

**TITLE 19            NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 10        NON-COAL MINING**  
**PART 6             NEW MINING OPERATIONS**

**19.10.6.1            ISSUING AGENCY:** New Mexico Mining Commission.  
[19.10.6.1 NMAC – N, 05-15-2001]

**19.10.6.2            SCOPE:** All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.  
[19.10.6.2 NMAC – N, 05-15-2001]

**19.10.6.3            STATUTORY AUTHORITY:** NMSA 1978, Section 69-36-1 et. seq.  
[19.10.6.3 NMAC - N, 05-15-2001]

**19.10.6.4            DURATION:** Permanent.  
[19.10.6.4 NMAC - N, 05-15-2001]

**19.10.6.5            EFFECTIVE DATE:** February 15, 1996, unless a later date is cited at the end of a section.  
**A.**            All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.  
**B.**            The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.  
[19.10.6.5 NMAC – N, 05-15-2001]

**19.10.6.6            OBJECTIVE:** The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.  
[19.10.6.6 NMAC - N, 05-15-2001]

**19.10.6.7            DEFINITIONS: [RESERVED]**  
[19.10.6.7 NMAC - N, 05-15-2001]  
[Definitions for this part can be found in 19.10.1.7 NMAC.]

**19.10.6.8 - 19.10.6.600 [RESERVED]**  
[19.10.6.8 - 19.10.6.600 NMAC - N, 05-15-2001]

**19.10.6.601         TIMING OF SUBMITTAL AND DEADLINES FOR OBTAINING APPROVAL:**  
**A.**            Applications for permits for new mining operations operating pursuant to Section 69-36-5 of the Act shall be received by the Director by December 31, 1995. The Director may grant a six-month extension if the applicant has requested such and has shown good cause for the extension. Every new mining operation operating pursuant to Section 69-36-5 of the Act must have a permit approved by the Director by December 31, 1997.  
**B.**            Except as provided in Subsection A of 19.10.6.601 NMAC, after June 18, 1993, no person shall conduct a new mining operation without a permit issued by the Director.  
**C.**            Renewal applications shall be filed 120 days preceding expiration of the current permit.  
[7-12-94, 2-15-96; 19.10.6.601 NMAC – Rn, 19 NMAC 10.2.6.601, 05-15-2001]

**19.10.6.602         PERMIT APPLICATION REQUIREMENTS:**  
**A.**            A minimum of six copies of applications for permits under this Part shall be submitted to the Director. The Director may require additional copies for distribution by the Director to other governmental agencies with an interest in, or jurisdiction over, elements of the proposed operation.  
**B.**            All information submitted to the Director shall be made available for public inspection and copying at the Director's office except as designated confidential. Information in the application which the applicant desires to keep confidential shall be clearly indicated and submitted separately from the rest of the application.  
**(1)**          If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the Director shall maintain the information as confidential and not subject to public records or disclosure laws.  
**(2)**          If a request is made for public review of the information held confidential, the Director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim is not substantiated to the satisfaction of the Director, the information shall be released.  
**(3)**          When a request is made for public review of information designated as confidential, the Director shall attempt to notify the operator within 24 hours of the request, and shall provide written notification by certified mail.

C. Each application shall be signed by the applicant or authorized agent of the applicant for the operation with the following certification made: I certify that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate, and complete.

D. Each application under this Part shall be in a format acceptable to the Director and shall contain the following:

(1) The name of the applicant to whom the permit may be issued.  
(2) A map of the proposed permit area and a map and list, including names and addresses, of all known owners of surface and mineral estates within the proposed permit area as shown by the most recent county assessor's property tax schedule.  
(3) Documents evidencing the applicant's right to enter the proposed permit area and conduct mining and reclamation.  
(4) A listing of all parties, including addresses and telephone numbers, that have an ownership and controlling interests in the operation. Alternatively, the applicant may submit the applicant's most recent 10K form required by the United States Securities and Exchange Commission.

(5) A statement of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for those operations over the preceding 10 years.

(6) The applicant shall designate an agent and provide the agent's street address for the service of notices and orders from the Director. This information shall be kept current if a permit is granted.

(7) To avoid duplication and conflicting requirements, the applicant may include information from environmental permit relevant to the application. Permits issued by other governmental agencies shall be accepted by the Director to the extent such permits satisfy the requirements of the Act and 19.10 NMAC.

(8) A copy of the proposed form of notices required under 19.10.9 NMAC.

(9) The permit fee as determined pursuant to 19.10.2 NMAC.

(10) Where physically separate but interrelated mining operations are located in close proximity to each other and are under the control of the same owner or operator, the applicant may request or the Director may determine to issue one permit for all of the operations and require only one permit application.

