

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 10 NON-COAL MINING
PART 14 MINING COMMISSION ADJUDICATORY REVIEW

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

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

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

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

19.10.14.5 EFFECTIVE DATE: June 30, 1999, unless a later date is cited at the end of a section.
A. All references to the Mining Act Parts 1-14 in any other rule shall be understood as a reference to 19.10 NMAC.
B. The amendment and replacement of The Mining Act Parts 1-14 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 1-14.
[19.10.14.5 NMAC – N, 05-15-2001]

19.10.14.6 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.
[19.10.14.6 NMAC – N, 05-15-2001]

19.10.14.7 DEFINITIONS FOR 19.10.14 NMAC:
A. "**Applicant**" means the person whose application for a permit or variance or revision to a permit is the subject of the permitting action to which a petition applies.
B. "**Date of notice**" means the date on which the Director initiates service of the notice of a decision by mail or other means. For example, the date of notice of final permitting decisions authorizing new activities shall be the date on which the Director mails notice to participants in the permitting proceeding and others who requested notice.
C. "**Document**" means, except as used in 19.10.14.1423 NMAC, any motion, response, memorandum, decision, order, comment, other pleading or evidence filed in a proceeding under 19.10.14 NMAC.
D. "**Final action**" means a written order issued by the Commission that contains findings of fact and the final decision of the Commission.
E. "**Hearing Clerk**" means the person designated to maintain the official record of the proceeding.
F. "**Hearing Officer**" means the person designated under 19.10.14 NMAC or appointed by the Commission to conduct a proceeding under 19.10.14 NMAC.
G. "**Interested participant**" means any person, other than a party, who files a statement of intent to present evidence pursuant to Subsection D of 19.10.14.1434 NMAC.
H. "**New activities**" means a new mining operation, a new unit of an existing mining operation or a unit expansion that exceeds the design limits specified in a permit for an existing mining operation.
I. "**Party**" means, the Petitioner, the Applicant, if different from the Petitioner, the Division, or any person who has been permitted to intervene in the particular hearing pursuant to Section 19.10.14.1424 NMAC.
J. "**Petition**" means a petition for review of an order, penalty assessment or issuance or denial of a permit by the Director pursuant to NMSA 1978, Section 69-36-15 (1993).
K. "**Petitioner**" means any person who files a timely petition.
L. "**Record**" depending on the context, means all documents filed by or with the Hearing Clerk during a proceeding before the Commission and includes: the audio or stenographic recording of the hearing and all

exhibits admitted into evidence at the hearing, or otherwise made a part of the record by the Commission; and the minutes, or an appropriate extract of minutes, of any Commission meeting where the Commission deliberated or acted on any procedural or substantive issue in the proceeding or the Hearing Record for decisions by the Director as described in 19.10.9.906 NMAC.

[6-30-99; 19.10.14.7 NMAC – Rn, 19 NMAC 10.2.14.1404, 05-15-2001]

[Additional Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.14.8 - 19.10.14.1400 [RESERVED]

[19.10.14.8 - 19.10.14.1400 NMAC – N, 05-15-2001]

19.10.14.1401 APPLICABILITY OF RULES OF CIVIL PROCEDURE: In the absence of a specific provision in this Part or the Act governing an action, the Commission may look to the New Mexico Rules of Civil Procedure, Rules 1-001 to 1-102, NMRA 1998, and the New Mexico Rules of Evidence, Rules 11-101 to 11-1102, NMRA 1998, for guidance.

[6-30-99; 19.10.14.1401 NMAC – Rn, 19 NMAC 10.2.14.1401, 05-15-2001]

19.10.14.1402 SEVERABILITY: If any portion or application of 19.10.14 NMAC is held invalid, the remainder of this Part, or its application to other persons or situations, shall not be affected.

[6-30-99; 19.10.14.1402 NMAC – Rn, 19 NMAC 10.2.14.1402, 05-15-2001]

19.10.14.1403 SAVINGS CLAUSE: This Part does not apply to petitions before the Commission filed prior to the effective date of this Part, except as agreed to by the parties to such proceedings.

[6-30-99; 19.10.14.1403 NMAC – Rn, 19 NMAC 10.2.14.1403, 05-15-2001]

19.10.14.1404 [RESERVED]

19.10.14.1405 EFFECTIVE DATES:

A. Except as otherwise provided in the Director's decision or in these rules, the effective date of a Director's decision shall be the date of notice.

B. The effective date of final permitting decisions authorizing new activities shall be no sooner than the sixteenth day after the date of notice, but the Director may, in the decision itself, provide for an effective date up to 30 days after the date of notice upon finding good cause.

