

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 10    NON-COAL MINING**  
**PART 4        EXPLORATION**

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

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

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

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

**19.10.4.5        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.  
[19.10.4.5 NMAC - N, 05-15-2001]

**19.10.4.6        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.  
[19.10.4.6 NMAC - N, 05-15-2001]

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

**19.10.4.8 - 19.10.4.400** [RESERVED]  
[19.10.4.8 - 19.10.4.400 NMAC - N, 05-15-2001]

**19.10.4.401       TIMING OF SUBMITTAL AND DEADLINE FOR OBTAINING APPROVAL:**  
**A.**        After December 31, 1994, no person shall engage in exploration operations in New Mexico without first obtaining a permit to conduct exploration from the Director.  
**B.**        Any person conducting exploration and who intends to continue exploration after December 31, 1994, shall submit an application by September 1, 1994.  
**C.**        For exploration commencing after December 31, 1994, applications for exploration operations shall be submitted not less than 120 days prior to the anticipated date of commencement of operations.  
**D.**        Renewal applications shall be filed at least 30 days preceding expiration of the current permit.  
**E.**        Permits for exploration operations are not required for exploration operations conducted within a permit area of a new or existing mining operation.  
[7-12-94, 2-15-96; 19.10.4.401 NMAC - Rn, 19 NMAC 10.2.4.401, 05-15-2001]

**19.10.4.402       PERMIT APPLICATION REQUIREMENTS:**  
**A.**        Six copies of an application for a permit shall be submitted to the Director. The Director may require additional copies for distribution by the Director to other governmental agencies.  
**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 of confidentiality 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 an 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. Further, the applicant certifies that he is not in violation of any other obligation under the New Mexico Mining Act or 19.10 NMAC adopted pursuant to that Act.

**D.** Each application for a permit shall include:

(1) The name of the applicant.

(2) A listing of all parties, including addresses and telephone numbers, which have an ownership or controlling interest in the proposed exploration operation or submittal of the applicant's most recent 10K form required by the United States Securities and Exchange Commission, and a listing 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 ten years.

(3) Copies of documents upon which the applicant bases his right to enter the property to conduct the exploration and reclamation.

(4) A map(s) and list, including names and addresses, of all owners of surface and mineral estates within the proposed permit area, as shown by the most recent county assessor's property tax schedule.

(5) A map at a scale of at least 1 inch equals 2,000 feet (1:24,000) showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show the boundary of the proposed permit area, proposed and existing roads, previously disturbed areas, occupied dwellings, and pipelines; existing bodies of surface water, springs, wetlands, and riparian areas; topographic and drainage features; and oil, gas and water wells on the permit area. Areas and types of proposed disturbance shall be indicated. The anticipated depth of each proposed method of exploration shall also be provided.

(6) A description of the exploration methods to be used, the minerals sought and the proposed dates during which exploration will be conducted.

(7) An estimate of the total number of acres to be disturbed by the operations, including new road construction and reconstruction of existing roads. Estimates must include:

(a) the width and length of any new roads to be constructed including culvert locations and sizes;

(b) the approximate depth and diameter of all drill holes; and

(c) the general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances.

(8) A list of chemicals contemplated for use by the exploration operation and a detailed plan for the containment, use, and disposal of such chemicals.

(9) An estimate of depth to ground water and total dissolved solids concentration.

(10) A reclamation plan which shall address:

(a) a general description of the vegetation of the area to be disturbed and, if applicable, a detailed description of species and methods to be used during revegetation;

(b) all applicable performance and reclamation standards and requirements in 19.10.4.403 NMAC; and

(c) an estimate of the proposed financial assurance required by 19.10.12 NMAC.

(11) 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 during the term of the permit.

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

(13) The permit fees as determined pursuant to 19.10.2 NMAC.

(14) Any additional information necessary for evaluation of the permit application as required by the Director.

E. To avoid duplication and conflicting requirements, the applicant may include information from environmental permits 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.

F. The Director shall, after determining the application is complete, deliver copies of the application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.4.402 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; 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.

[7-12-94, 2-15-96; 19.10.4.402 NMAC - Rn, 19 NMAC 10.2.4.402, 05-15-2001]

#### **19.10.4.403 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:**

Operations shall be designed and conducted to mitigate disturbance caused by exploration operations and, to the extent practicable, provide for the stabilization of disturbed areas to minimize future impact to the environment and protect air and water resources following closure. The reclamation plan must be developed to address site-specific characteristics and the exploration and excavation work to be performed.

A. Reclamation of the disturbed area shall be initiated and completed within the permit term, unless the disturbed area is included within a complete permit application for a new mining operation. Drill holes shall be plugged in accordance with Subsections K and L of 19.10.3.302 NMAC.

B. Cemeteries and burial grounds and the disturbance of cultural resources listed on or eligible for the *national register of historic places* or the *state register of cultural properties* shall be avoided until clearance has been granted by the director after consultation with the state historic preservation officer.