(11) A listing of all federal and state permits required for the operation.

(12) Sampling and Analysis Plan

(a) The applicant shall submit a proposed sampling and analysis plan (SAP) to the Director for review prior to baseline data collection. Six copies should be submitted to facilitate the review. The proposed SAP should contain, at a minimum, the following information for each relevant resource:

- (i) sampling objectives;
- (ii) a list of data to be collected;
- (iii) methods of collection;
- (iv) parameters to be analyzed for;
- (v) maps stating proposed sampling locations;
- (vi) sampling frequency;
- (vii) laboratory and field quality assurance plans; and
- (viii) a brief discussion supporting the proposals.

(b) The Director shall distribute the proposed SAP to the Environment Department, Department of Game and Fish, and other agencies as determined by the Director. The agencies will have 30 days from receipt of the proposed SAP to submit written comments to the Director. Any written comments received within 30 days shall be provided to the applicant. The Director shall also provide written comments and recommendations to the applicant on the adequacy of the SAP.

(c) The applicant may request a conference with the Director to discuss the SAP.

(13) **Baseline Data** The level of detail required for environmental baseline information may vary depending on the location, size, scope and type of mining operation and site-specific characteristics. Baseline data shall describe the environment of the proposed permit area and, to the extent practicable, the affected area. Data gathered or available to the applicant for other purposes, such as a site assessment previously submitted, may be used in part to meet the requirements of this Part. Baseline data shall be collected over a period of at least 12 months for evaluation of water quality and quantity, wildlife and wildlife habitat and vegetation. The Director may require studies of longer duration than 12 months to address unique, site-specific factors. Baseline data shall include, as applicable:

(a) A description of the climatological factors representative of the permit area including precipitation, prevailing winds and temperature.

(b) Topographic maps clearly showing: the boundaries of the permit area, and the location of all buildings within 1/2 mile of the permit area; the kinds of information set forth on U.S.G.S. topographic maps; and all man-made features within the permit area existing on the date of application. The map shall be at a scale of 1 inch equals 2000 feet (1:24,000) or a scale approved by the Director to accurately represent the permit and potentially affected area.

(c) A map which delineates existing vegetation types and a description, including cover, density, and productivity of the plant communities within the proposed permit area. The description of the vegetation types and plant communities may be based upon data from adjacent areas if vegetation within the permit area has been adversely impacted by previous mining operations or other disturbances. Included in this description shall be the results of an inventory conducted for any sensitive, threatened or endangered plant species within the permit area.

**(d)** Wildlife information shall be developed for the permit area and, to the extent practicable, the affected area. Where species may be impacted beyond these areas, the information shall include, to the extent practicable, the area of potential impact. Wildlife information shall include the following:

**(i)** a map showing habitat types. The applicant is encouraged to contact the Director for recommendations on the preferred habitat classification system. Special or unique wildlife habitat features (e.g., cliffs, talus slopes, ponds, springs, known nests, etc.) within the area of potential impact by the mining operation, shall also be mapped.

**(ii)** a list of species potentially occurring on the permit or affected area and any additional species potentially impacted by the mining operations. This list must also indicate legal status of each species and which species were confirmed present during baseline studies.

**(iii)** data gathered shall include: presence/absence, distribution by season and habitat type, and relative abundance. Key habitat areas shall be identified such as calving/fawning, nesting, foraging, wintering areas, etc. The quality and quantity of the data must be suitable for measuring the success of reclamation and the impacts of the mining operation. Survey methods must be suitable for each species.

**(iv)** information collected pursuant to this Part shall be summarized in a report which includes a discussion of the faunal characteristics of the habitats in the permit and affected area. The report shall discuss the anticipated direct, indirect, short- and long-term impacts associated with the proposed operation.

**(e)** If revegetation is part of the reclamation plan, a description of the thickness and nature of the topsoil, if any, over the proposed permit area. A soil survey and soil analyses conducted in accordance with standard methods acceptable to the Director may be required to show variations in topsoil depth and suitability. Where the applicant proposes to use something other than topsoil, the application shall provide the results of analyses as necessary to determine the suitability of the proposed materials for use as a topdressing.

**(f)** A description of the ore body in the proposed permit area, including geologic plans and cross-sections depicting the nature and depth of overburden, mineralized zone or ore body, aquifers and springs. A description of the potential for geochemical alteration of overburden, ore body and other materials present within the permit area. Detailed analyses may be required if the substrata is suspected to contain substances that are likely to create acid drainage or might degrade surface water or ground water or hinder reclamation.

