

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 8 COAL MINING
PART 1 GENERAL PROVISIONS

19.8.1.1 ISSUING AGENCY: New Mexico Coal Surface Mining Commission.
[11-29-97; 19.8.1.1 NMAC - Rn, 19 NMAC 8.2.1.100, 9-29-2000]

19.8.1.2 SCOPE: All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).
[11-29-97; 19.8.1.2 NMAC - Rn, 19 NMAC 8.2.1.101, 9-29-2000]

19.8.1.3 STATUTORY AUTHORITY: NMSA 1978, Sections 69-25A-1 et. seq. (1979).
[11-29-97; 19.8.1.3 NMAC - Rn, 19 NMAC 8.2.1.102, 9-29-2000]

19.8.1.4 DURATION: Permanent.
[11-29-97; 19.8.1.4 NMAC - Rn, 19 NMAC 8.2.1.104, 9-29-2000]

19.8.1.5 EFFECTIVE DATE: November 29, 1997, unless a later date is cited at the end of a section.
[11-29-97; 19.8.1.5 NMAC - Rn & A, 19 NMAC 8.2.1.105, 9-29-2000]

19.8.1.6 OBJECTIVE: The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.
[11-29-97; 19.8.1.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.1.7 DEFINITIONS:

A. Definitions beginning with the letter "A"

(1) **ACCELERATED EROSION** - means washing away or blowing away of overburden, spoil, soil or topdressing material in excess of normal erosion resulting from changes in the vegetative cover or ground conditions.

(2) **ACID DRAINAGE** - means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mining and reclamation operations or from an area affected by surface coal mining and reclamation operations.

(3) **ACID FORMING MATERIALS** - means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) **ACID-TEST RATIO** - means the relation of quick assets to current liabilities.

(5) **ACT** - is the state of New Mexico Surface Mining Act (Sections 69-25A-1 et. seq. NMSA 1978)

(6) **ADJACENT AREA** - means land located outside the affected area, permit area, or mine plan area, depending on the context in which adjacent area is used where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the act may be adversely impacted by surface coal mining and reclamation operations.

(7) **AFFECTED AREA** - means, with respect to surface coal mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground coal mining activities, affected area means:

(a) any water or surface land upon or in which those activities are conducted or located; and

(b) land or water which is located above underground mine workings.

(8) **AGRICULTURAL ACTIVITIES** - means with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(9) **AGRICULTURAL USE** - means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants.

(10) **ALLUVIAL VALLEY FLOORS** - means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass movement accumulations, and windblown deposits. Ephemeral or dry streams incapable of supporting agricultural activities by natural means, and without artificial means, are not alluvial valley floors.

(11) **ANTHRACITE** - means coal classified as anthracite in ASTM standard D 388-77. Coal classifications are published by the American society of testing and materials under the title, "standard specification for classification of coals by rank", ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of 19.8 NMAC Parts 1-35.

(12) **APPLICANT** - means any person seeking a permit from the director to conduct surface coal mining and reclamation operations or coal exploration pursuant to the act and 19.8 NMAC Parts 1-35.

(13) **APPLICATION** - means the documents and other information filed with the director under the act and 19.8 NMAC Parts 1-35 for the issuance of exploration approval or a permit as the context requires.

(14) **APPLICANT/VIOLATOR SYSTEM or AVS** - means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

(15) **APPROXIMATE ORIGINAL CONTOUR** - means the surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all spoil piles and refuse piles eliminated. Highwalls will also be eliminated except as provided for in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC. Permanent water impoundments may be permitted where the director has determined that they comply with 19.8.20.2017, 2024, and 2075 NMAC.

(16) **AQUIFER** - means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

(17) **ARID AND SEMIARID AREA** - includes, in the context of alluvial valley floors, all coal fields in the state.

(18) **ASPECTION** - means the variability of blooming, fruiting, foliation and defoliation of vegetation during the various seasons of the year.

(19) **AUGER MINING** - means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(20) **AUGMENTED SEEDING** - means seeding in excess of the normal husbandry practices approved in the director's *coal mine reclamation program vegetation standards*, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence.

B. Definitions beginning with the letter "B"

(1) **BASAL AREA** - means that portion of the sampling unit covered by the cross-sectional area of the individual plants taken at or near the ground surface for the herb and shrub strata and at "breast height" (1.3 m; 4.5 ft.) for tree species.

