

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 1 GENERAL PROVISIONS

19.10.1.1 ISSUING AGENCY: New Mexico Mining Commission.
[2-15-96; 19.10.1.1 NMAC - Rn, 19 NMAC 10.2.1.100, 05-15-2001]

19.10.1.2 SCOPE: All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.
[2-15-96; 19.10.1.2 NMAC - Rn, 19 NMAC 10.2.1.101, 05-15-2001]

19.10.1.3 STATUTORY AUTHORITY: NMSA 1978, Section 69-36-1 et. seq.
[2-15-96; 19.10.1.3 NMAC - Rn, 19 NMAC 10.2.1.102, 05-15-2001]

19.10.1.4 DURATION: Permanent.
[2-15-96; 19.10.1.4 NMAC - Rn, 19 NMAC 10.2.1.103, 05-15-2001]

19.10.1.5 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.
[2-15-96, 12-14-96; 19.10.1.5 NMAC - Rn, 19 NMAC 10.2.1.104, 05-15-2001]

19.10.1.6 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.
[2-15-96, 12-29-2000; 19.10.1.6 NMAC - Rn, 19 NMAC 10.2.1.105, 05-15-2001]

19.10.1.7 DEFINITIONS:

A. Definitions with letter "A."

(1) "Acid/Acid Drainage" means water that is discharged from an area affected by mineral exploration, mining or reclamation, with a pH of less than 5.5 and in which total acidity exceeds total alkalinity as defined by the latest edition of Standard Methods for the Examination of Water and Wastewater.

(2) "Act" means the New Mexico Mining Act, Sections 69-36-1 through 69-36-20, NMSA 1978.

(3) "Affected area" means the area outside of the permit area where the land surface, surface water, ground water or air resources are impacted by mining operations within the permit area.

(4) "As-built drawings" means engineering drawings signed and sealed by a professional engineer registered in New Mexico which portray facilities as constructed and which the engineer certifies that the facility meets the requirements of the relevant rule.

B. Definitions with the letter "B." [RESERVED]

C. Definitions with the letter "C."

(1) "Commission" means the Mining Commission established in the Act.

(2) "Contaminated" means the presence of substances at concentrations exceeding state or federal standards as a result of mining exploration or reclamation.

D. Definitions with the letter "D."

(1) "Director" means the Director of the Division or his designee.

(2) "Disturbed area" means an area where the earth's surface is disturbed as a result of mining or activities facilitating mining.

(3) "Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

(4) "Division" means the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department.

E. Definitions with the letter "E."

(1) "Ephemeral stream" means a stream or reach of a stream that flows briefly only in direct response to precipitation or snowmelt in the immediate locality; its channel bed is always above the water table of the region adjoining the stream.

(2) "Existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and June 18, 1993.

(3) "Exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no, or very little, surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration are excluded from the meaning of "exploration."

F. Definitions with the letter "F." [RESERVED]

G. Definitions with the letter "G."

(1) "Ground cover" means foliar or basal area cover of living plant material, rock or litter.

(2) "Ground water" means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Definitions with the letter "H." [RESERVED]

I. Definitions with the letter "I."

(1) "Important habitat" means vegetation, water and physical resources that are utilized by sensitive wildlife species or are critical to the survival or productivity of important wildlife populations.

(2) "Important wildlife" means wildlife populations determined by the Department of Game and Fish as having high recreational, ecological or commercial values.

(3) "Impoundment" means a basin constructed for the retention of water or sediment, but does not include impoundments for process solutions or tailings.

(4) "Intermittent stream" means a stream or reach of a stream that flows only at certain times of the year, such as when it receives flow from springs, melting snow, or localized precipitation.

J. Definitions with the letter "J." [RESERVED]

K. Definitions with the letter "K." [RESERVED]

L. Definitions with the letter "L."

(1) "Life zone of the surrounding area" means the climate, elevation and topography of the undisturbed environment in the locality of lands disturbed by mining.

(2) "Location work" means the minimum amount of labor or improvements required to establish a federal mining claim.

