

MINUTES OF PUBLIC MEETING OF THE ARIZONA MINE INSPECTOR OF MEETING HELD NOVEMBER 09, 2018

A public meeting of the Arizona Mine Inspector was convened on November 9, 2018, **9:03 a.m.** at 1700 W Washington, Phoenix, AZ 85007. Present at the meeting were the following members of The Arizona State Mine Inspectors' Office: **Laurie Swartzbaugh, Amanda Lothner,** and **Paul Katz** the Assistant Attorney General for the State of Arizona. The following matters were discussed, considered, and decided at the meeting.

1.

Pursuant to A.R.S. § 27-1204, the public was given the opportunity to present their concerns regarding Title 11, Chapter 3, Aggregate Mined Land Reclamation Proposed Rules located at asmi.az.gov. Three representatives of the State Mine Inspector's Office were present to answer questions. The public was given the opportunity to comment on the proposed rules and was encouraged to submit written comments prior to the November 9, 2018 meeting and until 5 p.m. that day.

The meeting was verbally commenced and announced at 9:03 a.m. by Paul Katz. Two members of the public were in attendance. An explanation of what the Mine Inspector does and what Mine Inspectors have access to in terms of reclamation was discussed and defined by one of the members of The Arizona Mine Inspector. One member of the public had three questions prepared. The other did not self-identify. Material from TITLE 11. MINES CHAPTER 3. STATE MINE INSPECTOR AGGREGATE MINED LAND RECLAMATION PREAMBLE was cited three times throughout the meeting. At the end of the meeting, the public was reminded to send comments or questions by 5 p.m. that day,

The meeting's general agenda and topic focused on the legislature that enacted the Aggregate Mine Land Reclamation Act (A.R.S. Title 27, Chapter 6) in 2005.

Aggregate Mine Land Reclamation Act Background

The Act requires aggregate exploration operations and aggregate mining units to submit reclamation plans and financial assurance mechanisms to the Office of the State Mine Inspector. The Act requires the Inspector to make rules consistent with the Act for reclamation of surface disturbances at aggregate exploration operations and mining units, financial assurances, and notice and public meetings. This rulemaking makes the required rules.

2.

No legal actions were proposed, discussed, or taken. No person proposed a motion therefore, no person voted.

3.

Paul Katz provided a description of the rulemaking development and reasons for the meeting in process.

He explained how the rules were decided upon. Paul Katz also explained that the Arizona Mine Inspector had met with the Arizona Rock Products Association and have had input from attorneys that represent both the industry and those that are concerned with reclamation, public rules, and safety. Paul Katz explained how the rules have gone through several drafts and said, *“They are not locked into cement but we hope any comments we receive will be useful in making sure that we are headed in the right direction.”*

The public was reminded that they were free to sign in although it was not mandatory unless they wanted to make oral comments or make questions regarding the rules. They were asked to come forward and identify themselves.

The public was told that the present members of the Arizona Mine Inspector’s office would do their best to try to answer questions that day but may not be able to answer all the questions They were told that all written and spoken comments would be addressed by the Mine Inspector’s Office prior to the formal adoption of these proposed rules.

Paul Katz mentioned that some of the initial comments from the industry were that not all the rules read as wholly parallel to the hard rock mining industry rules (gold, silver, copper, mining industry rules).

He explained that this was because of two reasons:

- 1) The hard rock rules were adopted more than 10 years ago there are flaws or defects in them.
- 2) The language is not as clear as it should be.

The public was told that those rules were taken as the base of the drafting for these new ones and that federal regulations were taken into consideration in the drafting of the rules, as well as statutory schemes found in ARS Section 27- 1201.

[**ARS27- 1201**- Upon discovery of mineral in place on the public domain of the United States the mineral may be located as a lode mining claim by the discoverer for himself, or for himself and others, or for others.]

Paul Katz explained that The Arizona State Mine Inspector tried to interpret those rules and give guidance to the public and to the industry. He mentioned that a lot of the complaints from cities, towns, or the public concerned matters that were out of the jurisdiction of the Mine Inspector.

The public was clarified that the Mine Inspector ensures that, before there is a disturbance of five acres or more, the sand and gravel operator on private land creates a properly engineered reclamation plan. When that plan is approved they have to submit financial assurances to make sure that they can complete reclamation. If not, then the mine inspector has to make sure there are funds available to reclaim the site.

Paul Katz listed off issues that are not controlled by the Mine Inspector:

- Air pollution
- Noise pollution
- Zoning
- Other Nuisances

Paul Katz clarified that the Mine Inspector's duties are to make sure that mining sites are reclaimed and don't remain a public health/safety hazard.

At this point, Paul Katz invited the public to come forward with any questions or comments.