(2) **BEST TECHNOLOGY CURRENTLY AVAILABLE** - means equipment, devices, systems, methods or techniques which will:

(a) prevent to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and

(b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; the term includes equipment, devices, systems, methods or techniques which are currently available anywhere as determined by the director, even if they are not in routine use; the term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 19.8.20 NMAC; within the constraints of the permanent program, the director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the act and 19.8 NMAC Parts 1-35.

(3) **BLASTER** - means a person directly responsible for the use of explosives in surface coal mining operations who is certified pursuant to these regulations.

C. Definitions beginning with the letter "C"

- (1) **CEMETERY** - means a place dedicated to, used and maintained for the interment of the human dead.
- (2) **COAL** - means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM standard D 388-77, referred to and incorporated by reference in the definition of anthracite.
- (3) **COAL EXPLORATION** - means the field gathering of:
- (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or
 - (b) environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the act and 19.8 NMAC Parts 1-35.
- (4) **COAL MINING OPERATION** - means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
- (5) **COAL PREPARATION PLANT** - means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.
- (6) **COAL PROCESSING PLANT** - means (a) a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; or (b) underground development waste.
- (7) **COAL PROCESSING WASTE** - means (a) earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal, (b) underground development waste.
- (8) **COAL PROCESSING WASTE BANK** - means a surface deposit of coal processing waste that does not impound water, slurry or other liquid or semi-liquid material.
- (9) **COLLATERAL BOND** - means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the state of New Mexico of one or more of the following:
- (a) a cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the state of New Mexico upon demand, or the deposit of cash directly with the director;
 - (b) negotiable bonds of the United States, a state, or a municipality, endorsed to the order of the state of New Mexico, and placed in the possession of, the director;
 - (c) negotiable certificates of deposit, made payable or assigned to the state of New Mexico and placed in its possession or held by a federally-insured bank;
 - (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the state of New Mexico upon presentation;
 - (e) a perfected, first-lien security interest in real property in favor of the state of New Mexico only; or
 - (f) other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of the state of New Mexico, and placed in the possession of, the director.
- (10) **COMBUSTIBLE MATERIAL** - means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.
- (11) **COMMUNITY OR INSTITUTIONAL BUILDING** - means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(12) **COMPACTION** - means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effect such as from repeated application of wheel, track, or roller loads from heavy equipment.

(13) **COMPLETE APPLICATION** - means an application for exploration approval or a surface coal mining and reclamation permit, which contains all information required under the act and 19.8 NMAC Parts 1-35.

(14) **CONSTANCY** - means the percentage of sampling areas of the same vegetative type in which an individual species occurs.

(15) **CROPLAND** - means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(16) **CUMULATIVE IMPACT AREA** - means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

- (a) the proposed operation;
- (b) all existing operations;
- (c) any operation for which a permit application has been submitted to the director; and
- (d) all operations required to meet diligent development requirements for leased federal coal

for which there is actual mine development information available.

(17) **CURRENT ASSETS** - means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(18) **CURRENT LIABILITIES** - means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

D. Definitions beginning with the letter "D"

(1) **DENSITY** - means the number of individuals of a species per unit area.

(2) **DEVELOPED WATER RESOURCES** - is meant to include land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(3) **DIRECT FINANCIAL INTEREST** - means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also any other arrangements where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(4) **DIRECTOR** - means the director of mining and minerals division, or his authorized representative.

(5) **DISTURBED AREA** - means any area where vegetation, topsoil, or overburden is removed or upon which topdressing, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by NMAC 19.8.14 is released.

(6) **DIVERSION** - means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

(7) **DOWNSLOPE** - means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

(8) **DRAINAGE GRADE CROSSING** - means the point at which a road crosses a drainage channel at the elevation of the base of that channel.

(9) **DRINKING, DOMESTIC OR RESIDENTIAL WATER SUPPLY** - means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

E. Definitions beginning with the letter "E"

(1) **EMBANKMENT** - means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(2) **EMPLOYEE** - means:

- (a) any person employed by the director who performs any function or duty under the act; and
- (b) advisory board or commission members and consultants who perform any function or duty under the act, if they perform decision-making functions under the authority of state law or regulations; however,

members of advisory boards or commissions established in accordance with state law or regulations to represent multiple interests are not considered to be employees.

