

STATE OF NEW MEXICO
MINING COMMISSION

**IN THE MATTER OF PETITION NO. 11-01
FOR THE REVISION OF REGULATIONS,
19 NMAC 10 PART 2 - FEES**

FINAL ORDER

THIS MATTER came before the New Mexico Mining Commission (the "Commission") for public hearing on a Petition for the Revision of Regulations, 19 NMAC 10.2 Part 2 - Fees, filed October 12, 2011 by the Mining & Minerals Division of the Energy, Minerals and Natural Resources Department ("MMD"). Notice of the subject, time and place of hearing, the manner in which any interested persons could present their views, and the method by which the public could obtain copies of the proposed revisions was published and mailed as required by NMSA 1978, § 69-36-8(C). All interested persons and the general public were provided with a reasonable opportunity to present their views and to examine witnesses testifying at the hearing. The hearing was tape-recorded and the tapes are in the custody of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division.

I. Proposed Amendment

Petitioner MMD in its Petition requested that the Commission consider revising Mining Act Rule, 19 NMAC 10.2 Part 2 – Fees to extend annual fee collections to December 31, 2013 in order to ensure the continuity of the Mining Act Reclamation Program (the "Program") and to ensure that MMD will be able to address its statutory and regulatory duties. MMD further requested that the Commission consider authorizing MMD to charge operators (i) a late fee for

Program fees that are not paid on time, and (ii) interest on the amount of the unpaid Program fees, in order to cover MMD's time and expense associated with collecting and processing Program fees not paid when due and not having timely access to the Programs fees.

The New Mexico Mining Association stood in support of MMD's petition.

II. Statement of Reasons

The Commission deliberated on the Petition at the close of the hearing.

The Commission found that the proposed two-year extension was reasonable and consistent with the Mining Act, the Mining Act Rules, and MMD's ongoing role in mining permit compliance and enforcement activities, approval of closeout plans and reclamation activities, mine site inspections, permit modifications and revisions, and financial assurance oversight. While MMD receives funding from other sources, MMD relies primarily on the fees collected to fund the Program. MMD believes that the two-year extension will afford it the opportunity to confer with the Director's Advisory Committee and other stakeholders regarding the need to revise the Program's fee structure to adequately fund the Program in the future. The Commission also found that the proposed late fees for mining operations that fail to pay the Program fees when due are reasonable and necessary as a result of the increased administrative costs associated with bill collection.

The Commission voted unanimously to approve the amendments to Subpart E of Section 19.10.2.202 NMAC and Section 19.10.2.205 NMAC proposed by MMD because these are consistent with the purposes and intent of the Mining Act. The amendments approved by the Commission on January 12, 2012 are attached hereto as Exhibit A and incorporated by reference.

IT IS THEREFORE ORDERED THAT Petition No. 11-01 for the Revision of Regulations, 19 NMAC 10.2 Part 2 – Fees is hereby **GRANTED**.

NEW MEXICO MINING COMMISSION

By: 
Doug Bland, Chairman

Dated: January 9, 2012

EXHIBIT A

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 2 FEES

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

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

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

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

19.10.2.5 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.
[19.10.2.5 NMAC - N, 05-15-2001]

19.10.2.6 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.
[19.10.2.6 NMAC - N, 05-15-2001]

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

19.10.2.8 - 19.10.2.200 [RESERVED]
[19.10.2.8 - 19.10.2.200 NMAC - N, 05-15-2001]

19.10.2.201 APPLICATION FEES: Applications filed with the director shall be accompanied by a fee determined under the following schedule:

A. The permit application fee for an existing mining operation shall be determined by adding:
(1) \$1,000.00 base fee;
(2) \$15.00 per acre for the first 50 acres of land expected to be disturbed over the life of the mine (design limits) for surface disturbance, plus \$5.00 per acre for all such land over 50 acres;
(3) a fee determined in accordance with 19.10.2.203 NMAC; and
(4) if a closeout plan is submitted with the initial application, an additional fee will be assessed in accordance with Subsection K of 19.10.2.201 NMAC.

B. The permit application fee for a new mining operation shall be determined by adding:
(1) \$5,000.00 base fee;
(2) \$200.00 per acre for the first 50 acres of land expected to be disturbed over the life of the mine (design limits) for surface disturbance, plus \$40.00 per acre for all such land over 50 acres;
(3) a fee determined in accordance with 19.10.2.203 NMAC; and

(4) in addition, any cost associated with the preparation of an environmental evaluation by a third party shall be paid for by the applicant.

