

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 5 EXISTING MINING OPERATIONS

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

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

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

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

19.10.5.5 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.
[19.10.5.5 NMAC - N, 05-15-2001]

19.10.5.6 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.
[19.10.5.6 NMAC - N, 05-15-2001]

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

19.10.5.8 - 19.10.5.500 [RESERVED]
[19.10.5.8 - 19.10.5.500 NMAC - N, 05-15-2001]

19.10.5.501 TIMING OF SUBMITTAL AND DEADLINE FOR OBTAINING APPROVAL:
A. An application for a permit for an existing mining operation shall be submitted by December 31, 1994.
B. The application shall include: a closeout plan; or a compliance schedule for completion of, within the shortest time practicable, a closeout plan, which shall be submitted no later than December 31, 1995, unless the applicant requests an extension and the Director grants approval for good cause shown.
C. Every existing mining operation must have a permit and closeout plan approved by the Director by December 31, 1997 unless the Director grants a non-renewable extension of time not to exceed two years for good cause shown. Notwithstanding the preceding sentence, prior to December 31, 1999 the Director may grant an additional extension of time pursuant to Subsection D of 19.10.5.501 NMAC.
D. At any time before September 22, 1999, an applicant may file a request for an additional non-renewable extension, which shall not extend beyond December 31, 2001. The application shall be filed in writing, with the Director. Upon receipt of the request, the Director shall provide a copy of the request to the department of environment which will have thirty days from receipt to provide comments. The Director shall approve the request for an extension if:
(1) The request is accompanied by a non-refundable application fee of \$5,000.00 payable pursuant to subsection A of 19.10.2.204 NMAC. The request will not be processed if the fee has not been paid.

(2) The request includes a detailed schedule of milestones and deliverables acceptable to the Director for obtaining closeout plan approval, which shall include:

- (a) a schedule for carrying out supporting studies and submitting reports thereon;
- (b) a description of steps to be taken for allowing public participation as provided in the Mining Act for Mining Act permits, closeout plans and revisions, taking into consideration public participation requirements under other authorities;
- (c) a schedule for closeout plan approval for portions of the mining operation where approval is feasible prior to the final approval deadline, giving priority to completion of all studies and milestones necessary for prompt closeout plan approval for those portions of the mining operation;
- (d) a schedule for submitting proposals for financial assurance for each portion of a mining operation having a separate closeout plan deadline, which allows sufficient time for review and comment prior to the final deadline, and which may include submission prior to the closeout plan being deemed approvable; and
- (e) a final date by which the closeout plan must be approved and the financial assurance mechanism in place for each portion of a mining operation having a separate closeout plan deadline; this date should be as soon as feasible for each portion of a mining operation.

(3) It is not feasible for the applicant to obtain a closeout plan approval by December 31, 1999.

(4) Written concurrence is obtained by the Director from the secretary of environment for a request that will have an impact upon programs administered by the department of environment. MMD may consult with other state and federal agencies in determining the adequacy of the detailed schedule and request for extension.

(5) A public meeting to provide information to the public and to receive public comment on the request for extension has been held by the Director in the locality of the mining operation requesting an extension of time. At least 30 days prior to the meeting, the applicant shall make a copy of the request available for public inspection at a public repository in the county where the mining operation is located. The public meeting shall be held within 45 days of the applicant filing the request for an extension, and notice of the meeting shall be approved by the Director and given by the applicant at least 30 days prior to the meeting. The notice shall include the date, time and place of the meeting and the information identified in subsection A of 19.10.9.902 NMAC through subsection D of 19.10.9.902 NMAC, and shall meet requirements of subsection B of 19.10.9.903 NMAC through subsection H of 19.10.9.903 NMAC except that mailings may be sent by first class mail.

E. Any applicant who received an extension of time pursuant to Subsection D of 19.10.5.501 NMAC, and for which a public hearing on a closeout application has been requested but will not be held pursuant to subsection A of 19.10.9.904. NMAC prior to December 1, 2001 or for which a public hearing on a closeout application was not requested, must have the closeout plan approved by the Director by no later than October 1, 2002.