(3) **EPHEMERAL STREAM** - means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(4) **ESSENTIAL HYDROLOGIC FUNCTIONS** - means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation. The role of the alluvial valley floor in making water usefully available for agricultural activities results from:

(a) the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants;

(b) the presence of earth materials suitable for the growth of agriculturally useful plants;

(c) the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation;

(d) the natural control of alluvial valley floors in limiting destructive extremes of stream discharge; and

(e) the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(5) **EXCESS SPOIL** - means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with Paragraph (5) of Subsection A of 19.8.20.2055 NMAC in non-steep slope areas shall not be considered excess spoil.

(6) **EXISTING STRUCTURE** - means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a state program.

(7) **EXPERIMENTAL PRACTICE** - means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of 19.8.20 NMAC, the act, and 19.8 NMAC Parts 1-35.

(8) **EXTRACTION OF COAL AS INCIDENTAL PART** - means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of 19.8 NMAC Parts 1-35, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the act and 19.8 NMAC Parts 1-35.

F. Definitions beginning with the letter "F"

(1) **FEDERAL LANDS** - means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(2) **FEDERAL LANDS PROGRAM** - means a program established by the secretary of the U.S. department of interior, pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 to regulate surface coal mining and reclamation operations on federal lands.

(3) **FEDERAL VIOLATION NOTICE** - means a violation notice issued by OSM or by another agency or instrumentality of the United States.

(4) **FISH AND WILDLIFE HABITAT** - means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(5) **FIXED ASSETS** - means plants, facilities and equipment, not used for the production, transportation or processing of coal, and does not include land or coal in place.

(6) **FLOOD IRRIGATION** - means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(7) **FOLIAGE COVER** - means that portion of the sampling unit covered by the vertical projection of an individual plant's aerial parts.

(8) **FORESTRY** - means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest, harvest and management operations which is

adjacent to or an integral part of these operations is also included. For purposes of 19.8 NMAC Parts 1-35, pinon-juniper type trees shall not be deemed forest trees managed for such long term production.

(9) **FRAGILE LANDS** - means unique or valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants and uncommon geologic formations. National natural landmark sites, areas where mining may cause flooding, areas containing a concentration of unique ecological and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 69-25A-26 NMSA 1978 of the act and 19.8.2, 3 and 4 NMAC, that could be damaged or destroyed by surface coal mining operations.

(10) **FREQUENCY** - means the percentage of plots or subplots occupied by each individual species in one sampling unit or area.

(11) **FUGITIVE DUST** - means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads, wind erosion of exposed surfaces, storage piles, and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.

G. Definitions beginning with the letter "G"

(1) **GOVERNMENT FINANCED CONSTRUCTION** - means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of SMCRA.

(2) **GRAZING LAND** - includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(3) **GROUND COVER** - means either foliage or basal area cover of living plant material.

(4) **GROUND WATER** - means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

H. Definitions beginning with the letter "H"

(1) **HALF-SHRUB** - means a perennial plant with a woody base whose annually produced stems die back each year.

(2) **HEAD-OF-HOLLOW FILL** - means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(3) **HIGHWALL** - means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(4) **HISTORIC LANDS** - means historic or cultural districts, places, structures or objects, including archaeological and natural historic landmark sites, sites listed on or eligible for listing on a state or national register of historic places, or sites for which historic designation is pending.

(5) **HISTORICALLY USED FOR CROPLAND** - means:

(a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(b) lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(6) **HYDROLOGIC BALANCE** - means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone,

lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(7) **HYDROLOGIC REGIME** - means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

I. Definitions beginning with the letter "I"

(1) **IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC** - means the existence of any condition or practice, or any violation of a permit, 19.8 NMAC Parts 1-35 or other requirements of the act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(2) **IMPOUNDMENT** - means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water or sediment.

(3) **INDIGENOUS** - means an organism that is native, not introduced, or immigrates under its own power into an area.

(4) **INDIRECT FINANCIAL INTEREST** - means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, minor child and other relatives, including in-laws residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(5) **INDUSTRIAL/COMMERCIAL** - means land used for:

(a) extraction or transformation of materials for fabrication or products, wholesaling of products or for long-term storage of products; this includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture; land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included; support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments; land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included; support facilities include, but are not limited to, parking, storage or shipping facilities.

