

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8    COAL MINING**  
**PART 5        GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS**

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

**19.8.5.2        SCOPE:** All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections.  
[19.8.5.2 NMAC - N, 9-29-2000]

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

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

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

**19.8.5.6        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.  
[19.8.5.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.5.8 - 19.8.5.499 [RESERVED]**  
[19.8.5.8 - 19.8.5.499 - N, 9-29-2000]

**19.8.5.500      GENERAL REQUIREMENTS FOR PERMITS: OPERATORS:** Except as provided for in Subsection A of 19.8.5.501 NMAC on and after 8 months from the date on which a regulatory program for the state is approved by the secretary of the U.S. department of interior, no person shall engage in or carry out surface coal mining and reclamation operations on non-federal lands within the state, unless that person has first obtained a valid permit issued by the director under the approved program.  
[11-29-97; 19.8.5.500 NMAC - Rn 19 NMAC 8.2.5.500, 9-29-2000]

**19.8.5.501      CONTINUED OPERATION UNDER INTERIM PERMITS:** A person conducting surface coal mining operations under a permit issued pursuant to Laws 1972, Chapter 68, as amended, or issued by the director pursuant to the act, prior to the effective date of an approved program may conduct these operations beyond the period prescribed in 19.8.5.500 NMAC, if:

- A.** timely and complete application for a permit under the approved program has been made to the director in accordance with the provisions of the act, and 19.8 NMAC Parts 1-35;
- B.** the director has not yet rendered an initial decision with respect to such application; and
- C.** the operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the act, and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.501 NMAC - Rn 19 NMAC 8.2.5.501, 9-29-2000; A, 1-15-2002]

**19.8.5.502      CONTINUED OPERATION UNDER FEDERAL PROGRAM PERMITS:** A permit issued by the office of surface mining and reclamation pursuant to a federal program for a state shall be valid under any superseding state program approved by the secretary of the U.S. department of interior.

- A.** The federal permittee shall have the rights to apply to the state director for a state permit to supersede the federal permit.

**B.** The director may review a permit issued pursuant to the superseded federal program, to determine that the requirements of the act and 19.8 NMAC Parts 1-35 are not violated by the federal permit.

**C.** To the extent that the approved state program contains additional requirements not contained in the federal program for the state, the director shall:

(1) promptly issue an order requiring the permittee to comply with such additional requirements within 60 days of the issuance of the order, unless the permittee demonstrates to the director that it is physically impossible to meet those additional requirements within 60 days, or unless the director agrees to a longer period under an established time schedule; and

(2) notify the permittee, in writing, of the right to a hearing with respect to the order in the manner and time provided for in the act and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.502 NMAC - Rn 19 NMAC 8.2.5.502, 9-29-2000; A, 1-15-2002]

**19.8.5.503 COMPLIANCE WITH PERMITS:** All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the act and 19.8 NMAC Parts 1-35, and shall comply with the terms and conditions of the permit and the requirements of the act and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.503 NMAC - Rn 19 NMAC 8.2.5.503, 9-29-2000; A, 1-15-2002]

**19.8.5.504 PERMIT APPLICATION FILING DEADLINES:**

**A.** Not later than two (2) months following approval of the state program by the secretary of the U.S. department of interior, each person who conducts or expects to conduct surface coal mining and reclamation operations after the expiration of eight (8) months from that approval shall file an application for a permit for these operations.

**B.** Permit renewals and revisions.

(1) An application for renewal of a permit shall be filed with the director at least 120 days before the expiration of the permit involved.

(2) Any application for revision of a permit shall be filed with the director before the date on which the permittee expects to revise surface coal mining or reclamation operations. After filing of such application, the director shall determine the time by which that application shall be approved or disapproved, based on the time required for review of the application and public participation in the process of review.

**C.** Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the director not later than 30 days after that succession is approved by the director.

