joint Petition for the Revision of Existing Regulations, 19.10 NMAC Part 5 – Existing Mining Operations, filed on June 3, 2002 by the Mining & Minerals Division ("MMD"), Chino Mines Company, Phelps Dodge Tyrone, Inc., Phelps Dodge Corporation and Cobre Mining Company (hereinafter collectively "PD"), Citizens for Economic Growth and Environmental Protection ("CEGEP"), and the Gila Resources Information Project ("GRIP"). The hearing was tape-recorded and the tapes are in the custody of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

This summary of the Commission's deliberation should be read in conjunction with the Minutes of the Commission's September 13, 2002 meeting which lists the specific actions taken by the Commission.

I. **Proceedings**

At its June 17, 2002 meeting, the Commission scheduled a public hearing on Joint Petition No. 02-01 for August 28 and 29, 2002. After the Commission's June 17, 2002 meeting, GRIP withdrew its support of the Joint Petition and subsequently testified in opposition to the same. A public hearing was held on

August 28 and 29, 2002 in Santa Fe. A quorum of the Commission was present throughout the hearing and the Commission Chairman presided over the hearing. 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 Joint Petition at a public meeting on September 13, 2002.

II. Proposed Amendment

Petitioners MMD, PD, and CEGEP (hereinafter the "Joint Petitioners") in their Joint Petition requested that the Commission consider revising the Commission's regulation, 19.10 NMAC Part 5, to further extend the deadline for applicants to obtain approval of their existing mine closeout plans from October 1, 2002 to October 1, 2007. The Joint Petitioners proposed that to be eligible for such an extension, an applicant would have to agree to (1) provide interim financial assurance pending closeout plan approval, (2) provide a schedule of deadlines for obtaining closeout plan approval, and (3) establish one or more technical review boards to consider, develop and offer recommendations to the MMD Director relating to the applicant's closeout plan application, as well as assist the MMD Director in facilitating the resolution of issues.

At the hearing, the Joint Petitioners provided testimony in support of their Joint Petition. The New Mexico Mining Association and representatives for LAC Minerals Cunningham Mine also testified in support of the Joint Petition. GRIP and the Rio Grande Chapter of the Sierra Club testified in opposition.

III. Deliberation and Decision

The Commission deliberated on the Joint Petition at the close of the hearing. NMSA 1978, § 69-36-11(2001) requires every owner or operator of an existing mining operation to submit to the MMD Director a closeout plan by December 31, 1995, unless good cause is shown for further extension of time. The Commission's regulations, specifically NMAC § 19.10.5.501.C, require existing mining operations to have closeout plan approved by December 31, 1997, unless additional extensions of time have been granted pursuant to subsections C, D, or E of NMAC § 19.10.5.501.

The Commission found that the five-year extension was not reasonable or in accordance with the intent of the Legislature when it enacted the Mining Act, NMSA 1978, §§ 69-36-1 through 69-36-20 (the "Act"). The Commission found that there was not sufficient evidence in the record relating to the scientific studies being contemplated by the Joint Petitioners as a basis for the five-year extension. The Commission found that the proposed amendments to NMAC §19.10.5.501 are not consistent with the Act, the Mining Act Rules, or MMD's past practice of approving a closeout plan first, subject to modification, as more relevant information becomes available. The Commission concluded that the MMD Director under the existing regulations is authorized to draft a closeout plan that later may be modified from time to time as the parties receive new scientific and other evidence that relates to reclamation practices and adequate financial assurance.

IV. Conclusion

After deliberation, the Commission voted to deny the Joint Petition because the proposed amendments to the Mining Act Rules, NMAC § 19.10.5.501, are not consistent with the purposes and intent of the Act.

IT IS THEREFORE ORDERED THAT Joint Petition No. 02-01 for the Revision of Existing Regulations, 19.10 NMAC Part 5 – Existing Mining Operations be and is hereby **DENIED**.

NEW MEXICO MINING COMMISSION

By: Terry J. Fletcher
Terry Fletcher, Chairman

Dated: 9/25/02