C. Upon finding good cause, the Director may, in any other decision, provide for a delayed effective date up to 90 days after the date of notice.

[6-30-99; 19.10.14.1405 NMAC – Rn, 19 NMAC 10.2.14.1405, 05-15-2001]

19.10.14.1406 REQUESTS FOR STAY OF NEW ACTIVITIES:

A. A person who is or may be adversely affected by a decision authorizing new activities may file with the Commission a request to stay the new activities no later than 15 days after the date of notice.

B. Upon the timely filing of a request to stay new activities, the effective date of the Director's decision shall be delayed until the Commission concludes an expedited hearing as provided in Subsection G of 19.10.14.1406 NMAC.

C. A request to stay new activities shall include, at a minimum:

(1) a petition initiating an appeal to the Commission, which petition may include a waiver of the hearing deadlines applicable to hearings on the merits, and;

(2) a statement of the basis for the request and showings to be made at the expedited hearing, including:

- (a) the irreparable harm to the person requesting the stay if the stay is not granted,
- (b) the likelihood that the person requesting the stay will prevail in the appeal on the merits,
- (c) the lack of substantial harm to others if the stay is granted, and
- (d) the lack of harm to the public interest if the stay is granted.

D. The person requesting the stay shall, at the time of filing, serve the request on all other parties. The other parties may file responses to the request at least 2 working days prior to the expedited hearing, and may separately respond to the petition as otherwise provided.

E. The petition, which must be filed as part of a request to stay new activities, need not include the detailed statement of objections required in Subsection B of 19.10.14.1417 NMAC; provided, however, the

petitioner must supplement the petition to meet all requirements for a petition by no later than 60 days after notice of the decision being appealed. A waiver of the hearing deadlines in a petition under this section shall have the limited effect of tolling the deadlines for the hearing on the merits until the date on which petitioner supplements the petition.

F. A person filing a request to stay new activities need not provide financial assurance for the period of any resulting stay ordered by the Commission.

G. The hearing clerk shall distribute copies of any timely request to stay new activities to the Commissioners and schedule an expedited hearing no sooner than 16 days and no later than 30 days after notice of the decision. Only parties (including but not limited to all who filed a timely request for stay) shall be entitled to participate in the Commission's expedited hearing.

(1) The expedited hearing shall be completed and a decision rendered by the Commission no later than 30 days after notice of the decision, and the expedited hearing may be held on short notice.

(2) The Commission chairperson or another Commissioner designated by the chair shall conduct an orderly hearing, not to exceed 5 hours in length, and shall allow each party the opportunity to present evidence on the request(s).

(3) The Commission shall grant or deny the request at the conclusion of the expedited hearing. The Commission may grant a request to stay new activities only if it finds that:

- (a)** the request was timely and complete when filed,
- (b)** the person requesting the stay is or may be adversely affected by the Director's decision,
- (c)** irreparable harm to the person requesting the stay will result if the stay is not granted,
- (d)** there is a likelihood that the person requesting the stay will prevail on the merits in the

appeal,

(e) no substantial harm will result to other interested persons if the stay is granted, and

(f) no harm will ensue to the public interest if the stay is granted.

H. If the Commission fails to decide a request to stay new activities within 30 days of the Director's notice of decision, the request(s) shall be deemed denied.

I. If the Commission denies a request to stay new activities, the effective date of the Director's decision shall be the date of such denial, and no further request to stay the same decision will be considered by the Commission. No person may appeal the denial of a request to stay new activities until after the Commission's final action in the appeal on the merits.

J. If the Commission grants a request to stay new activities, the effective date of the Director's decision shall be the date of the Commission's final action in the appeal on the merits.

[6-30-99; 19.10.14.1406 NMAC – Rn, 19 NMAC 10.2.14.1406, 05-15-2001]

19.10.14.1407 OTHER REQUESTS FOR STAY:

A. Any request for stay other than requests to stay new activities shall be filed with the Commission at or after the time of filing a petition. The request for stay must be served on all other parties and must meet the requirements of Subsection C, Paragraph 2 of 19.10.14.1406 NMAC.

B. Any other party shall have 10 days after service to file a response. The party filing the request for stay may submit a reply to any response within 5 days of service of the response.

C. The Commission may grant a request to stay under this Section only if, after a hearing, it makes the findings required under Subsection G, Paragraph 3 of 19.10.14.1406 NMAC.

