

The following is an amendment to 19.10.12 NMAC, Sections 1201 and 1204, effective April 30, 2009.

19.10.12.1201 REQUIREMENT TO FILE FINANCIAL ASSURANCE:

A. Except for existing mining operations without new units [~~and minimal impact explorations~~], the applicant for a permit shall provide a financial assurance proposal to the director following the director's determination that the permit application is approvable, but prior to the permit issuance. An applicant's financial assurance proposal shall be based upon estimates for a third-party contractor to complete reclamation work. The permit shall not be issued until receipt of the approved financial assurance by the director.

B. The permittee of an existing mining operation shall provide a financial assurance proposal in an amount adequate to complete the proposed closeout plan as soon as practicable after the permittee receives notice from the director that the closeout plan is approvable. The permittee shall provide the approved financial assurance prior to the director's approval of the closeout plan.

C. Financial assurance shall be payable to the state of New Mexico and conditioned upon the performance of all the requirements of the act, 19.10 NMAC, the permit, and the reclamation plan or closeout plan.

D. Financial assurance proposals submitted by applicants or permittees may be required to be reviewed by a third party contractor as ordered by the director. All costs for such review shall be paid by the applicant or permittee.

[7-12-94, 2-15-96; 19.10.12.1201 NMAC - Rn, 19 NMAC 10.2.12.1201, 05-15-2001; A, 10-15-03; A, 04-30-09]

19.10.12.1204 PERIOD OF LIABILITY:

A. The permittee shall maintain the financial assurance in effect, except as reduced pursuant to 19.10.12 NMAC, until such time as the director releases the financial assurance pursuant to 19.10.12.1210 NMAC. For areas to be revegetated, the director shall retain the amount of financial assurance necessary for a third party to re-establish vegetation for a period of 12 years after the last year of augmented seeding, fertilizing, or irrigation, unless a post-mining land use is approved by the director that does not require revegetation. Interseeding to establish diversity shall not be considered augmented seeding. Interseeding may not be performed within the last three years of the liability period.

B. For new mining operations only, no part of the financial assurance necessary for a third party to re-establish vegetation shall be released so long as the lands to which the release would be applicable are contributing suspended solids above background levels to streamflow of intermittent or perennial streams.

C. Isolated and clearly defined portions of the disturbed area not qualifying for financial assurance release may be separated from the original area and assured separately with the approval of the director. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the director.

D. For exploration permits, financial assurance may be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.3 NMAC and 19.10.4 NMAC, as applicable, and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.12.1204 NMAC - Rn, 19 NMAC 10.2.12.1204, 05-15-2001; A, 04-30-09]