(6) **IN SITU PROCESSES** - means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining and fluid recovery mining.

(7) **INTERMITTENT STREAM** - means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(8) **INTERSEEDING** - means a secondary seeding practice into established vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses.

(9) **IRREPARABLE DAMAGE TO THE ENVIRONMENT** - means any damage to the environment that cannot be corrected by actions of the applicant.

K. Definitions beginning with the letter "K". **KNOWING OR KNOWINGLY** - means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

L. Definitions beginning with the letter "L"

(1) **LAND USE** - means specific uses or management related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the director. Land use categories identified in 19.8 NMAC Parts 1-35 are:

(a) cropland

- (b) pasture land or land occasionally cut for hay
- (c) grazing land
- (d) forestry
- (e) residential
- (f) industrial/commercial
- (g) recreation
- (h) fish and wildlife habitat
- (i) developed water resources
- (j) undeveloped land or no current use or land management

(2) **LIABILITIES** - means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(3) **LITTER COVER** - means that portion of the sampling unit covered by dead s of plants.

M. Definitions beginning with the letter "M"

(1) **MATERIAL DAMAGE**, in the context of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, means:

- (a) any functional impairment of surface lands, features, structures or facilities;
- (b) any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or
- (c) any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(2) **MATERIALLY DAMAGE THE QUANTITY OR QUALITY OF WATER** - means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(3) **MINE PLAN AREA** - means the area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations as anticipated by the applicant at the time of submission of a permit application. Other terms defined in 19.8 NMAC Parts 1-35 which relate closely to mine plan area are:

- (a) permit area, which will always be within or the same as the mine plan area;
- (b) affected area, which will always be within or the same as the permit area; and
- (c) adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

(4) **MINING PLAN** - means a complete mining and reclamation operations plan that complies with the requirements of the act, 19.8 NMAC Parts 1-35 and all other applicable laws and regulations.

(5) **MOIST BULK DENSITY** - means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

(6) **MULCH** - means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

N. Definitions beginning with the letter "N"

(1) **NATURAL HAZARD LANDS** - means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment.

(2) **NET WORTH** - means total assets minus total liabilities and is equivalent to owners' equity. For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of 19.8.14.1410 NMAC plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

(3) **NONCOMMERCIAL BUILDING** - means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are also defined in 19.8.1.7 NMAC. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises are excluded.

(4) **NO SIGNIFICANT RECREATIONAL, TIMBER, ECONOMIC OR OTHER VALUES INCOMPATIBLE WITH SURFACE COAL MINING OPERATIONS** - means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the

undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

- (a) recreation, including hiking, boating, camping, skiing or other related outdoor activities;
- (b) timber management and silviculture;
- (c) agriculture, aquaculture or production of other natural, processed or manufactured products

which enter commerce;

- (d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

(5) **NORMAL EROSION** - means the erosion that occurs on land under natural environmental conditions not disturbed by human activity.

(6) **NOXIOUS PLANTS** - means species that have been included on the official state lists of noxious plants.

O. Definitions beginning with the letter "O"

(1) **OCCUPIED DWELLING** - means any building that is currently being used on a regular or temporary basis for human habitation.

(2) **OCCUPIED RESIDENTIAL DWELLING AND ASSOCIATED STRUCTURES** - means, for purposes of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes are excluded.

(3) **OPERATOR** - means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

(4) **OSM** - means office of surface mining reclamation and enforcement, U.S. department of the interior.

(5) **OTHER TREATMENT FACILITIES** - means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area, and to comply with all applicable state and federal water-quality laws and regulations.

(6) **OUTSLOPE** - means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(7) **OVERBURDEN** - means material of any nature, consolidated or unconsolidated that overlies a coal deposit, excluding topsoil.

(8) **OWNED OR CONTROLLED AND OWNS OR CONTROLS** - means any one or a combination of the relationships specified in Subparagraphs (a) and (b) of Paragraph (8) of Subsection O of 19.8.1.7 NMAC:

(a) being a permittee of a surface coal mining operation, or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations;

(b) the following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (i) being an officer or director of an entity;
- (ii) being the operator of a surface coal mining operation;
- (iii) having the ability to commit the financial or real property assets or working

resources of an entity;

- (iv) being the sole proprietor of the entity;
- (v) being a general partner in a partnership;
- (vi) being a member in a limited liability company;
- (vii) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 percent or more of the entity; or

(viii) owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(9) **OWNERSHIP or CONTROL LINK** - means any relationship included in the definition of "owned or controlled" or "owns or controls" in Subsection O of 19.8.1.7 NMAC or in the violations review provisions of Subsection C of 19.8.11.1105 NMAC. It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" in this section, unless such presumption has been successfully rebutted under the provisions of 19.8.11.1117 and 1118 NMAC or under the provisions of 19.8.12 and 19.8.11.1118 NMAC.