D. Any party opposing a request for stay under this Section may request that financial assurance be provided if the stay is granted. If a stay is granted, the Commission shall determine whether the financial assurance is to be provided and set the other terms for it, including the form and amount of the financial assurance and the conditions for forfeiture or release of the financial assurance. In the event the appeal is ultimately denied by the Commission, the Commission's final action shall include a determination of what portion of any financial assurance that was provided shall be paid over to the party who requested that financial assurance be provided, and shall state what portion, if any, is to be released back to the provider of the financial assurance.

[6-30-99; 19.10.14.1407 NMAC – Rn, 19 NMAC 10.2.14.1407, 05-15-2001]

19.10.14.1408 POWERS AND DUTIES OF THE COMMISSION: The Commission shall exercise all powers and duties as prescribed under the Act, the Regulations and this Part and not otherwise delegated to the Hearing Officer or the Hearing Clerk.

A. The Commission may issue procedural orders that either impose additional procedural duties or simplify the procedures provided in this Part. The Commission shall not eliminate any procedural requirements of the Act or regulations.

B. The Commission may appoint one or more of its members as Hearing Officers to perform the functions described in 19.10.14.1407 NMAC. From the date a petition is received by the Commission, the chairperson of the Commission shall serve as Hearing Officer until the Commission appoints another hearing officer.

C. No Commissioner with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a Hearing Officer in that proceeding or otherwise participate in the proceeding.

D. The evidentiary hearings conducted under this Part shall take place at meetings of the Commission, unless the Commission specifically delegates, for good cause, the taking of evidence by the Hearing Officer.

E. The Commission may adopt, modify or set aside the Director's actions and can remand the matter to the Director for further action.

[6-30-99; 19.10.14.1408 NMAC – Rn, 19 NMAC 10.2.14.1408, 05-15-2001]

19.10.14.1409 POWERS AND DUTIES OF THE HEARING OFFICER: The Hearing Officer shall exercise all powers and duties prescribed or delegated by the Commission under the Act or this Part, including, but not limited to:

- A.** Preside over the hearings under this Part;
- B.** Rule on motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;
- C.** Issue subpoenas, as authorized by the Act, for the attendance and testimony of witnesses and the production of documentary evidence;
- D.** Administer oaths and affirmations, examine witnesses, and admit or exclude evidence;
- E.** Require parties to attend conferences for the settlement or simplification of issues or proceedings;
- F.** Enter pre-hearing orders related to scheduling and other procedural issues; and
- G.** Impose sanctions, subject to review by the Commission, on parties who cause undue delay and fail to cooperate in the proceeding.

[6-30-99; 19.10.14.1409 NMAC – Rn, 19 NMAC 10.2.14.1409, 05-15-2001]

19.10.14.1410 COMPUTATION AND EXTENSION OF TIME:

A. In computing any period of time prescribed or allowed by this Part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, 3 days is added to the prescribed period. The three-day extension does not apply to any deadline under the Act or in Sections 19.10.14.1405 NMAC, 19.10.14.1406 NMAC or 19.10.14.1407 NMAC.

B. The Commission or Hearing Officer may grant an extension of time for the filing of any document or the hearing upon consent of all the parties or upon timely motion of a party to the proceeding, if good cause is shown, and no prejudice will result to other parties.

[6-30-99; 19.10.14.1410 NMAC – Rn, 19 NMAC 10.2.14.1410, 05-15-2001]

19.10.14.1411 DISCUSSION OF ISSUES WITH COMMISSION: At no time after the filing of a petition and before the conclusion of a proceeding shall any party, interested participant or their representatives discuss the issues involved in the proceeding with any Commissioner when all other parties to the proceeding are not present. This prohibition does not preclude any constituent agency Commissioner from conferring with agency employees who are not, and have not been, involved in the matter before the Commission.

[6-30-99; 19.10.14.1411 NMAC – Rn, 19 NMAC 10.2.14.1411, 05-15-2001]

19.10.14.1412 FILING, SERVICE, AND FORM OF DOCUMENTS:

A. The originals of all documents served in the proceeding shall be filed with the Hearing Clerk designated by the Director. Filing is complete when received by the Hearing Clerk or some other Division employee in his place. Filing may be completed between 8 a.m. and 5 p.m. on state work days. Additionally, a party filing a

document must provide 12 copies of the document at the time of filing to the Hearing Clerk to distribute to the Commission and its counsel.

B. A party filing documents shall serve copies of the documents upon all other parties. A certificate of service, as shown in Attachment A, shall accompany each filed document.

C. All documents may be served by hand-delivery, facsimile transmission or first class mail. If facsimile transmission is used, the sending party must telephone and confirm receipt in order to complete service. If the parties agree, then service by electronic mail may also be used. Service by mail is not allowed within 10 days of the hearing.