C. Measures shall be taken to safeguard the public from unauthorized entry into hazardous areas if such hazards were created by the operator. Depending on site-specific characteristics, the following measures shall be required:

- (1) closing shafts, adits and tunnels to prevent entry;
- (2) posting warning signs in locations near hazardous areas;
- (3) restricting access to hazardous areas; or
- (4) other measures as needed to protect human safety.

D. Trash, other materials and structures incidental to exploration shall be removed and disposed of appropriately.

E. Exploration and reclamation operations shall be conducted to minimize erosion.

F. Disturbance to riparian areas and wetlands shall be minimized during exploration. Adverse effects on riparian areas and wetlands shall be mitigated during reclamation.

G. Measures shall be taken during exploration and reclamation to minimize adverse impacts on wildlife and important habitat. Impacts on important habitat shall be mitigated during reclamation.

H. If necessary for the re-establishment of vegetation, topsoil or topdressing shall be salvaged, stockpiled, and distributed.

I. Vegetation shall be re-established with appropriate species.

J. Road construction should be limited. Roads shall be located to minimize disturbance to land and wildlife and enhance stability. Roads shall be constructed and maintained to control erosion. Roads constructed in or across intermittent or perennial streams require site specific designs. Roads to remain permanent must be approved by the surface owner and must be stabilized to control erosion.

K. Excavations shall be backfilled and graded to approximate the original topography. Adits and shafts created by the operator shall be sealed. Drill holes not regulated by the state engineer office shall be plugged or filled to prevent subsidence and injury to the public and wildlife.

L. 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 specific blast design limits to control possible adverse effects to structures.

[7-12-94, 2-15-96; 19.10.4.403 NMAC - Rn, 19 NMAC 10.2.4.403, 05-15-2001; A, 04-30-09]

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

**A.** Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with that 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; 19.10.4.404 NMAC - Rn, 19 NMAC 10.2.4.404, 05-15-2001]

#### **19.10.4.405 TERMS, ISSUANCE AND RENEWAL:**

**A.** Terms

(1) A permit to conduct exploration and reclamation operations shall be valid for a period of not more than one year from the date of issuance.

(2) The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.

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

**B.** Issuance - The Director may issue a permit subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC. No permit shall be issued until the Director finds that:

(1) The applicant has agreed, in writing, to conduct only those operations described in the permit, including any subsequently approved revision or modification.

(2) The applicant has agreed, in writing, to reclaim any areas disturbed by the exploration operations in accordance with the permit.

(3) The applicant has paid the permit fee required by 19.10.2 NMAC.

(4) The financial assurance required by 19.10.12 NMAC has been provided and approved.

(5) The applicant's failure to comply with the provisions of the Act, 19.10 NMAC or a permit issued under 19.10 NMAC has not resulted in the forfeiture of financial assurance.

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

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

(8) The applicant is not in violation of the Act or 19.10 NMAC.

(9) The applicant has submitted a notarized statement signed by the applicant that he agrees to comply with the performance standards and reclamation requirements of the permit, 19.10 NMAC, and the Act and allows the Director to enter the permit area without delay for the purpose of conducting inspections during mining and reclamation.

**C.** Renewal

(1) An exploration permit may be renewed from year to year.

(2) Renewal applications shall be filed 30 days preceding the expiration of the current permit.

(3) Applications for renewal shall not be approved if the applicant has outstanding violations of the Act or 19.10 NMAC or otherwise fails to meet the requirements of 19.10 NMAC.

**D.** Applications for the transfer of an exploration permit shall comply with the requirements of 19.10.8 NMAC.

[7-12-94, 2-15-96; 19.10.4.405 NMAC - Rn, 19 NMAC 10.2.4.405, 05-15-2001]

#### **19.10.4.406 PERMIT MODIFICATIONS AND REVISIONS:**

**A.** A permit modification or revision shall be required for exploration in areas or for types of disturbances not identified in the approved exploration permit.

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

**C.** 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 disturbed area 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 original exploration 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 19.10.4.406 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 this section are present relevant to the agency's area of expertise.

**D.** A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.4 NMAC.  
[7-12-94, 2-15-96, 12-29-2000; 19.10.4.406 NMAC - Rn, 19 NMAC 10.2.4.406, 05-15-2001]

**19.10.4.407 TERMINATION REPORT:** At the conclusion of an exploration operation not to be renewed, the permittee shall submit to the director a termination report. The report shall:

**A.** certify that the exploration reclamation operations have been completed in accordance with the approved permit;

**B.** provide the total depth and diameter of each hole drilled, the date each hole was completed, depth of water bearing zones and a statement describing any flow to the surface;

**C.** identify on an approved map, the disturbed area including the number and the location of the disturbed acres, and the location, including identification number, of all drill holes and excavation sites; and

**D.** financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.4.403 NMAC and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.4.407 NMAC - Rn, 19 NMAC 10.2.4.407, 05-15-2001; A, 04-30-09]

#### **History of 19.10.4 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 4, Exploration, filed 07-12-94.

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

#### **Other History:**

Rule 4, Exploration, filed 07-12-94, renumbered and reformatted as Subpart 4 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 4, Exploration, filed 01-31-96 was renumbered and reformatted to 19.10.4 NMAC, effective 05-15-2001.