[11-29-97; 19.8.5.504 NMAC - Rn 19 NMAC 8.2.5.504, 9-29-2000; A, 12-31-2007]

**19.8.5.505 PERMIT APPLICATIONS: GENERAL REQUIREMENTS FOR FORMAT AND CONTENTS:**

**A.** Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the director. The application shall be complete and include, at a minimum, for surface mining activities, all the applicable information required under 19.8.7, 19.8.8 and 19.8.9 NMAC and for special types of surface coal mining and reclamation operations, all the information required under 19.8.10 NMAC.

**B.** Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the director.

**C.** All technical data submitted to the application shall be accompanied by:

(1) names of persons or organizations which collected and analyzed such data;

(2) dates of the collection and analyses;

(3) descriptions of methodology used to collect and analyze the data; and

(4) the application shall contain a bibliography of published and unpublished material used and names, addresses and telephone numbers of persons providing information through personal communication.

**D.** Maps and plans - general requirements.

(1) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. geological survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the mine plan area and the adjacent areas shall clearly show the lands and waters within those areas and be in a scale determined by the director, but in no event smaller than 1:24,000.

(2) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the mine plan area. At a

minimum, distinctions shall be clearly shown among those portions of the mine plan area in which surface coal mining operations occurred:

- (a) prior to August 3, 1977;
  - (b) after August 3, 1977 and prior to either:
    - (i) May 3, 1978;
    - (ii) in the case of an applicant or operator which obtained a small operator's exemption in accordance with 30 CFR 710.12 January 1, 1979;
  - (c) after May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the regulatory program;
  - (d) after the estimated date of issuance of a permit by the director.
- [11-29-97; A, 12-15-99; 19.8.5.505 NMAC - Rn, 19 NMAC 8.2.5.505, 9-29-2000]

#### **19.8.5.506 PERMIT AND EXPLORATION FEES:**

Each application, pursuant to the act and 19.8 NMAC Parts 1-35 shall be accompanied by a fee determined under the following schedule:

**A.** Original permit filing fee shall be \$2,500 plus \$25.00 per acre for estimated area to be disturbed during the first year of mining.

**B.** Commencing the second year the annual permit fee shall be \$2,500. In addition, there shall be an acreage fee of \$25.00 per acre of disturbed permit area for which the bond has not been released, provided that \$15,000 per year acreage fee is the maximum charge per year for all disturbance. The maximum annual fee will therefore be:

Permit fee = \$2,500  
Acreage fee = \$15,000  
Max. Total = \$17,500

The annual fee is to be submitted with the annual report.

**C.** Pending further study, the initial annual acreage fee shall not be collected for acres classified as disturbed, when disturbance is due to subsidence associated with underground mining, unless it is determined by the director that such subsidence causes significant environmental damage to the surrounding area.

**D.** The fee for transferring a permit shall be \$1,000.

**E.** For revision applications expanding the size of the permit the fee shall be \$4,000 plus \$25.00 per acre for the estimated area to be disturbed during the first year of mining in the expansion area. For all other revision applications the fee shall be \$4,000.

**F.** The fee for filing a notice of intention to explore under 19.8.6.601 NMAC shall be \$100.

**G.** The fee for filing an application for approval under 19.8.6.602 NMAC shall be \$200.

[11-29-97; 19.8.5.506 NMAC - Rn, 19 NMAC 8.2.5.506, 9-29-2000; A, 1-15-2002; A, 7-30-2004]

#### **19.8.5.507 ANNUAL REPORT:**

**A.** By March 1 of each year, the operator shall submit to the director a report, setting out in detail the measures taken to effect reclamation of the affected area during the previous calendar year. The report must be typewritten and signed by the operator. The report must include the following information:

(1) a current topographic or orthophotographic map with 5' contour intervals. The map shall be the same scale as the mining and reclamation sequence maps found in the approved permit with 5' contour intervals. The map must be made on a single sheet, or series of sheets, each sheet of the map being no larger than 4' x 4'. The scale and all lines and symbols must be clearly described in the legend.