D. All documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, and where appropriate, the first page of every document shall contain the heading and caption illustrated in Attachment A.

E. The Hearing Clerk shall provide a docket number for the proceeding and maintain a file of documents submitted in the proceeding and a listing identifying those documents and their date of submittal. [6-30-99; 19.10.14.1412 NMAC – Rn, 19 NMAC 10.2.14.1412, 05-15-2001]

19.10.14.1413 FILING AND SERVICE OF DOCUMENTS ISSUED BY COMMISSION OR HEARING

OFFICER: All documents issued by the Commission or Hearing Officer shall be filed with the Hearing Clerk. The Hearing Clerk shall promptly serve copies of the documents upon all parties.

[6-30-99; 19.10.14.1413 NMAC – Rn, 19 NMAC 10.2.14.1413, 05-15-2001]

19.10.14.1414 EXAMINATION OF DOCUMENTS FILED: Any person may, during normal business hours, inspect and copy any document filed in any proceeding, except confidential documents. Such documents shall be made available by the Hearing Clerk. The person seeking copies of any documents shall pay the cost of copying the documents.

[6-30-99; 19.10.14.1414 NMAC – Rn, 19 NMAC 10.2.14.1414, 05-15-2001]

19.10.14.1415-19.10.14.1416 [RESERVED]

[6-30-99; 19.10.14.1415-19.10.14.1416 NMAC -- Rn, 19 NMAC 10.2.14.1415-1416, 05-15-2001]

19.10.14.1417 FILING OF PETITION: The proceeding shall be started by the filing of a petition with the Commission within 60 days from the date of notice of the Director's action. The Petitioner shall file the original and 12 copies of the Petition with the Hearing Clerk and serve a copy on the Division and the applicant if the applicant is not the Petitioner. The Hearing Clerk shall promptly serve copies of the petition to the Commission. The Petition shall:

A. Identify the Petitioner, and state how the Petitioner is or may be adversely affected by the Director's action;

B. Identify the Director's action which is the subject of the appeal, specify the portions of the Director's action to which Petitioner objects and specifically state the objections. The Commission will consider only the objections included in the Petition;

C. Have attached a copy of the Director's action;

D. Be served on the Applicant on the date of filing if the Applicant is not the Petitioner.

[6-30-99; 19.10.14.1417 NMAC – Rn, 19 NMAC 10.2.14.1417, 05-15-2001]

19.10.14.1418 RESPONSES TO THE PETITION:

A. The Division shall file a response to the Petition responding to each of the objections in the Petition no later than 20 days after the petition is filed.

B. The Division shall deliver to the Hearing Clerk a list of all persons who have expressed in writing an interest in the subject of the Petition by requesting a public hearing, submitting written comments regarding the application to the Director, or by presenting testimony at any hearing conducted by the Division prior to the Director's action.

C. When the Petitioner is not the same person as the Applicant, then the Applicant may also file a response clearly and directly responding to each of the objections in the Petition within 30 days after the Petition is filed.

[6-30-99; 19.10.14.1418 NMAC – Rn, 19 NMAC 10.2.14.1418, 05-15-2001]

19.10.14.1419 NOTICE OF HEARING OFFICER ASSIGNMENT: If a Hearing Officer other than the Commission chairperson is assigned, the Hearing Clerk shall notify the parties of the name and address of the

Hearing Officer. The Hearing Clerk shall also, at that time, forward to the Hearing Officer copies of all documents filed to date. Any party may request a pre-hearing conference with the Hearing Officer to address scheduling, motions and other pre-hearing matters.

[6-30-99; 19.10.14.1419 NMAC – Rn, 19 NMAC 10.2.14.1419, 05-15-2001]

19.10.14.1420 SCHEDULING THE HEARING:

A. The Commission or Hearing Officer shall schedule the hearing to begin no earlier than 30 days and no later than 60 days after the date the Petition was filed, unless the parties waive the deadline in writing. The notice of waiver must be filed before the 60-day deadline.

B. The Hearing Clerk shall, upon direction from the Commission or Hearing Officer, but no later than 20 days prior to the hearing date, issue and serve upon the parties a Notice of Hearing with proof of service, setting forth the date, time, and location of the hearing, a brief description of the petition and information regarding participation in the hearing. This information shall include references to the procedures to intervene pursuant to 19.10.14.1424 NMAC, to present evidence as an interested participant by filing and mailing to the parties a statement of intent pursuant to Subsection D of 19.10.14.1434 NMAC, and to participate as a general public participant pursuant to 19.10.14.1434 NMAC.

