

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 8 COAL MINING
PART 11 REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR DISAPPROVAL OF
PERMIT APPLICATIONS, TERMS AND CONDITIONS

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

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

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

19.8.11.4 DURATION: Permanent
[19.8.11.4 NMAC - N, 9-29-2000]

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

19.8.11.6 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.
[19.8.11.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

19.8.11.8 - 19.8.11.1099 [RESERVED]
[19.8.11.8 - 19.8.11.1099 NMAC - N, 9-29-2000]

19.8.11.1100 PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS:

A. An applicant applying for a permit shall place an advertisement in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

- (1) the name and business address of the applicant; and
- (2) a map or description which shall:
 - (a) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;
 - (b) clearly show or describe the exact location and boundaries of the proposed permit area;
 - (c) state the name of the U.S. geological survey 7.5-minute quadrangle map(s) which contains the area shown or described; and
 - (d) if a map is used, indicate the north point;
- (3) the location where a copy of the application is available for public inspection under Subsection E of 19.8.11.1100 NMAC and a description of the information requested by the applicant to be held in confidence by the director;
- (4) the name and address of the director to which written comments, objections or requests for informal conferences on the application may be submitted under 19.8.11.1101 through 1103 NMAC; and

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

B. In addition to the requirements of Subsection A of 19.8.11.1100 NMAC, an applicant for a new permit or for a permit revision under 19.8.13.1301 NMAC shall submit, at the time of filing the application, a plan approved by the director to provide notice using at least three of the methods listed below. If the director determines that significant non-English speaking populations live within the general area of the proposed mine, the applicant shall include at least one method that seeks to reach these populations. The notice shall summarize the information listed in, and shall be given prior to the last publication of the notice in, Subsection A of 19.8.11.1100 NMAC. The methods may include:

(1) mailing a notice to the owners of record, as shown by the most recent property tax schedule, of all properties adjacent to the proposed permit area and to the owners of all properties containing a residence located within one-half mile (2640 feet) of the proposed permit area as identified in Subsection F of 19.8.7.701 NMAC;

(2) posting a notice in at least four publicly accessible and conspicuous places, including the entrance to the proposed operation if that entrance is publicly accessible and conspicuous;

(3) publishing a notice in a display ad at least three inches by four inches at a place in the newspaper calculated to give the general public the most effective notice; or

(4) broadcasting public service announcements on radio stations that serve the general permit area.

C. Upon receipt of a complete application for a permit, the director shall issue written notification of:

(1) the applicant's intention to mine a particularly described tract of land;

(2) the application number;

(3) where a copy of the application may be inspected; and

(4) where comments on the application may be submitted under 19.8.11.1101 NMAC.

D. The written notifications shall be sent to:

(1) federal, state, tribal and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(2) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(3) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(4) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application; and

(5) all persons on a list maintained by the director of individuals and organizations who have requested notice of applications under the act and who have provided a surface or electronic mail address to the director.

E. Public inspection of the application.

(1) The applicant shall make a full copy of his complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the director with the county clerk of the county where the mining is proposed to occur, or if approved by the director, at another equivalent public office, if it is determined that office will be more accessible to local residents than the county courthouse.

(2) The applicant shall file the copy of the complete application under Paragraph (1) of Subsection E of 19.8.11.1100 NMAC by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the director.

(3) The written notification shall be posted on a website maintained by the director after receipt of a complete application.

F. Public meeting. Within 60 days of receipt of a complete application for a new permit or a permit revision, the director shall hold a public meeting at a location near the proposed mining operation.

(1) The public meeting will serve as an opportunity for the director and applicant to inform the public of the proposed action and to provide an opportunity for the public to identify issues and concerns associated with the application.

(2) The director shall give notice at least fifteen days prior to the meeting date in a newspaper of general circulation and on radio stations serving the mine area.

(3) The director or his representative shall keep a record summarizing issues and concerns raised at the meeting.

(4) Any person attending the meeting may submit written comments to the director up to thirty days after the meeting.

[11-29-97; 19.8.11.1100 NMAC - Rn, 19 NMAC 8.2.11.1100, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1101 OPPORTUNITY FOR SUBMISSION OF WRITTEN COMMENTS ON PERMIT APPLICATIONS:

A. Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under Subsections C and D of 19.8.11.1100 NMAC, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

B. These comments shall be submitted to the director within 30 days following the last publication of the above notice.

C. The director shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Subsection E of 19.8.11.1100 NMAC.

D. A copy shall also be transmitted to the applicant.

[11-29-97; 19.8.11.1101 NMAC - Rn, 19 NMAC 8.2.11.1101, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1102 RIGHT TO FILE WRITTEN OBJECTIONS:

A. Any person whose interests are or may be adversely affected or an officer or head of any federal, state, tribal or local governmental agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director within 30 days after the last publication of the newspaper notice required by Subsection A of 19.8.11.1100 NMAC.

B. The director shall immediately upon receipt of any written objections:

(1) transmit a copy of them to the applicant; and

(2) file a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Subsection E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.11.1102 NMAC - Rn, 19 NMAC 8.2.11.1102, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1103 HEARINGS AND CONFERENCES:

A. Procedure for requests. Any person, whose interests are or may be adversely affected by the issuance, revision or renewal of the permit, or the officer or head of any federal, state, tribal or local government agency or authority may, in writing, request that the director hold an informal conference on any application for a permit. The request shall:

(1) briefly summarize the issues to be raised by the requestor at the conference;

(2) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(3) be filed with the director not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under Subsection A of 19.8.11.1100 NMAC.