P. Definitions beginning with the letter "P"

(1) **PARENT CORPORATION** - means a corporation which owns or controls the applicant.

(2) **PASTURELAND OR LAND OCCASIONALLY CUT FOR HAY** - means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock of occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(3) **PERENNIAL STREAM** - means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(4) **PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT** - means those decisions or actions, which if performed or not performed by an employee, affect the programs under the act.

(5) **PERMANENT DIVERSION** - means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the director and other appropriate state and federal agencies.

(6) **PERMIT** - means a permit to conduct surface coal mining and reclamation operations issued pursuant to Laws 1972, Chapter 68, as amended, or by the director pursuant to the act.

(7) **PERMIT AREA** - means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the director. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit. The permit area shall not include roads, not otherwise within the permit boundary, infrequently used to monitor remote facilities or environmental resources, or for exploration or surveying purposes, if the director approves such use of such roads, after determining that such use will not result in a significant adverse affect upon the environment.

(8) **PERMIT MODIFICATION** - means an alteration of the terms or requirements of a permit, which alteration is not a permit revision.

(9) **PERMIT REVISION** - means a significant alteration of the terms or requirements of a permit, as identified in Subsection A of 19.8.13.1301 NMAC.

(10) **PERMITTEE** - means a person holding or required by the act and 19.8 NMAC Parts 1-35 to hold a permit to conduct surface coal mining and reclamation operations issued by the director pursuant to the act and 19.8 NMAC Parts 1-35.

(11) **PERSON** - means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

(12) **PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY AFFECTED OR PERSON WITH A VALID LEGAL INTEREST** - shall include any person:

(a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director; or

(b) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director.

(13) **PRECIPITATION EVENT** - means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in 19.8 NMAC Parts 1-35, a precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

(14) **PREVIOUSLY MINED AREA** - means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of SMCRA, the act, and the New Mexico regulatory program.

(15) **PRIME FARMLAND** - means those lands which are defined by the secretary of the U. S. department of agriculture in 7 CFR 657 (federal register vol. 4 no. 21) and which have historically been used for cropland as that phrase is defined in 19.8 NMAC Parts 1-35.

(16) **PROHIBITED FINANCIAL INTEREST** - means any direct or indirect financial interest in any coal mining operation.

(17) **PROPERTY TO BE MINED** - means both the surface and mineral estates on and underneath lands which are within the permit area.

(18) **PUBLIC BUILDING** - means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(19) **PUBLIC OFFICE** - means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(20) **PUBLIC PARK** - means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

(21) **PUBLIC ROAD** - means all roads and highways except private roads, established pursuant to any law of the United States or the state of New Mexico, and roads dedicated to the public use, that have not been vacated or abandoned, and such other roads as are recognized by the corporate authorities of any county in New Mexico.

Q. Definitions beginning with the letter "Q". **QUALIFIED LABORATORY** - means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core sampling, or other services as specified at 19.8.32.3203 NMAC under the small operator assistance program and which meet the standards of 19.8.32.3204 NMAC.

R. Definitions beginning with the letter "R"

(1) **RANGELAND** - means land on which the natural potential (climax) plant cover is principally native grasses, forbs and shrubs valuable for forage. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(2) **RECHARGE CAPACITY** - means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(3) **RECLAMATION** - means those actions taken to restore mined land as required by the act and 19.8 NMAC Parts 1-35 to a postmining land use approved by the director.

(4) **RECREATION** - means land used for public or private leisure time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(5) **RECURRENCE INTERVAL** - means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10 year 24 hour precipitation event would be that 24 hour precipitation event expected to occur on the average once in 10 years.