C. The Hearing Clerk shall mail a copy of the Notice of Hearing to each person identified in Subsection B of 19.10.14.1418 NMAC at least 30 days prior to the hearing and shall include information regarding participation by the general public.

D. The Hearing Clerk shall send copies of the Notice of Hearing, with requests for publication, to at least one newspaper of general circulation in the state; and at least one additional newspaper published or distributed at least weekly in the county where the mining or exploration operation is located to be published at least 25 days prior to the hearing.

E. The Hearing Clerk shall file in the record a copy of the Notice of Hearing and any affidavits of publication attached.

F. A request for postponement of a hearing shall be granted if all parties agree or if good cause is shown.

G. Unless otherwise ordered or allowed by the Commission or Hearing Officer, the hearing shall be in Santa Fe.

[6-30-99; 19.10.14.1420 NMAC – Rn, 19 NMAC 10.2.14.1420, 05-15-2001]

19.10.14.1421 MOTIONS:

A. Any application or request by a party to the Commission for an order shall be made by motion in writing except those made orally during a hearing. The party making the motion shall specify the reasons for the motion and state the relief sought. Motions may be accompanied by an affidavit(s), certificate(s), or other evidence relied upon.

B. Motions should be filed within 30 days of when the Petition was filed.

C. Any party upon whom a motion is served shall have 10 days after service of the motion to file a response. A party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

D. The party making the motion may, but is not required to, submit a reply to any response within 5 days after service of the response.

E. Motions shall be decided by the Hearing Officer without a hearing unless otherwise ordered by the Hearing Officer or upon written request of any party. The Hearing Officer shall refer any motion that would resolve the matter, and may refer any other motion, to the Commission for a decision. The Hearing Officer may make a recommendation to the Commission on dispositive motions. The Commission may reconsider a motion decided by the Hearing Officer if the reconsideration will not delay the proceeding. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received after the ruling but prior to the expiration of the time for response shall be treated as a request for reconsideration of the ruling.

F. Motions seeking an extension of time may be filed at any time before the deadline for which the extension is sought.

[6-30-99; 19.10.14.1421 NMAC – Rn, 19 NMAC 10.2.14.1421, 05-15-2001]

19.10.14.1422 DISCOVERY:

A. At least 15 days prior to the hearing, the Petitioner shall file and serve on the Division and any other party the following information:

- (1) The name of each witness to be called at the hearing;
- (2) An estimate of the length of the direct testimony of each witness;
- (3) A summary or outline of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the basis for those opinions; and
- (4) A list of exhibits, if any, to be offered into evidence at the hearing and copies of any such exhibits that are not in the administrative record.

B. At least 7 days prior to the hearing, the Division and any other party, other than an intervenor, shall file and serve on the Petitioner the information listed in Subsection A of 19.10.14.1422 NMAC.

C. If a request for discovery is made, the Rules of Civil Procedure for the District Courts, Rule 1-001 to 1-102, NMRA 1998, shall govern, except the Hearing Officer shall resolve any disputes and may shorten deadlines.

[6-30-99; 19.10.14.1422 NMAC – Rn, 19 NMAC 10.2.14.1422, 05-15-2001]

19.10.14.1423 SUBPOENAS: The Hearing Officer may issue subpoenas to compel attendance of witnesses and for the production of documents relevant to the Petition.

A. The Hearing Clerk shall, upon request by any party and without the necessity for notice to other parties, forward the proposed subpoena to the Hearing Officer for issuance. The subpoena may be issued with the name and address of the witness blank, to be completed by the requesting party.

B. A subpoena must be served on the person to whom it is directed at least 7 days before the date set for the hearing.

C. Any person to whom the subpoena is directed may file a motion to modify the subpoena or quash the subpoena (declare it void) within 5 days after service of the subpoena. Unless the motion is granted in advance, the person to whom the subpoena is directed is expected to be in attendance at the hearing.

[6-30-99; 19.10.14.1423 NMAC – Rn, 19 NMAC 10.2.14.1423, 05-15-2001]

19.10.14.1424 INTERVENTION:

A. Any person may intervene as a matter of right or by permission of the Commission pursuant to the criteria set forth in Rule 1-024, NMRA 1998. Any agency represented on the Mining Commission pursuant to NMSA 1978, Section 69-36-6(A) (1993) shall be permitted to intervene as a matter of right by following the procedures set forth in this Section.