C. The initial application fee for an existing minimal impact mining operation is \$250.00. If a closeout plan is submitted with the initial application, an additional fee of \$250.00 will be assessed.

D. The initial application fee for a new minimal impact mining operation is \$1,000.00.

E. The fee for an exploration permit is \$1,000.00.

F. The fee for a minimal impact exploration permit is \$500.00.

G. The fee for transferring a permit is \$250.00.

H. The fee is \$1,000.00 for a non-minimal impact operation permit modification which is not a revision.

I. The fee for a minimal impact operation modification is \$250.00.

J. The fee for each permit revision, excluding revisions for closeout plans, is \$5,000.00.

K. The fee for a permit revision for a closeout plan for an existing mining operation shall be determined by the following table. Acreage calculations must be based on total existing and proposed disturbance as described in the closeout plan.

(1)	> 0 to 10 acres	\$750
(2)	> 10 to 30 acres	\$1,500
(3)	> 30 to 100 acres	\$3,000
(4)	> 100 to 300 acres	\$4,500
(5)	> 300 to 3,000 acres	\$6,000
(6)	> 3,000 to 10,000 acres	\$7,500
(7)	> 10,000 acres	\$9,000

L. The fee for a permit modification for a closeout plan for a minimal impact existing mine is \$250.00.

M. The fee for each application for a variance is \$500.00.

N. The director may waive application fees for a variance, modification, revision, or transferring a permit that requires little or no cost for investigation and issuance.

O. The application fee to determine whether a mine or a portion of a mine qualifies for prior reclamation is \$250.00. The fee shall be paid at the time an inspection is requested.

[7-12-94, 11-15-95, 12-15-95, 2-15-96; 19.10.2.201 NMAC - Rn, 19 NMAC 10.2.2.201, 05-15-2001; A, 03-16-09]

19.10.2.202 ANNUAL FEES

A. The annual fee for an existing mining operation shall be determined by adding:

(1) \$800.00 base fee;

(2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC;

(4) a surcharge of 75% shall be added to the total annual fees for mining operations that have 500 acres or more disturbed area in their permit as defined in Paragraph (2) of Subsection D of 19.10.1.7 NMAC; substantially reclaimed acreage as defined in Paragraph (1) of Subsection F of 19.10.2.202 NMAC will not be counted as disturbed acreage for purposes of this paragraph;

(5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and

(6) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each year until all Mining Act requirements are met.

B. The annual fee for the new mining operation shall be determined by adding:

(1) \$1,000.00 base fee;

(2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC; and

(4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each subsequent year following initial submittal of a permit application.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

E. The provisions in Subsection A through D of 19.10.2.202 NMAC and Subsection F of 19.10.2.202 NMAC shall not be applicable to any fees due after ~~December 31, 2013~~ ~~March 31, 2012~~.

F. Formula for Reducing Fees for Substantially Reclaimed Acreage.

(1) For the purposes of 19.10.2 NMAC, "Substantially Reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = Pre-reclamation Fee - (AR/AT) * (Pre-reclamation Fee), where AT = Total Acreage and AR = Reclaimed Acreage.

[7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03; A, 12-30-05; A, 03-16-09]

19.10.2.203 ASSESSMENT OF FACILITY-RELATED FEES

A. The following table is used to calculate the portion of the fee based on certain types of facilities. These tables reflect the complexity of an operation. A facility fee in each applicable category will be assessed based on total acreage for all facilities of that type.

B. This portion of permit application and annual fees for existing and new mining operations shall be the sum of the costs within each of the following categories of fees applicable to the operation: Application Fees. For existing and new mine initial application fees, when determining acreages of facilities in the following categories, the total acreage identified as current and future sites (design limits) of these facilities is counted. Annual Fees. For existing and new mine annual fees, when determining acreages of facilities in the following categories, cumulative acreage disturbed up to June 30 of the current fee year will be counted.