**(g)** Surface water and ground water information shall include the following:

**(i)** a map indicating the location of surface waters and the location and size of watersheds in and adjacent to the proposed permit area. The map shall depict all watercourses, lakes, reservoirs, springs, and riparian and wetland areas. Streams shall be classified as ephemeral, intermittent or perennial. The map shall identify all watercourses, lakes, springs, and riparian and wetland areas into which surface or pit drainage will be discharged or may possibly be expected to reach;

**(ii)** a description of surface drainage systems sufficient to identify the seasonal variations in surface water quantity and quality within the proposed permit and affected areas to the extent possible;

**(iii)** lithology and thickness of each geologic unit below the site indicating which units are water bearing, cross sections and potentiometric maps indicating the location of wells and the ground water flow direction in the vicinity of the site, and references or sources for this information;

**(iv)** a description of the aquifer characteristics including total dissolved solids concentration, maximum and minimum depths to ground water, direction of flow and gradients, transmissivity and storativity, and a general description of ground water quality, and references or sources for this information; and

**(v)** a determination of the probable hydrologic consequences of the operation and reclamation, on both the permit and affected areas, with respect to the hydrologic regime, quantity and quality of surface and ground water systems that may be affected by the proposed operations, including the dissolved and suspended solids under seasonal flow conditions.

**(h)** A description and delineation on topographic maps of any prior mining operations which may have affected the permit area including, if known, the type of mining and processing method and a list of any processing chemicals or reagents used.

**(i)** A list and accompanying map indicating all sites on or eligible for listing on either the National Register of Historic Places and/or the State Register of Cultural Properties and known cemeteries and human burials within the proposed permit area. Included with this list and map shall be a description of the effects the proposed mining operations may have on these sites and any proposed mitigation measures.

**(j)** A description of the present and historic land use of the permit area, the general patterns of land use in the surrounding areas, and a narrative of land capability and productivity based upon U.S. Soil Conservation Service land use capability classes or a similar classification.

**(14)** The Director may contract with and the applicant shall pay for qualified experts for the following:

**(a)** Review and comment to the Director on the adequacy of baseline data prior to submission of the permit application.

**(b)** Recommend to the Director additional baseline data that may be necessary in the review of the proposed mining activity.

**(c)** Recommend to the Director methodology guidelines for the collection of baseline data;

**(d)** Review and comment on the permit application;

**(e)** Prepare an environmental evaluation, analysis and assessment of the permit application which complies with Subsection D of 19.10.6.605 NMAC.

**(15)** A detailed description of the proposed mining operation and reclamation plan, including:

- (a) A description of the type and method of mining and the engineering techniques proposed, and how the operation will meet the performance and reclamation standards and requirements of this Part.
- (b) A map or maps at a scale approved by the Director and an approximate schedule or timetable indicating the mining operations including number of acres of land to be disturbed. A permittee will be required to follow the sequence described in the schedule or timetable, unless modified or revised. A permittee will not be required to meet specific dates for initiation or completion of mining according to the schedule or timetable.
- (c) Maps and plans indicating the location, size and capacities for the mine facilities including:
  - (i) leach pads, heaps, ore dumps and stockpiles;
  - (ii) impoundments;
  - (iii) ponds;
  - (iv) diversions;
  - (v) disposal systems;
  - (vi) pits;
  - (vii) tailings disposal facilities;
  - (viii) mills;
  - (ix) water treatment facilities;
  - (x) storage areas for equipment, vehicles, chemicals and solutions;
  - (xi) topsoil and topdressing stockpiles;
  - (xii) waste rock dumps; and
  - (xiii) other facilities or structures.
- (d) A contingency plan to mitigate impacts to wildlife when there has been an emergency or accidental discharge of toxic substances that may impact wildlife.
- (e) A description of measures which will be undertaken to reduce sedimentation from the permit area and a plan for the monitoring of non-point source sediment pollution from the disturbed area.
- (f) If a post-mining land use is proposed, a detailed description of how the disturbed area will be reclaimed to achieve that use and written approval of the surface owner for the proposed use.
- (g) A description of the proposed reclamation plan, including, a detailed description of how the disturbed area will be reclaimed to meet the requirements of Section 69-36-7(H)4 and the performance and reclamation standards and requirements of this Part.
- (h) A map or maps at a scale approved by the Director and an approximate schedule indicating the reclamation activities to take place on disturbed areas of the mine site including the number of acres to be reclaimed. A permittee will be required to follow the sequence described unless modified or revised.
- (i) A topographic map of the anticipated surface configuration of the permit area upon the completion of reclamation operations. The map shall be at contour intervals and scale approved by the Director.
- (j) A description of the potential for the generation of acid or other toxic drainage from overburden and waste materials following reclamation and a design that incorporates measures to reduce, to the extent practicable, the formation of acid or other toxic drainage that may otherwise occur following reclamation to prevent releases that cause federal or state standards to be exceeded.
- (k) A detailed description of how all waste, waste management units, pits, heaps, pads and any other storage piles will be designed, sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation and are consistent with the approved reclamation plan.