B. A person seeking to intervene must file and serve upon each party a motion to intervene at least 10 days before the hearing. The motion shall include the following information:

- (1) The name of the person seeking to intervene;
- (2) A pleading setting forth the objections to or support for the Director's action which is the subject of the appeal and for which intervention is sought;
- (3) Unless the person is an agency that may intervene as a matter of right, an explanation of why intervention should be allowed based upon the criteria set forth in Rule 1-024, NMRA 1998;
- (4) The name of each witness to be called at the hearing;
- (5) An estimate of the length of the direct testimony of each witness;
- (6) A summary or outline of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the basis for those opinions; and
- (7) A list of exhibits, if any, to be offered into evidence at the hearing.

C. Any party shall have 5 days after service of a motion to intervene to file a response.

D. The motion shall be decided pursuant to Paragraph F of 19.10.14.1421 NMAC.

[6-30-99; 19.10.14.1424 NMAC – Rn, 19 NMAC 10.2.14.1424, 05-15-2001]

19.10.14.1425-19.10.14.1428 [RESERVED]

[6-30-99; 19.10.14.1425-19.10.14.1428 NMAC -- Rn, 19 NMAC 10.2.14.1425-1428, 05-15-2001]

19.10.14.1429 CONDUCT OF HEARING:

A. In most circumstances, the hearing will be conducted in front of the Commission, with the Hearing Officer presiding. For good cause, the Commission may delegate the authority to take evidence to the Hearing Officer.

B. The Hearing Officer shall conduct the hearing to provide a reasonable opportunity for the parties and interested participants to present evidence without making the hearing unreasonably long or repetitious.

C. Members of organizations that are parties or interested participants will appear and participate only through counsel or authorized representatives.
[6-30-99; 19.10.14.1429 NMAC – Rn, 19 NMAC 10.2.14.1429, 05-15-2001]

19.10.14.1430 ORDER OF TESTIMONY: The Hearing Officer may allow brief opening and closing statements. The Petitioner has the first opportunity to present evidence or argument to support its position. Other parties and interested participants supporting the Petition will then proceed. Following the presentation of evidence in support of the Petition, any party or interested participant opposed to the relief sought in the Petition may produce evidence or argument to support its position. The Hearing Officer may change the order of testimony as needed to accommodate parties, interested participants, witnesses, the public or for other good cause.
[6-30-99; 19.10.14.1430 NMAC – Rn, 19 NMAC 10.2.14.1430, 05-15-2001]

19.10.14.1431 PREPONDERANCE OF EVIDENCE: Each matter of controversy raised by the Petition shall be determined by the Commission upon a preponderance of the evidence.
[6-30-99; 19.10.14.1431 NMAC – Rn, 19 NMAC 10.2.14.1431, 05-15-2001]

19.10.14.1432 EVIDENCE:

A. The Hearing Officer shall admit any relevant evidence, unless it is immaterial, repetitious, or otherwise unreliable. Evidence relating to settlement is not admissible.

B. All or portions of the administrative record before the Director shall be admitted into evidence at the request of any party or interested participant or at the Commission's request. The party or interested participant who requested the administrative record to be admitted into evidence shall pay for the cost of copies if the Commission requests such copies. Copies may be made by any party or interested participant so long as the copies match the documents in the record.

C. Witnesses shall be examined orally, under oath or affirmation. The Commission, Hearing Officer, parties and interested participants shall have the right to cross-examine a witness. The Hearing Officer will limit cross-examination that he determines to be unduly repetitious, harassment or beyond the scope of the witness' direct testimony.

D. All exhibits offered in evidence shall be marked with a designation identifying the party or interested participant offering the exhibit, and numbered in the sequence in which offered.

E. The Hearing Officer may take official notice of any matter that may be judicially noticed in New Mexico courts.

F. The Commission strongly urges the parties to enter into stipulations of fact to expedite the hearing process. Any stipulation of facts must be filed with the Commission at least 10 business days before the hearing.
[6-30-99; 19.10.14.1432 NMAC – Rn, 19 NMAC 10.2.14.1432, 05-15-2001]

19.10.14.1433 OBJECTIONS:

A. Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing at the time the issue arises. The party raising the objection must supply a short statement of the reasons for the objection. The ruling by the Hearing Officer on any objection and the reasons given for it shall be part of the record.

B. Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proven. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.
[6-30-99; 19.10.14.1433 NMAC – Rn, 19 NMAC 10.2.14.1433, 05-15-2001]

19.10.14.1434 PARTICIPATION BY THE GENERAL PUBLIC:

A. Any member of the general public may present comments in support of or in opposition to a petition at the hearing. Such comments may be given orally or in a signed written statement with 12 copies. Such comments will be included in the record but will not be admitted as evidence. The Commission may consider the comments with respect to the weight of the evidence presented by the parties or interested participants or with respect to interpretation of law or matters of public policy within the Commission's jurisdiction and discretion.