	Facility	Fee
(1)	Open Pit Mine	
	(a) > 0 to 4 acres	\$500
	(b) > 4 to 10 acres	\$1,000
	(c) > 10 to 50 acres	\$2,500
	(d) > 50 to 100 acres	\$5,000
	(e) > 100 acres	\$7,500
(2)	Tailings	
	(a) > 0 to 4 acres	\$500
	(b) > 4 to 10 acres	\$1,000
	(c) > 10 to 50 acres	\$2,500
	(d) > 50 to 100 acres	\$5,000
	(e) > 100 acres	\$7,500
(3)	Waste Dumps	
	(a) > 0 to 4 acres	\$500
	(b) > 4 to 10 acres	\$1,000
	(c) > 10 to 50 acres	\$2,500
	(d) > 50 to 100 acres	\$5,000
	(e) > 100 acres	\$7,500
(4)	Plant Site	
	(a) > 0 to 4 acres	\$500
	(b) > 4 to 10 acres	\$1,000
	(c) > 10 to 50 acres	\$2,500
	(d) > 50 to 100 acres	\$5,000
	(e) > 100 acres	\$7,500
(5)	Leach Piles	

(a)	> 0 to 4 acres	\$500
(b)	> 4 to 10 acres	\$1,000
(c)	> 10 to 50 acres	\$2,500
(d)	> 50 to 100 acres	\$5,000
(e)	> 100 acres	\$7,500

[7-12-94, 11-15-95, 2-15-96; 19.10.2.203 NMAC - Rn, 19 NMAC 10.2.2.203, 05-15-2001]

19.10.2.204 PAYMENT

A. Payments shall be in cash or check made payable to the Mining and Minerals Division and received by the Division on or prior to the date due. The Division shall deposit the payment with the state treasurer in the Mining Act Fund.

B. This fee schedule applies to all permit applications submitted after July 12, 1994. Permit fees submitted pursuant to Subsection A of 19.10.2.201 NMAC filed July 12, 1994 shall satisfy the requirement of Subsection A of 19.10.2.201 NMAC. Previously submitted fees exceeding those required under Subsection A of 19.10.2.201 NMAC shall be credited to annual fees for that operation.

[7-12-94, 12-15-95, 2-15-96; 19.10.2.204 NMAC - Rn, 19 NMAC 10.2.2.204, 05-15-2001]

19.10.2.205 LATE FEES

A. A late fee shall be charged for fees that are paid after the due date of April 30th, each year. The late fee shall consist of (i) \$100 to cover administrative costs associated with the late payment and (ii) interest on the amount of the unpaid fees at an annual rate of fifteen percent (15%), compounded daily. The late fee will be applied to the mining act fund that is created by Section 69-36-19 of the New Mexico Mining Act.

19.10.2.2056 SURCHARGE FOR DEPARTMENT OF GAME AND FISH ACTIVITIES

A. To compensate the Department of Game and Fish for its costs required to implement its involvement in implementing the Act, a percentage surcharge shall be added in the same percentage to each of the above application and annual fees. This surcharge shall be 4.5 percent of fees collected in FY 96 to be used in FY 97 and FY 98. This surcharge shall be 4.2 percent of fees collected in FY 98 and FY 99, to be used in FY 99 and FY 2000. This surcharge shall be 3.2 percent of fees collected in FY2000 to be used in FY 2001. No percentage surcharge shall be assessed in FY 2001 or FY 2002; instead, the balance of the surcharges assessed during FY 1996 through FY 2002 shall be used in FY 2002, FY 2003, FY 2004, FY 2005 and FY 2006.

B. Payment. On a quarterly basis, the Director shall reimburse the Department of Game and Fish, only from this surcharge, for its reasonably necessary costs incurred under the Department's involvement with implementation of the Act.

[11-15-95, 12-15-95, 2-15-96, 5-31-97, 6-30-99; 19.10.2.205 NMAC - Rn, 19 NMAC 10.2.2.205, 05-15-2001; A, 12-28-01; A, 04-30-03]

HISTORY of 19.10.2 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 2, New Mexico Mining Act - Fees, filed 07-12-94; Rule 2, New Mexico Mining Act - Fees, filed 11-02-95; Rule 2, New Mexico Mining Act - Fees, filed 12-01-95.

History of Repealed Material: [Reserved]

Other History: Rule 2, New Mexico Mining Act - Fees, filed 12-01-95 renumbered and reformatted into 19 NMAC 10.2, Mining Act Implementation - Subpart 2, Fees, filed 01-31-96.

19 NMAC 10.2, Mining Act Implementation - Subpart 2, Fees, filed 01-31-96; renumbered and reformatted to 19.10.2 NMAC, Fees, effective 05-15-2001.