**(16)** Additional information necessary for evaluation of the application as required by the Director. [7-12-94, 2-15-96; 19.10.6.602 NMAC – Rn, 19 NMAC 10.2.6.602, 05-15-2001; A, 05-31-2001]

**19.10.6.603 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:** The permit area will be reclaimed to achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use. Each reclamation plan must be developed to meet the site-specific characteristics of the mining operation and the site.

- A. Most Appropriate Technology and Best Management Practices** The mining operation and the reclamation plan shall be designed and operated using the most appropriate technology and the best management practices.
- B. Contemporaneous Reclamation** Contemporaneous reclamation is required to the maximum extent practicable and in a manner that is consistent with the approved reclamation plan.
- C. Assure Protection** The mining operation and completed reclamation shall meet the following requirements established to assure protection of human health and safety, the environment, wildlife and domestic animals.

**(1) Signs, Markers and Safeguarding** Measures will be taken to safeguard the public from unauthorized entry into shafts, adits, and tunnels and to prevent falls from highwalls or pit edges. Depending on site-specific characteristics, the following measures shall be required:

- (a) closing shafts, adits or tunnels to prevent entry;
- (b) posting warning signs in locations near hazardous areas;
- (c) restricting access to hazardous areas;
- (d) marking the permit area boundaries;

(e) posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies related to the mine; or

(f) other measures as needed to protect human safety.

(2) **Wildlife Protection** Measures shall be taken to minimize adverse impacts on wildlife and important habitat. Based on site-specific characteristics, the following measures will be required:

(a) restricting access of wildlife and domestic animals to toxic chemicals or otherwise harmful materials;

(b) minimizing harm to wildlife habitat during mining; and

(c) reclaiming areas of wildlife habitat if not in conflict with the approved post-mining land use.

(3) **Cultural Resources** Cultural resources listed on or eligible for listing on the National Register of Historic Places or the State Register of Cultural Properties, and any cemeteries or burial grounds shall be protected until clearance has been granted by the State Historic Preservation Office or other appropriate authority.

(4) **Hydrologic Balance** Operations shall be planned and conducted to minimize change to the hydrologic balance in both the permit and potentially affected areas. If not in conflict with the approved post-mining land use, reclamation shall result in a hydrologic balance similar to pre-mining conditions unless non-mining impacts have substantially changed the hydrologic balance.

(a) Operations shall be designed so that non-point source surface releases of acid or other toxic substances shall be contained within the permit area, and that all other surface flows from the disturbed area are treated to meet all applicable state and federal regulations.

(b) The disturbed areas shall not contribute suspended solids above background levels, or where applicable the Water Quality Control Commission's standards, to intermittent and perennial streams.

(c) To provide data to determine background levels for surface water entering the permit area, appropriate monitoring shall be conducted on drainages leading into the permit area.

(d) All diversions of overland flow shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and to assure the safety of the public.

(i) No diversion shall be located so as to increase the potential for landslides.

(ii) Unless site-specific characteristics require a different standard which is included in the approved permit, diversions which have watersheds larger than 10 acres shall be designed, constructed and maintained to safely pass the peak runoff from a 10-year, 24-hour precipitation event.

(iii) All diversion designs which have watersheds larger than 10 acres shall be certified by a professional engineer registered in New Mexico as having been designed in accordance with 19.10 NMAC. Diversion designs shall be kept on-site or otherwise be made available, upon request, to the Director for inspection.

(iv) When no longer needed, temporary diversions shall be removed and the disturbed area reclaimed.

(5) **Stream Diversions** When streams are to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:

(a) unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, the combination of channel, bank and flood plain configurations shall be adequate to safely pass the peak run-off of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions;

(b) the design and construction of all intermittent and perennial stream channel diversions shall be certified as meeting 19.10 NMAC by a professional engineer registered in New Mexico. As-built drawings shall be completed promptly after construction and be retained on site or otherwise made available upon request to the Director; and

(c) when no longer needed, temporary stream channel diversions shall be removed and the disturbed area reclaimed.

(6) **Impoundments** If impoundments are required they shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and adjoining property and to assure the safety of the public.