B. If written submittals are allowed following the hearing, then any member of the general public may offer additional comments during the time allowed for such submittals, which shall be considered in the same

manner as provided in Subsection A of 19.10.14.1434 NMAC. Comments received after the deadline will not be included in the record.

C. Members of the general public cannot file motions, need not be served with motions or pleadings filed by the parties, and cannot conduct cross-examination of witnesses.

D. Any person who wishes to present evidence at the hearing as an interested participant shall, not later than 10 days prior to the hearing, file a statement of intent to present evidence and send a copy of the statement by first class mail to each party at the address of record with the Hearing Clerk. The Hearing Clerk shall provide any interested person with the names and mailing addresses of the parties upon request. The statement of intent shall include:

- (1) the name of the person filing the statement;
- (2) an indication of whether the person supports or opposes the Petition at issue;
- (3) the name of each witness to be called at the hearing;
- (4) an estimate of the length of the direct testimony of each witness;
- (5) a summary or outline of the anticipated direct testimony of each witness; and
- (6) a list of exhibits, if any, to be offered into evidence at the hearing.

E. Upon the request of any party, the interested participant shall, prior to the hearing, provide a list of documents or other information that provides the basis for the testimony described in the statement of intent to present evidence as an interested participant pursuant to Subsection D of 19.10.14.1434 NMAC. Discovery from an interested participant shall be as provided in NMSA 1978, Section 69-36-15(F)(1993).

F. A person who has submitted a statement of intent to present evidence as an interested participant pursuant to Subsection D of 19.10.14.1434 NMAC may testify, offer witnesses to testify, or request the admission of exhibits as evidence at the hearing as disclosed in the statement of intent to present evidence, and may participate as otherwise provided in this Part.

G. An interested participant may not expand the issues at the hearing beyond the issues contained in the pleadings filed by the parties, may not file motions, and is bound by any stipulations filed by the parties. The parties are not required to serve motions or pleadings on interested participants.
[6-30-99; 19.10.14.1434 NMAC – Rn, 19 NMAC 10.2.14.1434, 05-15-2001]

19.10.14.1435-19.10.14.1438 [RESERVED]

[6-30-99; 19.10.14.1435-19.10.14.1438 NMAC -- Rn, 19 NMAC 10.2.14.1435-1438, 05-15-2001]

19.10.14.1439 RECORDING OF THE HEARING:

A. Unless otherwise ordered by the Commission, the Hearing Clerk shall make an audio recording of the hearing. Any person, other than the Commission, desiring a copy of the audio recording must order a copy from the Hearing Clerk and pay for the copying.

B. No later than 5 days prior to the hearing date, a party may request that the hearing be stenographically recorded at the cost of the party. The request shall be in writing, filed with the Hearing Clerk, and shall certify that the party hired a court reporter and that the court reporter will deliver 13 copies of the hearing transcript to the Commission and copies to the parties, if the Commission requests such copies.
[6-30-99; 19.10.14.1439 NMAC – Rn, 19 NMAC 10.2.14.1439, 05-15-2001]

19.10.14.1440 ATTENDANCE BY TELEPHONE: Commission members may attend a meeting to take any action except on evidentiary matters by telephone if the following requirements are met:

A. The Hearing Clerk is able to arrange for a conference telephone or other similar communications equipment at the location of the meeting;

B. It is difficult or impossible for the Commissioner to attend the meeting in person;

C. Each Commissioner participating by telephone can be identified when speaking;

D. All participants are able to hear each other at the same time;

E. Members of the public attending the meeting are able to hear any Commissioner who speaks during the open portion of a meeting; and

F. Any documents to be considered in the meeting have been provided in advance to Commissioners attending by telephone.

[6-30-99; 19.10.14.1440 NMAC – Rn, 19 NMAC 10.2.14.1440, 05-15-2001]

19.10.14.1441 FINAL ORDER BY COMMISSION:

A. Following the hearing, the Commission may allow a period for written submittals from the parties and interested participants and comments from the general public. These submittals shall not contain evidence not presented previously. The Commission may ask for proposed findings of fact and conclusions of law from any or all parties and may ask for objections to proposed findings of fact and conclusions of law.