(6) **REFERENCE AREA** - means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species composition that are produced naturally or by crop production methods approved by the director. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(7) **REPLACEMENT OF WATER SUPPLY** - means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(8) **RENEWABLE RESOURCE LANDS** - means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(9) **RESIDENTIAL** - includes single and multiple family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(10) **ROAD** - means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

S. Definitions beginning with the letter "S"

(1) **SAFETY FACTOR** - means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(2) **SEDIMENTATION POND** - means a primary sediment control structure designed, constructed and maintained in accordance with 19.8.20.2014 NMAC and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(3) **SELF-BOND** - means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the state of New Mexico, with or without separate surety.

(4) **SIGNIFICANT FOREST COVER** - means an existing plant community consisting predominantly of trees and other woody vegetation. The secretary of the U.S. department of agriculture shall decide on a case-by-case basis whether the forest cover is significant within national forests of New Mexico.

(5) **SIGNIFICANT, IMMINENT ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES** - means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) is causing harm; or,

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 69-25A-25(B) NMSA 1978 of the act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(6) **SLOPE** - means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(7) **SMCRA** - means the Surface Mining Control and Reclamation Act of 1977, as amended, its implementing regulations at 30 CFR Chapter VII, and any state or federal law, rule, regulation or program enacted or promulgated pursuant to it.

(8) **SOIL HORIZONS** - means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

(a) "A" HORIZON - the uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles are typically the greatest.

(b) "B" HORIZON - the layer that typically is immediately beneath the "A" horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the "A" or "C" horizons.

(c) "C" HORIZON - the deepest layer of a soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(9) **SOIL SURVEY** - means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey.

(10) **SPOIL** - means overburden that has been removed during surface coal mining operations, or underground development waste material.

(11) **STABILIZE** - means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(12) **STATE VIOLATION NOTICE** - means any written notification from the director of a violation of the act or 19.8 NMAC Parts 1-35, whether by letter, memorandum, legal or administrative pleading or other written communication, or by another agency or instrumentality of state government.

(13) **STEEP SLOPE** - means any slope with an average inclination of 20 degrees or more from the horizontal or such lesser slope as may be designated by the director after consideration of soil, climate and other characteristics of a region within the state.

(14) **SUBIRRIGATION** - means with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils due to iron in the root zone;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) increase in stream flow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

(15) **SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENTS IN A SURFACE COAL MINING OPERATION** - means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and capital-intensive activities.

(16) **SUBSTANTIALLY DISTURB** - means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(17) **SUCCESSOR IN INTEREST** - means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(18) **SUITABLE MATERIAL** - means subsoil or geologic material that can be manipulated to form a sufficient amount of soil size particles with the nutrient capability for supporting desirable vegetation in compliance with the postmining land use.

(19) **SURETY BOND** - means an indemnity agreement in a sum certain payable to the state of New Mexico, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state.

(20) **SURFACE COAL MINING OPERATIONS** - means:

(a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69-25A-20 NMSA 1978 of the act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce; such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 69-25A-16 NMSA 1978 of the act; and provided, further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) areas upon which the activities described in Subparagraph (a) of Paragraph (20) of Subsection S of 19.8.1.7 NMAC occur or where those activities disturb the natural land surface; these areas shall

also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

(21) SURFACE COAL MINING AND RECLAMATION OPERATIONS WHICH EXIST ON THE DATE OF ENACTMENT - means all surface coal mining and reclamation operations which were being conducted on August 3, 1977.

(22) SURFACE COAL MINING AND RECLAMATION OPERATIONS - means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(23) SURFACE MINING ACTIVITIES - means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(24) SURFACE OPERATIONS AND IMPACTS INCIDENT TO AN UNDERGROUND COAL MINE - means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 69-25A-3(P) NMSA 1978 of the act and the definition of surface coal mining operations appearing in 19.8.1.7 NMAC.

(25) SUSPENDED SOLIDS OR NONFILTERABLE RESIDUE, EXPRESSED AS MILLIGRAMS PER LITER - means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for waste water and analysis (40 CFR 136).

T. Definitions beginning with the letter "T"

(1) TANGIBLE NET WORTH - means net worth minus intangibles such as goodwill and rights to patents or royalties.

(2) TEMPORARY CESSATION OF OPERATIONS - means cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee.

(3) TEMPORARY DIVERSION - means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the director to remain after reclamation as part of the approved postmining land use.

(4) TON - means 2000 pounds avoirdupois (.90718 metric tons).