(a) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, impoundments having earthen embankments but not subject to the jurisdiction of the Mine Safety and Health Administration or the State Engineer shall:

(i) have a minimum elevation at the top of the settled embankment of 1.0 foot above the water surface in the pond with the spillway flowing at the design depth;

(ii) have a top width of the embankment not less than 6 feet;

(iii) have combined upstream and downstream side slopes of the settled embankment not less than 5 horizontal : 1 vertical with neither slope steeper than 2 horizontal : 1 vertical. Slopes shall be vegetated or otherwise stabilized to control erosion;

(iv) have the embankment foundation cleared of all vegetative matter, all surfaces sloped to no steeper than 1 horizontal : 1 vertical and the entire foundation area scarified;

(v) have fill material free of vegetative matter and frozen soil;

(vi) have spillways provided to safely discharge the peak runoff of a 25-year, 24-hour precipitation event, or an event with a 90-percent chance of not being exceeded for the design life of the structure; or

(vii) have other site-specific design criteria for embankments as long as they result in a minimum static safety factor of 1.3 with water impounded to the design level;

(viii) be designed and certified by a professional engineer registered in New Mexico as having been designed and constructed in accordance with 19.10 NMAC. As-built drawings shall be completed promptly after construction and be retained on

site or otherwise made available upon request to the Director; and

(ix) if necessary for sediment control be, in place before any other disturbance to the watershed for the impoundment.

(b) When no longer required, impoundments shall be graded to achieve positive drainage unless:

(i) the surface estate owner has requested in writing that they be retained;

(ii) they are consistent with the approved reclamation plan; and

(iii) they are appropriate for the post-mining land use or the self-sustaining ecosystem.

(7) **Minimization of Mass Movement** All man-made piles such as waste dumps, topsoil stockpiles and ore piles shall be constructed and maintained to minimize mass movement.

(8) **Riparian and Wetland Areas** Disturbance to riparian and wetland areas shall be minimized during mining. Adverse effects to riparian and wetland areas shall be mitigated during reclamation unless the mitigation conflicts with the approved post-mining land use.

(9) **Roads** Roads shall be constructed and maintained to control erosion.

(a) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation and flooding. Drainage facilities shall be installed as road construction progresses and shall be capable of safely passing a 10-year, 24 hour precipitation event unless site-specific characteristics indicate a different standard is appropriate and is included in the approved permit. Culverts and drainage pipes shall be constructed and maintained to avoid plugging, collapsing, or erosion.

(b) Roads to be constructed in or across intermittent or perennial streams require site-specific designs to be submitted with the permit application.

(c) Roads to be made permanent must be approved by the surface owner and be consistent with the approved post-mining land use.

(10) **Subsidence Control** Underground and in situ solution mining activities shall be planned and conducted, to the extent technologically and economically feasible, to prevent subsidence which may cause material damage to structures or property not owned by the operator.

(a) Underground and in situ solution mining activities near any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata.

(b) Underground and in situ solution mining activities conducted beneath or adjacent to any perennial stream must be performed in a manner so that subsidence is not likely to cause material damage to streams, water bodies and associated structures.

(11) **Explosives** Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The Director may require a detailed blasting plan, pre-blast surveys or specify blast design limits to control possible adverse effects to structures.

**D. Site Stabilization & Configuration** The permit area shall be stabilized, to the extent practicable, to minimize future impact to the environment and protect air and water resources. The final surface configuration of the disturbed area shall be suitable for achieving a self-sustaining ecosystem or approved post-mining land use.

(1) Final slopes and drainage configurations must be compatible with a self-sustaining ecosystem or approved post-mining land use.

(2) Backfilling or partial backfilling shall be required only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures.

(3) All reconstructed slopes, embankments and roads shall be designed, constructed and maintained to minimize mass movement.

(4) Measures must be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded.

(5) Nonpoint source surface releases for acid or other toxic substances shall be contained within the permit area.

**E. Topsoil** Where sufficient topsoil is present, the operator shall take measures to preserve it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed. The following requirements shall be met unless site-specific characteristics mandate different requirements and those requirements are included in the approved permit.

(1) Topsoil and topdressing shall be sampled and analyzed for vegetation establishment suitability:

(a) sample spacing and interval shall be based on site-specific materials; and

(b) suitability will be identified by analysis based on site-specific materials.

(2) If revegetation is a component of the reclamation plan and if sufficient topsoil is present in the disturbed or borrow areas, it shall be collected and preserved to the extent practicable. Sufficient topsoil means that it is of sufficient quality to conform to the definition of topsoil. Any necessary topdressing may be obtained from areas to be disturbed or borrow areas and shall be salvaged separately from other materials as needed to ensure its availability for distribution when needed for reclamation.

(3) Where direct distribution of topsoil or topdressing is not possible, it shall be stockpiled separately and in a manner to prevent loss of the resource.