B. If the hearing was not held as part of a Commission meeting, then a recommendation based on the record shall be made by the Hearing Officer and presented to the Commission within 30 days of the hearing or the last day for written submittals and comments. The recommendation will include findings of fact, conclusions regarding all material issues of law and reasons therefor, and a proposed final order. The recommendation shall be sent by the Hearing Clerk to all parties and the Commission. The Commission may allow written comments or oral argument regarding the recommendation.

C. The Commission shall reach a decision at the conclusion of the hearing or at a meeting within 30 days after the final deadline for written submittals by the parties or the Hearing Officer. After the Commission reaches an oral decision, the Commission or Commission counsel shall prepare a final written order. Unless otherwise ordered, the Commission shall approve the written order at a meeting within 30 days after the oral decision. Commission members may attend the meeting by telephone provided the requirements of 19.10.14.1440 NMAC are met. The written order shall include a decision granting or denying relief and the factual and legal basis for the decision, and may include a dissenting opinion.

D. The Hearing Clerk shall file the final order in the official public records of the Commission and within one day send copies of the final order to each party, interested participant and to all other persons who have made written requests for notification of the action taken.

[6-30-99; 19.10.14.1441 NMAC – Rn, 19 NMAC 10.2.14.1441, 05-15-2001]

19.10.14.1442 PENALTY: For reviews of penalty assessments, the Commission may change the amount and nature of the civil penalty, if any, and shall set forth the reasons for the change. The Petitioner shall pay the full amount of the civil penalty, if any, assessed in the final order within 60 days after receipt of the final order, unless otherwise ordered by the Commission. Payment shall be made by forwarding to the Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed, payable to the fund specified in the Act.

[6-30-99; 19.10.14.1442 NMAC – Rn, 19 NMAC 10.2.14.1442, 05-15-2001]

19.10.14.1443 NO AUTOMATIC STAY DURING JUDICIAL REVIEW: The filing of an appeal does not stay any action or payment of penalty required by the final order. The Commission may enter a stay if it is requested by motion prior to any appeal to district court.

[6-30-99; 19.10.14.1443 NMAC – Rn, 19 NMAC 10.2.14.1443, 05-15-2001]

19.10.14.1444 PREPARATION OF THE RECORD: The preparation of the record for an appeal or for any other reason shall be the responsibility of the Hearing Clerk. The Appellant shall make satisfactory arrangements for payment for the copies of the record with the Hearing Clerk, including the costs of transcribing the audio recording of the hearing if such transcription is necessary or desired.

[6-30-99; 19.10.14.1444 NMAC – Rn, 19 NMAC 10.2.14.1444, 05-15-2001]

19.10.14.1445-19.10.14.1446 [RESERVED]

[6-30-99; 19.10.14.1445-19.10.14.1446 NMAC -- Rn, 19 NMAC 10.2.14.1445-1446, 05-15-2001]

19.10.14.1447 SETTLEMENT: The Commission encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and Regulations. The Commission may approve a settlement agreement signed by all parties. If the Commission disapproves the settlement agreement, the matter shall proceed as if there had been no settlement agreement.

[6-30-99; 19.10.14.1447 NMAC – Rn, 19 NMAC 10.2.14.1447, 05-15-2001]

19.10.14.1448 WITHDRAWAL: A Petitioner may withdraw a petition at any time prior to a decision by the Commission by filing a Notice of Withdrawal with the Commission and serving the Notice on all other parties and upon such withdrawal, the permitting action becomes final.

[6-30-99; 19.10.14.1448 NMAC – Rn, 19 NMAC 10.2.14.1448, 05-15-2001]

19.10.14.1449 CERTIFICATE OF SERVICE:

ATTACHMENT A

[Preferred Format]

NEW MEXICO MINING COMMISSION
IN THE MATTER OF THE PETITION FOR
REVIEW OF THE DIRECTOR'S ACTION
DATED [] No.

PERMIT NO. _____

[NAME OF PETITIONER],

Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [name of document] was [hand-delivered] [faxed] [mailed first class] to the following counsel of record on this ____ day of _____, 19__ and hand-delivered to the Clerk of the New Mexico Mining Commission.

[6-30-99; 19.10.14.1449 NMAC – Rn, 19 NMAC 10.2.14.1449, 05-15-2001]

HISTORY OF 19.10.14 NMAC:

Pre NMAC History: None.

History of Repealed Material: [Reserved]

Other History: 19 NMAC 10.2 Subpart 14, New Mexico Mining Act Implementation, Mining Commission Adjudicatory Review, filed 06-17-99 has been renumbered and reformatted as 19.10.14 NMAC, Mining Commission Adjudicatory Review, effective 05-15-2001.