

BEFORE THE NEW MEXICO MINING COMMISSION



IN THE MATTER OF:

No. 15-01 (R)

**PETITION FOR THE REVISION OF
19.10 PART 12 NMAC - FINANCIAL ASSURANCE REQUIREMENTS**

FINAL ORDER

THIS MATTER came before the New Mexico Mining Commission (the “Commission”) on the petition filed on January 12, 2015 by the Mining and Minerals Division (“MMD”) of the New Mexico Energy, Minerals and Natural Resources Department, to revise 19.10.1210 NMAC of the Commission’s Regulations. In accordance with the Commission’s Guidelines for Rulemaking, 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 audio-recorded and copies of the audio-recording are in the custody of MMD.

Statement of Proceedings

MMD filed a Notice of Intent to Present Technical Testimony (“NOI”) in support of its petition on June 5, 2015. The New Mexico Mining Association filed a Notice of Intent to Present Rebuttal Technical Testimony on June 3, 2015. Also prior to the hearing, the New Mexico Mining Association and Horizon AG Products filed written public comments in support of the petition.

The Commission heard MMD's Petition to Revise 19.10 Part 12 NMAC on June 22, 2015. MMD Director Fernando Martinez testified in front of the Commission. In addition, Mike Bowen, Executive Director of the New Mexico Mining Association, spoke in favor of the petition. No person or entity spoke in opposition to the proposed revision. At the conclusion of the hearing and upon deliberation, the Commission voted to revise 19.10.1210(A) (1) NMAC of the Commission's Regulations as proposed by MMD.

Proposed Revision

In 2014, the Legislature amended NMSA 1978, Section 69-36-7 (R) of the New Mexico Mining Act to eliminate the number of times an operator may request release of financial assurance by deleting the following language: "[t]he permittee shall not file an application for release of financial assurance more than once per year for each mining operation." See SCONC/SB 80 and 95, Section 2 (2014 Regular Session). The Legislature also mandated that, on or before January 13, 2015, the Director of MMD propose amendments to New Mexico Mining Act to address the frequency for the intervals at which permittees under that act can request release of their financial assurances. See *id.*, at Section 3. Hence, in accordance with the legislative mandate and to ensure that the Commission's Regulations are consistent with the Act, MMD proposed to revise 19.10.12.1210 (A)(1) NMAC as follows:

9.10.12.1210 RELEASE OF FINANCIAL ASSURANCE:

A. Release Application

(1) The permittee may file an application with the Director for the release of all or part of the financial assurance. The permittee may file multiple release applications per year for each permit.

Statement of Reasons

The Commission finds that the proposed revision promotes reclamation by eliminating the once-per-year limit on release of financial assurance applications and allowing a mine operator to apply for the release of its financial assurance upon completing the reclamation of a designated area(s) within a permitted site. Because the nature, type and size of a mining operation necessarily will inform a mine operator's decision to apply for the release of financial assurance, the Commission further finds that as a practical matter the frequency with which a mine operator submits applications for release of financial assurance will be tempered by the considerable time, effort and resources available to the operator for preparation of multiple applications in any given time frame. Finally, the Commission finds that MMD staff will be able to timely and efficiently process said applications because MMD does not anticipate that eliminating the once-per-year limit on release applications will result in a significant increase in the number of release applications submitted to MMD annually.

By a vote of 7-0, the Commission voted to approve the revision to 19.10.12.1201(A)(1) NMAC as proposed by MMD because (1) it is reasonable and necessary for the Commission's Regulations to remain consistent with the New Mexico Mining Act, after the Act was amended in 2014, and (2) it will encourage reclamation and make it easier for mine operators to move forward with both reclamation and operation.

The revision approved by the Commission on June 22, 2015 is attached hereto as Exhibit A and incorporated by reference.

NEW MEXICO MINING COMMISSION

By: 

John Heaton, Chairman

Exhibit A

19.10.12.1210 RELEASE OF FINANCIAL ASSURANCE:

A. Release Application.

(1) The permittee may file an application with the director for the release of all or part of the financial assurance. The permittee may file multiple release applications per year for each permit.

(2) The application shall describe the reclamation or closeout measures completed and shall contain an estimate of the cost of reclamation that has not been completed.

(3) At the time the release application is filed with the director, the permittee shall submit proof that the notice of application has been provided in accordance with 19.10.9.902 NMAC and 19.10.9.903 NMAC. The notice shall be considered part of any release application and shall contain: the permittee's name; permit number and approval date; notification of the precise location of the real property affected; the number of acres; the type and amount of the financial assurance filed and the portion sought to be released; the type and appropriate dates of reclamation or closeout plan performed; a description of the results achieved as they relate to the permittee's approved reclamation or closeout plan; and the name and address of the director, to whom written comments, objections, or requests for public hearings on the specific financial assurance release may be submitted pursuant to Subsection C of 19.10.12.1210 NMAC.

(4) The director shall promptly provide notice of receipt of the application for release of all or part of the financial assurance to the environment department, the office of the state engineer, the department of game and fish, the forestry division, the state historic preservation division, other agencies he deems appropriate, and if the operation is on state or federal land, to the appropriate state or federal land management agency.

B. Inspection by director. Upon receipt of the complete financial assurance release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation or closeout measures completed. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation. The surface owner or lessor of the real property, other state and federal agencies as listed in Subsection A, Paragraph 4 of 19.10.12.1210 NMAC above, and any other persons who have requested advance notice of the inspection shall be given notice of such inspection and may be present at the release inspection as may any other interested members of the public. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the financial assurance release, for the purpose of gathering information relevant to the proceeding.

C. Public Hearing.

(1) Within 30 days from the date of the inspection, a person with an interest that is or will be adversely affected by the proposed financial assurance release may file written objections to the proposed release with the director. If written objections are filed and a hearing is requested, the director shall inform all persons who have requested notice of hearings and persons who have filed written objections in regard to the application of the time and place of the hearing at least 30 days in advance of the public hearing. The hearing shall be held in the locality of the permit area proposed for release.

(2) The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality of the permit area once a week for two consecutive weeks. All persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least 30 days prior to the hearing. The hearing procedures of 19.10.9.905 NMAC shall be followed.

D. Within 45 days from the inspection, if no public hearing is held pursuant to Subsection C of 19.10.12.1210 NMAC, or, within 45 days after a public hearing has been held pursuant to Subsection C of 19.10.12.1210 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in the collateral who have requested notification under 19.10.12.1208 NMAC and the persons who either filed objections in writing or participants in the hearing proceedings who supplied their addresses to the director, if any, of the decision whether to release all or part of the financial assurance.

E. The director may release all or part of the financial assurance for the entire permit area or incremental area if the director is satisfied that the reclamation or closeout plan or a phase of the reclamation or closeout plan covered by the financial assurance, or portion thereof, has been accomplished in accordance with the act, 19.10 NMAC, and the permit.

F. If the director denies the release application or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection C, Paragraph 4 of 19.10.12.1208 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release.

G. The director may approve an application for release of financial assurance for a minimal impact operation without public notice or hearing.

[7-12-94, 2-15-96; 19.10.12.1210 NMAC - Rn, 19 NMAC 10.2.12.1210, 05-15-2001; A, 12-30-03; A, 07-15-15]