(2) The first annual report map under this rule shall show the following, and each subsequent map shall show all information from the immediately preceding year's map in addition to any changes in:

- (a) current permit boundary.
- (b) maintenance buildings, office buildings, and storage areas.
- (c) petroleum and industrial chemical storage areas.
- (d) surface and underground storage tanks.
- (e) public roads and primary and auxiliary roads within the permit.
- (f) perennial and major intermittent and ephemeral streams, lakes, springs, and other natural bodies of water.
- (g) sediment ponds, other approved impoundments, and diversions (the sediment ponds should be identified by the same system used in the mine plan or modification to the mine plan).
- (h) rail facilities.

- (i) coal processing, storage, and loading facilities within the permit area.
- (j) sewage treatment plants, fields, or ponds.
- (k) coal waste disposal areas; other waste disposal areas.
- (l) section corners, or grid coordinates.
- (m) locations of water monitoring points (wells, stream sample point, and point source discharges) with NPDES permit number (these should correspond to identification systems used in the mine plan.
- (n) topdressing stockpiles (these should correspond to mine plan system of identification).
- (o) buffer zones. Any area that is required to be left undisturbed to protect pre-mine features of the landscape, or any area (disturbed or undisturbed) that is purposely established to separate different phases of the coal mining operation.
- (p) all pits (named or numbered) as presented in the mine plan or modifications to the mine plan.
- (q) all areas that have been reseeded (indicate initial year of seeding and last year of reseeded).
- (r) areas on which grading was completed during the report year (with each individual area indicate the acreage).
- (s) areas that were first disturbed during the report year (within each individual area indicate the acreage).
- (t) areas governed by the following regulatory performance standards:
  - (i) pre 79-1
  - (ii) 79-1
  - (iii) 80-1
- (u) areas currently under bond and bond release status of each area.
- (3) Three copies of the annual report including maps shall be submitted.
- B.** The annual report shall include:
  - (1) a list of all permit special conditions and brief indication of the status of each, including those from the 79-1 and 80-1 permits. This requirement may be waived, in part or in full, by the director.
  - (2) a summary of any required wildlife and vegetation data collected during the report year.
  - (3) the total number of acres:
    - (a) initially disturbed during the report year.
    - (b) that will require backfilling and/or grading but that were not graded as of December 31, of the report year.
    - (c) that were backfilled and graded during the report year.
    - (d) that were topdressed during the report year.
    - (e) that will eventually require topdressing but that were not topdressed as of December 31, of the report year.
    - (f) that were seeded during the report year with permanent reclamation seed mix, and temporary stabilization seed mix that will eventually require revegetation but that were not revegetated as of December 31, of the report year.
    - (g) of topdressed and seeded areas that were redisturbed by mining and reclamation operations during the report year. Briefly state the reason for each case of redisturbance (operation change, violation abatement, etc.).
    - (h) currently under bond for each bond release status, as shown on the map.
  - (4) a summary and discussion of specific efforts initiated or completed to enhance, restore, or protect wildlife and wildlife habitat.
  - (5) a mass balance which indicates the amount of topdressing available and the amount of topdressing needed covering the term of the permit.
- C.** An annual report may include a brief description of modifications or revisions to be submitted to MMD for approval during the year previous to the next annual report.  
[11-29-97; 19.8.5.507 NMAC - Rn, 19 NMAC 8.2.5.507 & A, 9-29-2000]

**19.8.5.508 VERIFICATION OF APPLICATION:** Applications for permits shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.  
[11-29-97; 19.8.5.508 NMAC - Rn, 19 NMAC 8.2.5.508, 9-29-2000]

**HISTORY OF 19.8.5 NMAC:**

**Pre-NMAC History:**

The material in Part 5 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 5 General Requirements for Permits and Permit Applications (filed 11-13-97), to 19.8.5 NMAC General Requirements for Permits and Permit Applications, effective 09-29-2000.