[7-12-94, 2-15-96, 9-15-99; 19.10.5.501 NMAC - Rn, 19 NMAC 10.2.5.501, 05-15-2001; A, 12-28-01]

19.10.5.502 PERMIT APPLICATION REQUIREMENTS:

A. A minimum of six copies of each application for a permit 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 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.

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

- (1) The name of the applicant to whom the permit will be issued.
- (2) 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.
- (3) A statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation. The applicant will allow the Director to examine, if necessary, the documents which establish such basis.
- (4) The site assessment previously submitted pursuant to Section 69-36-5 of the Act shall be considered part of the application. If information in the site assessment requires updates to provide information necessary for evaluation of the permit or if the site-specific conditions at the time of the assessment significantly deviate from conditions at the time of submittal of the permit application, such updated information or deviations must be described in the application.
- (5) A map(s) showing all existing and proposed pits, shafts, adits, stockpiles, waste units, impoundments, leach piles, processing facilities, and support facilities such as office buildings. The map(s) shall identify the proposed permit area and design limits of each unit of the operation.
- (6) A description of undisturbed vegetation including a comprehensive list of species and their relative abundance with regards to cover and production.
- (7) Evidence that other applicable state and federal permits to be obtained either have been or will be issued before the activities subject to those permits begin.
- (8) The applicant shall designate an agent and provide the agent's street address for the service of notices and orders in writing from the Director. This information shall be kept current if a permit is granted.
- (9) A copy of the proposed form of notices required under 19.10.9 NMAC.
- (10) A permit fee as determined pursuant to 19.10.2 NMAC
- (11) 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. 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 and closeout plan. [7-12-94, 2-15-96; 19.10.5.502 NMAC - Rn, 19 NMAC 10.2.5.502, 05-15-2001; A, 05-31-2001]

19.10.5.503 PERMIT APPROVAL REQUIREMENTS:

A. Unless a proposed closeout plan is submitted with the permit application, the following procedure shall be followed. If a closeout plan is submitted with the permit application, the requirements of 19.10.5.506 NMAC shall also be met.

B. 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.

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 19.10.5.502, 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 Environment Department, the Office of the State Engineer, Department of Game and Fish, the State Forestry Division, the State Historic Preservation Office, and the state or federal land management agency, if applicable, for their information.

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

E. An application for a permit under 19.10.5 NMAC shall be approved or denied within six months after the application has been determined to be complete.

F. The Director shall approve the application and issue the permit if he finds that:

- (1) The application contains all of the information required, including a closeout plan or a proposed compliance schedule for submittal of a closeout plan within the shortest time practicable.
 - (2) The applicant has provided written information stating the name and official business address of the applicant and its agent for service of process.
 - (3) The applicant has provided the required signature and certification on the application.
 - (4) A permit application fee as determined pursuant to 19.10.2 NMAC has been paid.
 - (5) The public participation requirements of 19.10.9 NMAC have been met.
 - (6) 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 during mining and reclamation.
- [7-12-94, 2-15-96; 19.10.5.503 NMAC - Rn, 19 NMAC 10.2.5.503, 05-15-2001]

19.10.5.504 PERMIT TERM:

- A.** The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.
 - B.** A permit shall be reviewed by the Director 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.
 - C.** 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. If an approvable application for the required modifications or revisions has not been made within 90 days of the date of initial notification, the Director may order cessation of the mining operations.
 - D.** 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.
 - E.** 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, though not necessarily closeout plan operations, by the permit issued under 19.10 NMAC.
- [7-12-94, 2-15-96; 19.10.5.504 NMAC - Rn, 19 NMAC 10.2.5.504, 05-15-2001]

19.10.5.505 PERMIT MODIFICATIONS AND REVISIONS:

- A.** A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.5 NMAC.
- B.** 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 19.10.5.505 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 B of 19.10.5.505 NMAC are present relevant to the agency's area of expertise.

C. An application for a permit modification or revision shall be in a format acceptable to the Director. A permit modification or revision shall be required for any changes in the approved closeout plan.