(4) Topsoil and topdressing shall be distributed in a manner to establish and maintain vegetation, consistent with the approved permit.

(5) After distribution, topsoiled and topdressed areas shall be stabilized to protect loss of the resource.

(6) Where topsoil has been stockpiled for more than one year, the permittee may be required to conduct analyses to determine if amendments are necessary.

**F. Erosion Control** Reclamation of disturbed lands must result in a condition that controls erosion. Revegetated lands must not contribute suspended solids above background levels, or where applicable the Water Quality Control Commission's standards, to streamflow of intermittent and perennial streams. Acceptable practices to control erosion include but are not limited to the following:

- (1) stabilizing disturbed areas through land shaping, berming, or grading to final contour;
- (2) minimizing reconstructed slope lengths and gradients;
- (3) diverting runoff;
- (4) establishing vegetation;
- (5) regulating channel velocity of water;
- (6) lining drainage channels with rock, vegetation or other geotechnical materials; and
- (7) mulching.

**G. Revegetation** To obtain the release of financial assurance revegetated lands must meet the following standards:

- (1) Revegetation success for a self-sustaining ecosystem shall be determined through comparison of ground cover, productivity and diversity and shall be made on the basis of the following approved reference areas; through the use of technical guidance procedures published by the U. S. Department of Agriculture; other reasonably attainable standards approved by the Director; or a combination. Data collection shall be performed using the same methods and techniques on reference areas and reclaimed areas.
  - (a) foliage or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to 90 percent of the reference area or equal to the approved revegetation standard to within a 90-percent statistical confidence;
  - (b) diversity of plant life forms (woody plants, grasses, forbs) shall consider what is reasonable based on the physical environment of the reclaimed area; and
  - (c) woody plant species shall be established to the approved density with an 80 percent statistical confidence.
- (2) For areas for which the approved post-mining land use is for wildlife habitat or forest land, success of vegetation shall be determined on the basis of tree or shrub stocking (density) and ground cover.
  - (a) The ground cover of living perennial plants shall be equal to 90 percent of the native ground cover of the reference area or the approved standard to within a 90 percent statistical confidence and shall be adequate to control erosion.
  - (b) Tree stocking for forest land shall have stocking rates of plant species equal to 90 percent of the approved reference area or other approved standard with an 80 percent statistical confidence and shall be adequate to control erosion.
  - (c) If wildlife habitat is to be the post-mining land use, the operator shall select and use plant species on reclaimed areas based on the following criteria:
    - (i) their proven nutritional value for fish and wildlife;
    - (ii) their uses as cover and security for wildlife;
    - (iii) their ability to support and enhance fish and wildlife habitat; and
    - (iv) distribute plant life forms to maximize benefits of edge effect, cover and other benefits for fish and wildlife.

(3) Revegetation for other post-mining land shall be consistent with the approved post-mining land use. Site-specific standards may include standards for foliar or basal cover, production and diversity and will be included in the approved permit.

**H.** The operation will be designed to meet without perpetual care all applicable environmental requirements of the Act, 19.10 NMAC and other laws following closure.

[7-12-94, 2-15-96; 19.10.6.603 NMAC – Rn, 19 NMAC 10.2.6.603, 05-15-2001]

#### **19.10.6.604 COMPLIANCE WITH OTHER APPLICABLE LAWS:**

**A.** Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with the responsibility under the applicable state or federal law, regulation or standard.

**B.** Enforcement of non-point source surface releases of acids or other toxic substances shall be performed by the Environment Department.

**C.** During the term of a permit issued pursuant to 19.10 NMAC, the permittee must maintain environmental permits required for the permit area. Revocation or termination of such a permit or the forfeiture of financial assurance related to the permit area by another governmental agency is adequate grounds for the Director to issue a cessation order pursuant to 19.10.11 NMAC.

[7-12-94, 2-15-96; 19.10.6.604 NMAC – Rn, 19 NMAC 10.2.6.604, 05-15-2001]

#### **19.10.6.605 PERMIT APPROVAL REQUIREMENTS:**

**A.** As soon as practicable after receipt of a permit application, the Director shall notify the applicant in writing whether the application is complete. If the application is not complete, the notice shall specify the items missing from the application.

**B.** Within 30 days of receipt of a notice from the Director that the application is complete, the applicant shall, in the form approved by the Director, give public notice of the application pursuant to 19.10.9 NMAC.

**C.** The Director shall deliver copies of the complete application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.6.602 NMAC, provided, however, that the Director shall include with the application a list of the parts withheld and will provide such parts at an agency's specific request) to the following agencies which shall have 60 days in which to provide comments to the Director: the Environment Department; the Department of Game and Fish; the State Forestry Division; the State Historic Preservation Office; and the State Engineer; if the operation is on state or federal land, the appropriate state or federal land management agency; and any other agency the director deems appropriate.