(5) TOPDRESSING - means topsoil or other suitable material that has the capability of sustaining desirable vegetation for the approved postmining land use.

(6) TOPSOIL - means the "A" soil horizon layer of the three major soil horizons or other surface soil material of suitable texture and pH, and lacking concentrations of elements toxic to plants.

(7) TOXIC-FORMING MATERIALS - means earth materials or wastes which if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(8) TOXIC MINE DRAINAGE - means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(9) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS - means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the director.

U. Definitions beginning with the letter "U"

(1) UNCONSOLIDATED STREAMLAIN DEPOSITS HOLDING STREAMS - means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(2) UNDERGROUND DEVELOPMENT WASTE - means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities.

(3) **UNDERGROUND MINING ACTIVITIES** - means a combination of:

(a) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, above ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed; and

(b) underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage, and blasting.

(4) **UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT** - means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(5) **UNDEVELOPED RANGELAND** - means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(6) **UPLAND AREAS** - means with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

V. Definitions beginning with the letter "V"

(1) **VALLEY FILL** - means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

(2) **VIOLATION NOTICE** - means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the act, SMCRA, a state program, or any federal law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

(3) **VOLUME WHEN USED IN REFERENCE TO TIMBER** - means the board foot volume per square foot of basal area for each height class of commercial timber trees or volume per acre in cords for firewood producing trees.

W. Definitions beginning with the letter "W"

(1) **WATER TABLE** - means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(2) **WILLFUL OR WILLFULLY** - means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) intentionally, voluntarily, or consciously; and

(b) with intentional disregard or plain indifference to legal requirements.

(3) **WORKING CAPITAL** - means the excess of the operator's current assets over its current liabilities.

[11-29-97; A, 12-15-99; 19.8.2.7 NMAC - Rn, 19 NMAC 8.2.1.107 & A, 9-29-2000; A, 1-15-2002; A, 7-30-2004; A, 12-31-2007; A, 08-31-2010]

19.8.1.8 - 19.8.1.107 NMAC [RESERVED]

[19.8.1.8 - 19.8.1.107 NMAC - N, 9-29-2000]

19.8.1.108 SUSPENSION OF RULES OR REGULATIONS: (None) Section 1-11 CSMC Rule 80-1, as adopted May 15, 1980, is hereby repealed, provided, however, that such repeal shall not be deemed to affect the authority of persons to engage in or carry out any surface coal mining operations if he has a permit under Laws 1972, Chapter 68, and such permit has not expired pursuant to the act or 19.8 NMAC Parts 1-35, so long as he complies with the provisions of the act, the permit and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.1.108 NMAC - Rn, 19 NMAC 8.2.1.108 & A, 9-29-2000; A, 1-15-2002]

19.8.1.109 RESTRICTIONS OF EMPLOYEE FINANCIAL INTERESTS:

A. Responsibilities.

- (1) Employees performing duties or functions under the act and 19.8 NMAC Parts 1-35 shall:
- (a) file a fully completed statement of employment and financial interest 120 days after 19.8 NMAC Parts 1-35 become effective or upon entrance to duty, and annually thereafter on September 1 of each year;
 - (b) have no direct or indirect financial interest in coal mining operations; and
 - (c) comply with directions issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.
- (2) The director shall:
- (a) provide advice, assistance, and guidance to all state employees required to file statements pursuant to 19.8 NMAC Parts 1-35 and inform such employees of the name, address and telephone number of other persons whom they may contact for advice and counseling;
 - (b) promptly review the statement of the employee and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in surface coal mining and reclamation operations;
 - (c) resolve prohibited financial interest situations by ordering or initiating remedial action which will resolve the prohibited interest as required within 90 days, or by reporting the violations to the director of the office of surface mining;
 - (d) certify on each statement that review has been made, that prohibited financial interests, if any, has been resolved and that no other prohibited interests have been identified from the statement;
 - (e) submit to the director of the office of surface mining the initial listing and the subsequent annual listing or positions as required in Subsection C of 19.8.1.109 NMAC; and
 - (f) furnish a blank statement 45 days in advance of the filing date established in Subparagraph (a) of Paragraph (1) of Subsection A of 19.8.1.109 NMAC to each employee required to file a statement.