D. 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 for such units. Modifications or revisions will be approved if the Director determines the unit will:

(1) incorporate the requirements of paragraphs 1, 2, 4, 5 and 6 of subsection H of Section 69-36-7 of the Act;

(2) be sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation consistent with the closeout plan; and

(3) meet all the requirements of 19.10.5 NMAC.

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 closeout 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 closeout 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; 19.10.5.505 NMAC - Rn, 19 NMAC 10.2.5.505, 05-15-2001; A, 05-31-2001]

19.10.5.506 CLOSEOUT PLANS: Six copies of an application for a permit revision shall be submitted, in a format acceptable to the Director, pursuant to Section 69-36-7G of the Act for the incorporation of an approved closeout plan or closeout plan for a portion of the mine if a closeout plan or closeout plan for a portion of the mine was not approved as part of the original permit application. If the original permit application includes a proposed closeout plan or closeout plan for a portion of the mine, the contents, review and approval of the closeout plan or closeout plan for a portion of the mine shall be in accordance with 19.10.5 NMAC.

A. A proposed closeout plan for all or a portion of the mine shall be based on site-specific characteristics and the anticipated life of the mining operation. Site-specific characteristics include, but are not limited to, disturbances from previous mining operations, past and current mining methods utilized, geology, hydrology and climatology of the area. Information previously submitted to the Director in the site assessment or permit application may be referenced to support the proposed closeout plan, provided that, if the information in the site assessment significantly deviates from conditions at the time of submittal of the proposed closeout plan, deviations shall be described in the application.

B. A proposed closeout plan or a proposed closeout plan for a portion of the mine shall include a detailed description of how the permit area will be reclaimed to meet the requirements of Section 69-36-11B(3) of the Act and the performance and reclamation standards and requirements of 19.10.5 NMAC. The closeout plan shall also include the following:

(1) A description of the work proposed to be performed and a schedule, including anticipated starting and finishing dates, specifying the incremental work to be conducted and the period of time anticipated to be required for the various phases of the closeout.

(2) A list of all federal and state permits required for the closeout plan and evidence of when they were issued or a schedule by which these permits are anticipated to be received. To avoid duplication and conflicting requirements, the applicant may include information from environmental permits, or portions thereof, relevant to the application.

(3) A topographic map of the anticipated surface configuration of the permit area upon completion of the closeout plan. The map shall be at a scale approved by the Director to accurately represent the permit area.

(4) Additional information necessary for evaluation of the closeout plan as required by the Director.

C. Upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the Director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety.

D. As soon as practicable after the receipt of the 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.

E. The Director shall, after determining that the application is complete, deliver copies of the application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.5.502 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.

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

G. After notifying the applicant that the application is complete, the Director shall conduct a technical review of the closeout plan to determine if it is approvable. If the Director determines that the closeout plan is not approvable, the Director shall notify the applicant in writing of this determination, specifically describing each deficiency. The Director shall, upon submittal of additional information or changes, notify the applicant whether the resubmitted application is approvable or it continues to be deficient.

H. As soon as practicable after receiving notice that the closeout plan is approvable, the applicant shall submit a proposal for financial assurance in accordance with 19.10.12 NMAC.

I. The Director may approve a closeout plan subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC.

J. The Director shall approve an application to incorporate a closeout plan or closeout plan for a portion of the mine if:

(1) the closeout plan and permit application are complete and the public participation requirements of 19.10.9 NMAC have been met;

(2) the closeout plan permit fee has been paid and the financial assurance is adequate and has been provided;

(3) the applicant has demonstrated that the work to be done will reclaim disturbed areas within the permit area to a condition that allows for the re-establishment of a self-sustaining ecosystem on the permit area following closure, appropriate for the life zone of the surrounding areas unless conflicting with the approved post-mining land use; provided that for purposes of 19.10.5 NMAC, upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the Director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety;

(4) the existing mining operation is on state or federal lands, the appropriate land management agency approves or acknowledges the proposed closeout plan if approval or acknowledgement by the land management agency is required under that agency's regulations;

(5) a written determination has been received from the Secretary of the Environment Department stating that the application 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 closeout plan. 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;

(6) the applicant has submitted a notarized statement signed by the applicant that he agrees to comply with the performance and reclamation standards and 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.