M. Definitions with the letter "M."

(1) "Mineral" means a nonliving commodity that is extracted from the earth for use or conversion into a saleable or usable product, but does not include clays, adobe, flagstone, potash, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for construction, coal, surface water or subsurface water, geo-thermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are regulated by the Nuclear Regulatory Commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act.

(2) "Minimal impact mining operation" means a mining operation or an exploration operation determined by the Director, in consultation with other state agencies, likely to have minimal environmental impact if operated and reclaimed in accordance with the approved permit. In making this determination, the Director shall, except as set forth in Subsection M, Paragraph 2, Subparagraph j of 19.10.1.7 NMAC exclude from minimal impact status operations with any of the characteristics:

(a) Located in or expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas, except those excluded by 19.10.3.300 NMAC;

(b) 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;

(c) Located in an area with cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties;

(d) Having or expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l, except exploratory drilling intersecting ground water may be performed as a minimal impact operation;

(e) Expected to use or using cyanide, mercury amalgam, heap leaching or dump leaching in its operations;

(f) Located in a known cemetery or other burial ground;

(g) 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;

(h) Expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area; or

(i) Requiring a variance from any element of these regulations as part of the permit application.

(j) The Director may determine that an operation with any of the characteristics set forth in Subsection M, Paragraph 2, Subparagraphs a through d of 19.10.1.7 NMAC may qualify for minimal impact status, if the Director finds the operation is likely to have minimal environmental impact if operated and reclaimed in accordance with the approved permit. In making this determination, the Director shall:

(i) obtain written concurrence from the Secretary of the Environment Department for a waiver of characteristics in Subsection M, Paragraph 2, Subparagraphs a or d of 19.10.1.7 NMAC;

(ii) obtain written concurrence from the Director of the Department of Game and Fish for a waiver of any portion of characteristic in Subsection M, Paragraph 2, Subparagraph b of 19.10.1.7 NMAC that does not apply to the State Forestry Division; and

(iii) obtain written consultation from and cooperate with the Office of Cultural Affairs for a waiver of characteristics in Subsection M, Paragraph 2, Subparagraph c of 19.10.1.7 NMAC.

(k) In addition, where interrelated mining operations are located in close proximity to each other, the Director may determine to issue one permit for all the operations which may eliminate these operations from consideration as minimal impact operations. In determining whether or not the operations are interrelated, the Director shall look for common owners or operators, immediate family members as owners or operators, related corporations as owners or operators or other common, reliable indicators of interrelated operations.

(3) "Mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal Nuclear Regulatory Commission.

N. Definitions with the letter "N." "New mining operation" means a mining operation that engages in a development or extraction operation after June 18, 1993 and that is not an existing mining operation.

O. Definitions with the letter "O." "Obtaining useful minerals" does not include the recovery of minerals from previously disposed or abandoned mining wastes when the Director determines the following:

(1) that those wastes are removed from a location that does not require a permit under the Act;

(2) the wastes are removed pursuant to a plan approved by appropriate Federal or State authorities for mitigating and controlling adverse environmental impacts from the wastes and from the removal activities; and

(3) the wastes are taken to a facility appropriately permitted for processing.

P. Definitions with the letter "P."

(1) "Perennial stream" means a stream or reach of a stream that flows continuously throughout the year in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream.

(2) "Permit-by-rule" means an authorization to engage in mining activities without obtaining an individual permit under this Act provided that the conditions specified in Subsection B of 19.10.3.301 NMAC are met.

(3) "Permit area" means the geographical area defined in the permit for a new mining operation or for an existing mining operation on which mining operations are conducted or cause disturbance

(4) "Permittee" is the person or entity issued the permit by the Director, or required to have a permit under the Mining Act.

