

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8      COAL MINING**  
**PART 7         PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL,**  
**COMPLIANCE AND RELATED INFORMATION**

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

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

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

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

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

**19.8.7.6        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.  
[19.8.7.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.7.8 - 19.8.7.699 [RESERVED]**  
[19.8.7.8 - 19.8.7.699 - N, 9-29-2000]

**19.8.7.700      RESPONSIBILITY:** This part applies to any person who applies for a permit to conduct surface coal mining operations. It is the responsibility of the permit applicant to provide to the director all of the information required by this part.  
[11-29-97; 19.8.7.700 NMAC - Rn, 19 NMAC 8.2.7.700, 9-29-2000]

**19.8.7.701      IDENTIFICATION OF INTERESTS:** An application shall contain the following information, except that the submission of a social security number is voluntary:

**A.** a statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

**B.** the name, address, telephone number and, as applicable, social security number and employer identification number of the:

**(1)** applicant;

**(2)** applicant's resident agent; and

**(3)** person who will pay the abandoned mine land reclamation fee;

**C.** for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC of these rules, as applicable:

**(1)** the person's name, address, telephone number, social security number and employer identification number;

**(2)** the person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

**(3)** the title of the person's position, date position was assumed, and when submitted under Subsection C of 19.8.11.1120 NMAC, date of departure from the position;

(4) each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and

(5) the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

**D.** for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC, the operation's:

(1) name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

(2) ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

**E.** the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

**F.** the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area and the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed permit area;

**G.** the mine safety and health administration (MSHA) numbers for all mine-associated structures that require MSHA approval;

**H.** a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application; if requested by the applicant, any information required by this section which is not on public file pursuant to state law shall be held in confidence by the director, as provided under Subsection B of 19.8.6.606 NMAC;

**I.** after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Subsections A through D of 19.8.7.701 NMAC;

**J.** the applicant shall submit the information required by this section and 19.8.7.702 NMAC in any format prescribed by the director, that is approved by OSM.

[11-29-97; 19.8.7.701 NMAC - Rn, 19 NMAC 8.2.7.701, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

**19.8.7.702 COMPLIANCE INFORMATION:** Each application shall contain:

**A.** a statement of whether the applicant or any subsidiary, affiliate, or person controlled by or under common control with the applicant has:

(1) had a federal or state coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) forfeited a performance bond or similar security deposited in lieu of bond;

**B.** a brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in Paragraphs (1) and (2) of Subsection A of 19.8.7.702 NMAC has occurred, including:

(1) identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) the current status of the permit, bond, or similar security involved;

(4) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) the current status of the proceedings;

**C.** a listing of each violation notice received by the applicant in connection with any surface coal mining operation during the 3-year period before the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC; for each notice of violation issued pursuant to 30 CFR 843.12 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of

being corrected to the satisfaction of the agency with jurisdiction over the violation; for each violation notice reported, the list shall include the following information, as applicable:

- (1) any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
- (2) a brief description of the violation alleged in the notice;
- (3) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in Subsection C of 19.8.7.702 NMAC to obtain administrative or judicial review of the violation;
- (4) the current status of the proceedings and of the violation notice; and
- (5) the actions, if any, taken by any person identified in Subsection C of 19.8.7.702 NMAC to abate the violation;

**D.** after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

[11-29-97; 19.8.7.702 NMAC - Rn, 19 NMAC 8.2.7.702, 9-29-2000]

#### **19.8.7.703 RIGHT OF ENTRY AND OPERATION INFORMATION:**

**A.** Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area and whether that right is the subject of pending legislation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

**B.** Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area:

- (1) a copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or
- (2) a copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
- (3) if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

**C.** Nothing in this section shall be construed to afford the director the authority to adjudicate property title disputes.

[11-29-97; 19.8.7.703 NMAC - Rn, 19 NMAC 8.2.7.703, 9-29-2000]

#### **19.8.7.704 RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING:**

**A.** Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining operations under 19.8.4 NMAC or under study for designation in an administrative proceeding under 19.8 NMAC.

**B.** If an applicant claims the exemption in Paragraph (2) of Subsection D of 19.8.11.1106 NMAC, the application shall contain information supporting the applicant's assertion.

**C.** An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of Subsection D or E of 19.8.2.202 NMAC, respectively.

[11-29-97; 19.8.7.704 NMAC - Rn, 19 NMAC 8.2.7.704, 9-29-2000; A, 01-15-2002]

#### **19.8.7.705 PERMIT TERM INFORMATION:**

**A.** Timing and extent of operations.

(1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining operations and the anticipated number of acres of surface land to be affected for each phase of mining and over the total life of the permit.

(2) The horizontal and vertical extent of the proposed workings for each phase of the operation for the life of the permit shall be shown for underground mining.

**B.** If the applicant proposes to conduct the surface coal mining operations in excess of 5 years, the application shall contain the information needed for the showing required under Subsection A of 19.8.11.1111 NMAC.

[11-29-97; 19.8.7.705 NMAC - Rn, 19 NMAC 8.2.7.705, 9-29-2000; A, 12-31-2007]

**19.8.7.706 PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE INFORMATION:** Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in 19.8.14.1407 NMAC are satisfied.

[11-29-97; 19.8.7.706 NMAC - Rn, 19 NMAC 8.2.7.706, 9-29-2000]

**19.8.7.707 IDENTIFICATION OF OTHER LICENSES AND PERMITS:** Each application shall contain a list of all or other licenses and permits needed by the applicant to conduct the proposed surface coal mining operations. This list shall identify each license and permit by:

- A. type of permit or license;
- B. name and address of issuing authority;
- C. identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- D. if a decision has been made, the date of approval or disapproval by each issuing authority.

[11-29-97; 19.8.7.707 NMAC - Rn, 19 NMAC 8.2.7.707, 9-29-2000]

**19.8.7.708 IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION:** Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under Subsection E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.7.708 NMAC - Rn, 19 NMAC 8.2.7.708, 9-29-2000; A, 12-31-2007]

**19.8.7.709 NEWSPAPER ADVERTISEMENT AND PROOF OF PUBLICATION:** A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application, not later than 4 weeks after the last date of publication required under Subsection A of 19.8.11.1100 NMAC.

[11-29-97; 19.8.7.709 NMAC - Rn, 19 NMAC 8.2.7.709, 9-29-2000]

#### **HISTORY OF 19.8.7 NMAC:**

##### **Pre-NMAC History:**

The material in Part 7 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 09-24-80) to 19 NMAC 8.2, Coal Surface Mining, effective 11-29-1997.

Renumbered 19 NMAC 8.2 Subpart 7 Permit Application - Minimum Requirements for legal, Financial, compliance and Related Information (filed 11-13-97) to 19.8.7 NMAC Permit Application - Minimum Requirements for legal, Financial, compliance and Related Information, effective 9-29-2000.