Public comments and questions

Identified member of the public: **Rebecca Martorella** came up to the podium. She asked the following questions:

Question #1: What's the difference between a public meeting vs. a public hearing for mine plan modifications?

Paul answered,

A public meeting would be for an agency that means to take action such as the state's parks board, the industrial commission, or a state agency where someone will have a vote by a committee, by a board, or by commission. The mine inspector is independently elected. The purpose of this hearing is for those people who haven't already had commented or questions about these new rules. This is an opportunity to voice their concerns. This meeting is being held for the benefit of the public if they have any interest in making a comment. Whereas any board action that may be taken— the state's parks board as an example—they have to have those meetings open to the public and they don't have to have the public comment.

Question #2: In terms of the mine land modification... I think the rule says, for any significant modification you have to have a public meeting. Is that defined by the rules? (The public member referred to the word *significant*)

Paul answered and cited material **Rule 11-3-207 from Notice of Proposed Rulemaking Title 11 Mines Chapter 3.**

Amanda read the **Notice of Proposed Substantial Change to Approved Reclamation Plan** as required under ARS.

A. As required under A.R.S 27 § 27-1227(B). a responsible party that intends to make a change to an approved reclamation plan shall file a notice of the proposed change with the Inspector and indicate the purpose and scope of the proposed change and whether the proposed change is believed to be substantial.

B. If the inspector determines within 15 days after receipt of the notice that the proposed change is substantial, the responsible party shall submit an amendment for approval.

C. After submittal of the amendment and the fee specified under R11-3-210, the Inspector shall provide written notice to the responsible party approving or disapproving the proposed substantial change within 90 days. If the Inspector disapproves the proposed substantial change, the written notice shall include an explanation of reasons for the disapproval.

D. Before implementing an approved substantial change, the responsible party shall submit any required modifications to the financial assurance to account for the substantial change.

Amanda then cites and reads from page 10 of **Article 1 Definitions of Chapter 3. State Mine Inspector Aggregate Mined Land Reclamation Preamble**

“Substantial change” means one or more of the following alterations to an approved reclamation plan: Change in the post-aggregate mining use of the land from that stated in the approved reclamation plan;

The new surface disturbance that cannot be reclaimed in a manner substantially similar to that stated in the approved reclamation plan;

Change to the final topography of a surface disturbance that substantially affects the reclamation measures stated in the approved reclamation plan;

Change to reclamation measures stated in the approved reclamation plan that has the effect of lessening restrictions on public access to pits or other surface features that may cause a hazard to persons legally on the premises;

Change to reclamation measures stated in the approved reclamation plan that materially affects post-aggregate mining land use;

Change to reclamation measures stated in the approved reclamation plan that materially affects the reclamation of access roads, drill pads, drill holes, trenches, and other exploration workings;

New surface disturbance or expansion of an existing surface disturbance beyond the contours and boundaries stated in the approved reclamation plan;

A significant change in the cost estimate to perform reclamation measures stated in the approved reclamation plan unless the change results from inflation; or

Extension of more than one year in the date of completion stated in the approved reclamation plan.

Amanda Lothner explained that all of the mentioned requirements would constitute a substantial change but first, the mine inspector would review the proposed change to see whether it meets those criteria and then the Arizona Mine Inspector would require an amendment. A public meeting would then follow the technical review process before the amendment would be approved. Once the plan is approved then a revised financial assurance mechanism will be required.

Paul Katz added that if there is a substantial change it could result in an increase or a decrease in the amount of financial assurance, bond, insurance policy, or of credit that they would have to post to hopefully assure reclamation of the site if the mine operator is not found.

Laurie Swartzbaugh added that a technical review reaches outside of the agency to a third-party engineer.

Paul Katz clarified that the Mine Inspector does not have an engineer on staff. He explained that the Mine Inspector contracts with a state-approved certified engineering firm that's familiar with mining to accurately review and make sure that what is being suggested is appropriate and that the steps that are taken for reclamation are adequate to assure public health and safety.

Question #3: Can you talk about some of the other comments you've received?

Paul Katz answered:


We have not received any comments. I believe one of the reasons that is, is because there are so many comments being made by the industry and attorneys so we had probably 10 or 15 drafts of these rules and we also worked with a consultant that works with other companies making rules. Once the public comment session ends, which is at 5 p.m. today, the rules will be submitted to the assistant attorney general.

Paul Katz reminded the public members that they still had time to write in comments and questions to the office as long as they did it by 5 p.m. that day,

At 9:20 a.m. Paul Katz noted that there was no knowledge of people that said they would be late to the morning meeting.

He stated that the discussed rules were required to be adopted pursuant to Arizona Revised Statute Sanction 27-1204. At **9:21 a.m.** the meeting was adjourned.

Dated this 14th day of November 2018.

By 

Arizona Mine Inspector