(5) "Post-mining land use" means a beneficial use or multiple uses which will be established on a permit area after completion of a mining project. The post-mining land use may involve active management of the land. The use shall be selected by the owner of the land and approved by the Director. The uses which may be approved as post-mining land uses may include agricultural, commercial or ecological uses that would ensure compliance with Federal, State or local laws, regulations and standards and which are feasible. Approved post-mining land use categories include, but are not limited to:

- (a) cropland
- (b) pasture land or land occasionally cut for hay
- (c) grazing land
- (d) forestry
- (e) residential
- (f) industrial/commercial
- (g) recreation or tourism
- (h) wildlife habitat
- (i) developed water resources
- (j) scientific or educational

(6) "Precipitation event" means an event with a specified frequency of return and specified period of duration as defined in "Precipitation-Frequency Atlas of the Western United States," vol. IV-New Mexico.

Q. Definitions with the letter "Q." "Quarry rock used as aggregate in construction" means rock extracted from a surface mine which is actually used in construction. Construction use includes building materials, landscaping, erosion control and stabilization and road maintenance activities.

R. Definitions with the letter "R."

(1) "Reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources.

(2) "Revision" means a modification to a permit that has a significant environmental impact and requires public notice and an opportunity for public hearing.

(3) "Riparian area" means a geographically delineated area with distinct resource values, that is characterized by plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a perennial or intermittent stream, lake, pond, spring, or marsh bed maintained by natural water sources. For the purposes of 19.10 NMAC, "Riparian area" does not include areas in or adjacent to man-made bodies of water which neither were originally created in a natural watercourse nor resulted in an impoundment of a natural watercourse.

S. Definitions with the letter "S."

(1) "Safeguard" means to restrict, to the extent practicable, entrance or access by unauthorized persons to mine shafts, adits, pits, highwalls or other hazardous areas created by the operator or owner of a mining operation in order to reduce the possibility of accidents.

(2) "Self-sustaining ecosystem" means reclaimed land that is self-renewing without augmented seeding, amendments, or other assistance which is capable of supporting communities of living organisms and their environment. A self-sustaining ecosystem includes hydrologic and nutrient cycles functioning at levels of productivity sufficient to support biological diversity.

(3) "Sensitive wildlife species" means a species that has been identified by federal or state agencies pursuant to the Endangered Species Act of 1973 or the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978, as requiring special protection to maintain its continued existence throughout all or a significant portion of its range.

(4) "Stabilize" means to control movement of soil or areas of disturbed earth by modifying the landform, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating or vegetation.

(5) "Standby status" means the permitted temporary cessation of a mining operation which is expected to resume.

T. Definitions with the letter "T."

(1) "Topdressing" means geological material and other amendments capable of supporting vegetation.

(2) "Topsoil" means the "A" soil horizon or other soil material capable of supporting vegetation.

U. Definitions with the letter "U." "Unit" means a component of a mining operation including but not limited to processing, leaching, excavation, storage, stockpile or waste units.

V. Definitions with the letter "V." [RESERVED]

W. Definitions with the letter "W."

(1) "Wetlands" means those areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. For the purposes of 19.10 NMAC, "wetlands" does not include areas in or adjacent to man-made bodies of water which neither were originally created in a natural watercourse nor resulted in an impoundment of a natural watercourse.

(2) "Wildlife" means all wild birds, fish, mammals, mollusks, reptiles, amphibians and crustaceans.

X. Definitions with the letter "X." [RESERVED]

Y. Definitions with the letter "Y." [RESERVED]

Z. Definitions with the letter "Z." [RESERVED]

[7-12-94, 11-15-95, 2-15-96, 12-29-2000; 19.10.1.7 NMAC - Rn, 19 NMAC 10.2.1.107, 05-15-2001]

19.10.1.8 - 19.10.1.199 [RESERVED]

[19.10.1.8 - 19.10.1.199 NMAC - N, 05-15-2001]

HISTORY of 19.10.1 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives: Rule 1, New Mexico Mining Act - Definitions, filed 07-12-94.

History of Repealed Material: [Reserved]

Other History: Rule 1, New Mexico Mining Act - Definitions, filed 07-12-94 renumbered and reformatted into 19 NMAC 10.2, Mining Act Implementation - Subpart 1, General Provisions, filed 01-31-96.

19 NMAC 10.2, Mining Act Implementation - Subpart 1, General Provisions, filed 01-31-96; renumbered and reformatted to 19.10.1 NMAC, General Provisions, effective 05-15-2001.