[7-12-94, 2-15-96; 19.10.5.506 NMAC - Rn, 19 NMAC 10.2.5.506, 05-15-2001; A, 05-31-2001]

19.10.5.507 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:

A. The permit area will be reclaimed to a condition that allows for re-establishment of 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 closeout plan must be developed to meet the site-specific characteristics of the mining operation and the site. The closeout plan must specify incremental work to be done within specific time frames to accomplish the reclamation.

B. Waiver for Pits and Waste Units An operator may apply for a waiver for open pits or waste units from the requirement of achieving a post-mining land use or self-sustaining ecosystem. The operator must show that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound. The Director may grant the waiver for an open pit or waste unit if he finds:

(1) measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure; and

(2) the open pit or waste unit will not pose a current or future hazard to public health or safety.

[7-12-94, 2-15-96; 19.10.5.507 NMAC - Rn, 19 NMAC 10.2.5.507, 05-15-2001]

19.10.5.508 NEW UNITS: New discrete processing, leaching, excavation, storage or stockpile units located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation, and for each expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit must meet the reclamation standard set forth in Subsection A of 19.10.5.507 NMAC above and must also comply with the standards and requirements set forth below. Site-specific characteristics, including the existing mining operation, must be considered in applying the standards and requirements.

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. 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 negative impact to the hydrologic balance in both the permit and potentially affected areas.

(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;

(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

(viii) if necessary for sediment control, be in place before any other disturbance is made 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.

C. Site Stabilization and Surface 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) All reconstructed slopes, embankments and roads shall be designed, constructed and maintained to minimize mass movement.

(3) 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.

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

D. Erosion Control Reclamation of disturbed lands must result in a condition that controls erosion. Revegetated lands must not contribute suspended solids above background levels to 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.

E. 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) foliar 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.

[7-12-94, 2-15-96; 19.10.5.508 NMAC - Rn, 19 NMAC 10.2.5.507.C, 05-15-2001]

19.10.5.509 COMPLIANCE WITH OTHER APPLICABLE LAWS:

A. Enforcement of other state or federal laws, regulation 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; 19.10.5.509 NMAC - Rn, 19 NMAC 10.2.5.508, 05-15-2001]

19.10.5.510 ANNUAL REPORT: The permittee 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(s), the location of the disturbed areas and if reclaimed, the year in which the work was done;

D. indicate the number of disturbed acres, 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 19.10.12 NMAC; and

F. indicate compliance status for all existing state and federal environmental permits held by the permittee for this operation.

[7-12-94, 2-15-96; 19.10.5.510 NMAC - Rn, 19 NMAC 10.2.5.509, 05-15-2001]

19.10.5.511 PRIOR RECLAMATION:

A. The owner or operator of an existing mining operation who has completed some or all reclamation measures prior to July 12, 1994 may apply for an inspection of the reclaimed areas prior to August 31, 1994. This application shall be deemed to satisfy the deadline for a permit application for the areas covered as provided in Subsection A of 19.10.5.501 NMAC.

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 the substantive requirements for reclamation pursuant to 19.10 NMAC. The Director shall make the determination as soon as practicable, but not later than September 30, 1995. If the Director determines the reclamation measures do not satisfy the requirements of the Act and the substantive requirements for reclamation pursuant to 19.10 NMAC then, unless previously submitted, a permit application and closeout plan shall be submitted within 6 months after the owner or operator receives notice of the determination.
[7-12-94, 2-15-96; 19.10.5.511 NMAC - Rn, 19 NMAC 10.2.5.510, 05-15-2001]

History of 19.10.5 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 5, Existing Mining Operations, filed 07-12-94.

History of Repealed Material: [Reserved]

Other History:

Rule 5, Existing Mining Operations, filed 07-12-94, renumbered and reformatted as Subpart 5 of 19 NMAC 10.2, New Mexico Mining Act Implementation, filed 01-31-96.

19 NMAC 10.2, Subpart 5, Existing Mining Operations, filed 01-31-96 was renumbered and reformatted to 19.10.5 NMAC, effective 05-15-2001.