**D.** The Director shall prepare a draft environmental evaluation which shall include an analyses of the reasonably foreseeable impacts of proposed activities on the pre-mining and post-mining environment and the local community, including other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action or whether the actions are on private, state or federal land. The Director may contract with, and the applicant should pay for, a third party to prepare the analysis and assessment.

**E.** The Director shall, within 30 days after completion of the technical review of the application and the draft environmental evaluation, notify the applicant in writing whether the application is approvable, or, if not approvable, shall specify in detail what additional submittal or changes are required. The Director shall, upon submittal of additional information or changes, notify the applicant whether the resubmitted application is approvable or if the additional submittal or changes are not sufficient.

**F.** After receipt of written notice from the Director that the application is approvable, the applicant shall submit a proposal for financial assurance as determined under 19.10.12 NMAC.  
[7-12-94, 2-15-96; 19.10.6.605 NMAC – Rn, 19 NMAC 10.2.6.605, 05-15-2001]

**19.10.6.606 PERMIT APPROVAL OR DENIAL:**

**A.** The Director may issue a permit subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC.

**B.** No permit shall be issued until the Director finds, in writing, that:

(1) The permit area will achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use.

(2) The applicant has provided evidence that all other applicable state and federal permits required to be obtained by the new mining operation either have been or will be issued before the activities subject to those permits begin.

(3) The Secretary of the Environment Department has provided a written determination stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the permit application. This determination shall address applicable standards for air, surface water and ground water protection enforced by the Environment Department, or for which the Environment Department is otherwise responsible.

(4) The permit application is complete.

(5) The permit application fee, and any fees for the environmental evaluation, have been paid and the financial assurance is adequate and has been provided.

(6) Reclamation in accordance with the proposed reclamation plan is economically and technically feasible.

(7) The mining or reclamation operation is designed to meet, without perpetual care, all applicable environmental requirements following closure.

(8) The applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) Are not currently in violation of the terms of another permit issued by the Division or in violation of any substantial environmental law or substantive environmental regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States. For purposes of this Section, a substantial environmental law or substantive environmental regulation is one which is intended to protect natural resources from degradation and does not include violations of recordkeeping or reporting requirements. If a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(b) Have not demonstrated a pattern of willful violations of the Act or other New Mexico environmental statutes. If a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose.

(9) An environmental evaluation has been prepared which meets the requirements of Section 69-36-9 of the Act.

(10) If the proposed mining operation is on state or federal lands, the appropriate land management agency approves the proposed mining operation if approval by the land management agency is required under that agency's regulations.

(11) The public participation requirements of 19.10.9 NMAC have been met.

(12) The applicant has submitted a notarized statement that he agrees to comply with the performance and reclamation standards and requirements of the permit, the Act, and 19.10 NMAC and allows the Director to enter the permit area without delay until release of the financial assurance.

[7-12-94, 2-15-96; 19.10.6.606 NMAC – Rn, 19 NMAC 10.2.6.606, 05-15-2001]

**19.10.6.607 PERMIT TERM:**

**A.** The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.

**B.** The term of a permit shall not exceed 20 years. The term of renewals of a permit shall not exceed 10 years.

**C.** For any permits issued for more than five years, the Director shall review these permits at least every five years to determine compliance with the Act and 19.10 NMAC and to determine if the conditions are accurately reflected in the approved permit.

(1) In determining the frequency of review, the Director shall consider, among other factors:

(a) the current level of activity at the operation;

(b) the compliance history of the operation;



- (c) complaints received about the operation;
- (d) the effect amendments to the Act and 19.10 NMAC may have on the operation; and
- (e) the status of other environmental permits and compliance thereunder.

(2) After this review, the Director shall notify the permittee of any required modifications or revisions of the permit necessary to ensure compliance with the Act and 19.10 NMAC.

(3) If an approvable application for the required modification or revision has not been made within 90 days of the date of initial notification, the Director may order the cessation of the mining operation.

D. A permit shall be reviewed and may be required to be modified or revised for any of the following:

- (1) additional applicable requirements under the Act or 19.10 NMAC; or
- (2) the Director determines that the permit contains a material mistake or that inaccurate statements were made in

establishing the terms or conditions of the permit.

E. The Director shall periodically review the amount of financial assurance filed with the Director under 19.10.12 NMAC. The Director may require adjustments to the amount of financial assurance to reflect inflationary increases or increases in the anticipated costs of reclamation.