B. Penalties.

- (1) Any person who knowingly violates the provisions of Section 69-25A-32 NMSA 1978 of the act, shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or both.
- (2) Any employee who fails to file the required financial interest statement will be considered in violation of the act and 19.8 NMAC Parts 1-35 and will be subject to removal from his or her position, if 90 days after an employee is notified by the director to take remedial action, the employee is not in compliance with the requirements of the act and 19.8 NMAC Parts 1-35.

C. Who shall file.

- (1) Any employee who performs any function or duty under the act is required to file a statement of employment and financial interests.
- (2) The director shall prepare and submit to the director of the office of surface mining an initial listing of positions that do not involve performance or any functions or duties under the act within 60 days of the effective date of 19.8 NMAC Parts 1-35.
- (3) The director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the director of the office of surface mining and must contain a written justification for inclusions of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the director of the office of surface mining by no later than January 1 of each year.
- (4) The director may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the act or 19.8 NMAC Parts 1-35.

D. Where to file.

- (1) The director shall file his statement with the director of the office of surface mining.
- (2) All other employees shall file their statement with the director.

E. What to report.

- (1) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The reports shall be on OSM form 705-1. The statement consists of three major parts:
- (a) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year;

(b) a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operation except as specifically identified and described by the employee as part of the certificate; and

(c) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(2) An employee is expected to:

(a) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

(b) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee's certification of the form must provide enough information for the director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(a) list the financial interests;

(b) show the number of shares, estimated value or annual income of the financial interests; and

(c) include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

F. Gifts and gratuities.

(1) Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value, from a coal company which:

(a) conducts or is seeking to conduct operations or activities that are regulated by the act; and

(b) has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(2) The prohibitions of this rule do not apply in the context of obvious family or personal relationships, such as those between parents, children, or spouse of the employee, and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(a) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(b) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

[11-29-97; 19.8.1.109 NMAC - Rn, 19 NMAC 8.2.1.109, 9-29-2000; A, 1-15-2002]

19.8.1.110 COMPUTATION OF TIME:

A. Except as otherwise provided computation of time under the act and 19.8 NMAC Parts 1-35 is based on calendar days.

B. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the director is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

C. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

D. An operator's "mining year" shall be the calendar year.

[11-29-97; 19.8.1.110 NMAC - Rn, 19 NMAC 8.2.1.110, 9-29-2000; A, 1-15-2002]

19.8.1.111 EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION:

A. Coal extraction which is an incidental part of government-financed construction is exempt from the act and 19.8 NMAC Parts 1-35.

B. Any person who conducts or intends to conduct coal extraction which does not satisfy Subsection A of 19.8.1.111 NMAC shall not proceed until a permit has been obtained from the director.

C. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(1) a description of the construction project;

(2) the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(3) the government agency which is providing the financing and the kind and amounts of public financing, including the percentage of the entire construction costs represented by the government financing. [11-29-97; 19.8.1.111 NMAC - Rn, 19 NMAC 8.2.1.111, 9-29-2000; A, 1-15-2002]

HISTORY OF 19.8.1 NMAC:

Pre-NMAC History:

The material in Part 1 was derived from that previously filed with the State Records Center and Archives under: SB 73-1 Regulations of the State of New Mexico Coal Surfacemining Commission, filed 1-10-73 and its amendment filed 8-4-76

SB 78-1 (Rule 78-1) Regulations of the State of New Mexico Coal Surfacemining Commission, filed 8-31-78

SB 79-1 (Rule 79-1) New Mexico Coal Surfacemining Regulations, filed 7-11-79

CSMC Rule 80-1 (Rule 80-1) Surface Coal Mining Regulations, filed 9-24-80; and all amendments to CSMC Rule 80-1, filed 7-29-82, 11-10-83, 3-5-84, 7-19-84, filed 8-6-84, 8-23-84, 3-28-89, 6-15-90, 9-18-90, 2-15-91, 5-8-91, 8-26-91, 10-4-91, 7-28-92, 1-25-93, 11-1-94, 3-10-95, 4-12-95, 12-21-95.

Other History:

Renumbered and reformatted CSMC Rule 80-1, Surface Coal Mining Regulations (filed 9-24-80) to 19 NMAC 8.2, Coal Surface Mining, effective 11-29-97.

Renumbered and amended 19 NMAC 8.2 Subpart 1 General Provisions (filed 11-13-97) to 19.8.1 NMAC General Provisions, effective 9-29-2000.