

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8      COAL MINING**  
**PART 4          PROCESS FOR DESIGNATING LANDS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS**

**19.8.4.1        ISSUING AGENCY:** New Mexico Coal Surface Mining Commission.  
[19.8.4.1 NMAC - N, 9-29-2000]

**19.8.4.2        SCOPE:** All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).  
[19.8.4.2 NMAC - N, 9-29-2000]

**19.8.4.3        STATUTORY AUTHORITY:** NMSA 1978, Sections 69-25A-1 et. seq. (1979).  
[19.8.4.3 NMAC - N, 9-29-2000]

**19.8.4.4        DURATION:** Permanent.  
[19.8.4.4 NMAC - N, 9-29-2000]

**19.8.4.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[19.8.4.5 NMAC - N, 9-29-2000]

**19.8.4.6        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.  
[19.8.4.6 NMAC - N, 9-29-2000; A, 1-15-2002]

**19.8.4.7        DEFINITIONS: [RESERVED]**  
[19.8.4.7 NMAC - N, 9-29-2000]  
[Definitions for this part can be found in 19.8.1.7 NMAC.]

**19.8.4.8 - 19.8.4.399 [RESERVED]**  
[19.8.4.8 - 19.8.4.399 - N, 9-29-2000]

**19.8.4.400      PROCEDURES: PETITIONS:**

**A.** Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

**B.** Designation. The only information that a petitioner need provide is:

- (1) the location and size of the area covered by the petition;
- (2) allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;
- (3) a description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;

- (4) the petitioner's name, address and telephone number; and
- (5) identification of the petitioner's interest which is or may be adversely affected.

**C.** Termination. The only information that a petitioner need provide to terminate a designation is:

- (1) the location and size of the area covered by the petition;
- (2) allegation of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:

- (a) the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in Subsection B of 19.8.3.300 NMAC;
- (b) reclamation now being technologically and economically feasible, if the designation was based on the criteria found in Subsection A of 19.8.3.300 NMAC;

(c) the resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in Subsection B of 19.8.3.300 NMAC.

(3) the petitioner's name, address and telephone number; and

(4) identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

[11-29-97; 19.8.4.400 NMAC - Rn, 19 NMAC 8.2.4.400, 9-29-2000]

**19.8.4.401 PROCEDURES: INITIAL PROCESSING, RECORD-KEEPING AND NOTIFICATION REQUIREMENTS:**

**A.** Initial processing.

(1) Within 30 days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under Subsection B of 19.8.4.400 NMAC or Subsection C of 19.8.4.400 NMAC.

(2) The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, he shall return the petition to the petitioner with a statement of the findings.

(3) The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of 19.8.4.400 NMAC are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the director pursuant to the procedures of this part.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the director shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the director shall not consider the petition and shall return the petition to the petitioner, with a statement of his findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the director determines that the petition is incomplete or frivolous, he shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(6) The director shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(7) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the director from issuing a decision on that permit application. The director may return any petition received thereafter to the petitioner with a statement why the director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any informal conference held under 19.8.11.1103 NMAC, or, if no conference is requested, at the close of the period for filing written comments and objections under 19.8.11.1101 and 1102 NMAC.

**B.** Public notice.

(1) Promptly after a petition is received, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

(2) Within three weeks after the determination that a petition is complete, the director shall circulate copies of the petition to, and request submissions of relevant information from other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, other persons known to the director to have an interest in the property, and shall notify the general public, through the publication of a notice in the New Mexico state register, of the receipt of a petition to designate lands unsuitable for mining.

(3) Within three weeks after the determination that a petition is complete, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

**C.** Until three days before the director holds a hearing under 19.8.4.402 NMAC, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

**D.** Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the director. The director shall

make the record available for public inspection free of charge, and copying at reasonable cost, during all normal business hours.

[11-29-97; 19.8.4.401 NMAC - Rn, 19 NMAC 8.2.4.401, 9-29-2000; A, 12-31-2007]

**19.8.4.402 PROCEDURES: HEARING REQUIREMENTS:**

**A.** Within 10 months after receipt of a complete petition, the director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The director shall make a verbatim transcript of the hearing.

**B.** Notification requirements.

(1) The director shall give notice of the date, time, and location of the hearing to:

- (a) local, state, and federal agencies which may have an interest in the decision on the petition;
- (b) the petitioner and the intervenors; and
- (c) any person with an ownership or other interest known to the director in the area covered by

the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

**C.** The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement in the newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations once a week for 2 consecutive weeks and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin not more than 60 nor less than 30 days before the scheduled date of the public hearing.

**D.** The director may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

**E.** Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

**F.** In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

[11-29-97; 19.8.4.402 NMAC - Rn, 19 NMAC 8.2.4.402, 9-29-2000; A, 12-31-2007]

**19.8.4.403 PROCEDURES: DECISIONS:**

**A.** In reaching his decision, the director shall use:

- (1) the information contained in the data base and inventory system;
- (2) information provided by other governmental agencies;
- (3) the detailed statement prepared under Subsection E of 19.8.4.402 NMAC; and
- (4) any other relevant information submitted during the comment period.

**B.** A final written decision shall be issued by the director, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The director shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the regional director of the office of surface mining and reclamation for this region.

**C.** The decision of the director with respect to a petition, or the failure of the director to act within the time limits set forth in 19.8.4.403 NMAC, shall be subject to administrative and judicial review in accordance with Sections 69-25A-29 and 69-25A-30 NMSA 1978.

[11-29-97; 19.8.4.403 NMAC - Rn, 19 NMAC 8.2.4.403, 9-29-2000]

**19.8.4.404 DATABASE AND INVENTORY SYSTEM REQUIREMENTS:**

**A.** The director shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

**B.** The director shall include in the system information relevant to the criteria in 19.8.3.300 NMAC including, but not limited to, information received from the United States fish and wildlife service, the state historic preservation officer, and the agency administering Section 127 of the Clean Air Act, as amended.

**C.** The director shall add to the data base and inventory system information:

(1) on potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the director to prepare the statements required by Subsection E of 19.8.4.402 NMAC; and

(2) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.  
[11-29-97; 19.8.4.404 NMAC - Rn, 19 NMAC 8.2.4.404, 9-29-2000]

**19.8.4.405 PUBLIC INFORMATION:** The director shall:

- A. make the information and data base system developed under 19.8.4.404 NMAC available to the public for inspection free of charge and for copying at reasonable cost;
  - B. provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.
- [11-29-97; 19.8.4.405 NMAC - Rn, 19 NMAC 8.2.4.405, 9-29-2000]

**19.8.4.406 DIRECTOR'S RESPONSIBILITY FOR IMPLEMENTATION:**

- A. The director shall not issue permits which are inconsistent with designations made pursuant to 19.8.2, 19.8.3 or 19.8.4 NMAC.
  - B. The director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.
  - C. The director shall make available to any person any information within his control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information relating to the coal to the extent consistent with the act.
- [11-29-97; 19.8.4.406 NMAC - Rn, 19 NMAC 8.2.4.406, 9-29-2000]

**HISTORY OF 19.8.4 NMAC:**

**Pre-NMAC History:**

The material in Part 4 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 Surfacing 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 Surfacing Commission, filed 8-31-78

SB 79-1 (Rule 79-1) New Mexico Coal Surfacing 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, filed 11-13-97.

Renumbered 19 NMAC 8.2 Subpart 4 Process for Designating Lands Unsuitable for Surface Coal Mining Operations, filed 11-13-97, to 19.8.4 NMAC Process for Designating Lands Unsuitable for Surface Coal Mining Operations, effective 09-29-2000.