F. If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization for the permittee to conduct mining operations on the property automatically suspends the permittee's authority to continue mining operations on the property, although not necessarily reclamation operations, by the permit issued under 19.10 NMAC.

[7-12-94, 2-15-96; 19.10.6.607 NMAC – Rn, 19 NMAC 10.2.6.607, 05-15-2001]

### **19.10.6.608 PERMIT MODIFICATIONS OR REVISION:**

A. A permit modification or revision for a mining operation is required for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area and not identified in the permit and for each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit.

B. A permit modification or revision shall be required for any change in the approved reclamation plan.

C. An application for a permit modification or revision shall be in a format acceptable to the Director. A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.6 NMAC.

D. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to 19.10.9 NMAC. The Director shall review each request for a permit modification to determine whether it must be processed as a revision.

(1) The Director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact:

- (a) Whether the proposed change would authorize an expansion of design limits beyond that currently authorized by the permit that:
  - (i) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas.
  - (ii) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l.
  - (iii) Is expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area.
  - (iv) Would be located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the Department of Game and Fish likely to result in an adverse impact on an endangered species designated in accordance with the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978 or by the State Forestry Division for the Endangered Plants Act, Section 75-6-1 NMSA 1978.
  - (v) Would adversely impact cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties.
  - (vi) Would be located in a known cemetery or other burial ground.
  - (vii) Would be located in an area designated as a Federal Wilderness Area, Wilderness Study Area, Area of Critical Environmental Concern, or an area within the national Wild and Scenic River System.

(b) Whether the proposed change would result in a significant increase in the amount of financial assurance as determined by the Director; or

(c) Whether the proposed change would significantly depart from the nature or scale of the permit.

(2) An application for a permit modification or revision shall be accompanied by sufficient information for the Director to determine whether any of the factors listed in 19.10.6.608 NMAC are present.

(3) The Director shall consult with the Department of Environment, the Department of Game and Fish, State Forestry, applicable state or federal land management agency, or the State Historic Preservation if factors listed in Subsection D of 19.10.6.608 NMAC are present relevant to the agency's area of expertise.

E. The following actions do not require permit modifications:

(1) the construction, relocation or modification of roads within the disturbed area that does not change the reclamation plan;

- (2) placement or movement of support buildings, equipment areas, maintenance shops, monitoring facilities, wells, power lines, power poles, substations, and communications facilities within the disturbed area that does not change the reclamation plan;
- (3) the movement of tanks, pipelines, utilities, and portable units; and
- (4) changes to facilities subject to regulation under the Solid Waste Act.

[7-12-94, 2-15-96, 12-29-2000; 19.10.6.608 NMAC – Rn, 19 NMAC 10.2.6.608, 05-15-2001; A, 05-31-2001]

**19.10.6.609 PRIOR RECLAMATION:**

A. The owner or operator of a new mining operation who has completed some or all reclamation measures prior to the effective date of 19.10 NMAC may apply for an inspection of the reclaimed areas prior to August 31, 1994.

B. The Director shall release the owner or operator from further requirements of the Act and 19.10 NMAC if, after an inspection of the reclaimed areas, he determines that the reclamation measures satisfy the requirements of the Act and 19.10 NMAC. The Director shall make the determination as soon as practicable, but not later than September 30, 1995.

[7-12-94, 2-15-96; 19.10.6.609 NMAC – Rn, 19 NMAC 10.2.6.609, 05-15-2001]

**19.10.6.610 ANNUAL REPORT:** Every permittee, including those holding minimal impact mining permits, shall, on or before April 30 of each year after a permit has been issued, submit, on a form provided by the Director, a report for the preceding calendar year. The report must:

- A. provide the status of the operation;
- B. provide production figures for the operation;
- C. identify, on a separate map, the location of the disturbed areas and if reclaimed, the year in which the work was done;
- D. identify the number of acres disturbed, the number of acres reclaimed during the reporting year and the number of acres which have not yet been reclaimed;
- E. indicate the current market value of any collateral posted as financial assurance in accordance with Part 19.10.12 NMAC; and
- F. indicate the compliance status for all existing state and federal environmental permits held by permittee for this operation.

[7-12-94, 2-15-96; 19.10.6.610 NMAC – Rn, 19 NMAC 10.2.6.610, 05-15-2001]

**History of 19.10.6 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as: Rule 6, New Mining Operations, filed 07-12-94.

**History of Repealed Material: [Reserved]**

**Other History:**

Rule 6, New Mining Operations, filed 07-12-94, renumbered and reformatted as Subpart 6 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 6, New Mining Operations, filed 01-31-96 was renumbered and reformatted to 19.10.6 NMAC, effective 05-15-2001.