B. Except as provided in Subsection C of 19.8.11.1103 NMAC, if an informal conference is requested in accordance with Subsection A of 19.8.11.1103 NMAC, or upon the director's own motion, the director shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(1) if requested under Paragraph (2) of Subsection A of 19.8.11.1103 NMAC, it shall be held in the locality of the proposed mining;

(2) the date, time, and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations at least two weeks prior to the scheduled conference;

(3) if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the director may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference;

(4) the conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference; an electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties; the record shall

be maintained and shall be accessible to parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 19.8.14 NMAC.

C. If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

D. Informal conferences held in accordance with 19.8.11.1103 NMAC may be used by the director as the public hearing required under Subsection D of 19.8.2.202 NMAC on proposed uses or relocation of public roads. [11-29-97; 19.8.11.1103 NMAC - Rn, 19 NMAC 8.2.11.1103, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1104 PUBLIC AVAILABILITY OF INFORMATION IN PERMIT APPLICATIONS ON FILE WITH THE DIRECTOR:

A. Information contained in permit applications on file with the director shall be open, upon written request, for public inspection and copying at reasonable times except for:

(1) information pertaining to coal seams, test borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected;

(2) information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and

(3) information in the reclamation plan portions of the application, which is required to be filed with the director under Section 69-25A-12 NMSA 1978, and which is not otherwise a public record, shall be held in confidence by the director upon the written request of the applicant;

(4) information on the nature and location of archaeological resources on the public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470);

(5) information required to be kept confidential shall be clearly identified by the applicant and submitted separately from other portions of the application.

B. Information requested to be held as confidential under 19.8.11.1104 NMAC shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.11.1104 NMAC - Rn, 19 NMAC 8.2.11.1104, 9-29-2000; A, 4-28-2006]

19.8.11.1105 REVIEW OF PERMIT APPLICATIONS:

A. Review and consultation.

(1) The director shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 19.8.11.1101 through 1103 NMAC.

(2) The director shall determine the adequacy of the fish and wildlife plan submitted pursuant to 19.8.9.905 NMAC, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

B. If the director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 19.8.14 NMAC.

C. The director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, is currently in violation of any provision of the act, SMCRA or any federal or state law, rule or regulation pertaining to air or water environmental protection. The director will make this determination based on a review of reasonably available information concerning violation notices and ownership or control links involving the applicant, including information pursuant to 19.8.7.701 and 702 NMAC and 19.8.11.1102 and 1116 NMAC. In the absence of a failure-to-abate cessation order, the director may presume that a notice of violation issued pursuant to 19.8.30.3001 NMAC or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, where the abatement period for such notice of violation has not yet expired and where as part of the violation information provided pursuant to 19.8.7.702 NMAC, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for a nonpayment of abandoned mine

reclamation fees or civil penalties. If a current violation exists the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(1) submit to the director, proof which is satisfactory to the director, department or agency which has jurisdiction over such violation that the violation:

- (a) has been corrected; or
- (b) is in the process of being corrected; or

(2) establish to the director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation; if the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Any permit that is issued on the basis of proof submitted under Subparagraph (b) of Paragraph (1) or Paragraph (2) of Subsection C of 19.8.1105 NMAC that a violation is in the process of being corrected, or pending the outcome of an appeal described in Paragraph (2) of Subsection C of 19.8.11.1105 NMAC, shall be conditionally issued.

E. Before any final determination by the director that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 19.8.12.1200 NMAC.

F. Final compliance review. After an application is approved, but before the permit is issued, the director shall reconsider its decision to approve the application, based on the compliance review required by Subsection C of 19.8.11.1105 NMAC in light of any new information submitted under Subsection I of 19.8.7.701 NMAC, or Subsection D of 19.8.7.702 NMAC. Upon the applicant's completion of the reporting requirements of Subsection D of 19.8.7.702 NMAC, the director will request a compliance history report from AVS no more than five business days before permit issuance, and will make that report part of the AVS record review required by 19.8.11.1116 NMAC.

[11-29-97; 19.8.11.1105 NMAC - Rn, 19 NMAC 8.2.11.1105, 9-29-2000; A, 4-28-2006; A, 12-31-2007; A, 08-31-2010]

19.8.11.1106 CRITERIA FOR PERMIT APPROVAL OR DENIAL: No permit or revision application shall be approved, unless the application affirmatively demonstrates and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

A. the permit application is accurate and complete and that all requirements of the act and 19.8 NMAC have been complied with;

B. the applicant has demonstrated that surface coal mining and reclamation operations, as required by the act and 19.8 NMAC, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

C. the assessment of the probable cumulative hydrological impacts (CHIA) of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in Subsection C of 19.8.9.907 NMAC has been made by the director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

D. the proposed permit area is:

(1) not included within an area designated unsuitable for surface coal mining operations under 19.8.3 and 4 NMAC; or

(2) not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 19.8.4 NMAC, unless the applicant demonstrates that, before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit; or

(3) not within an area subject to the prohibitions of 19.8.2.201 NMAC.

E. the proposed operations will not adversely affect any publicly-owned parks or places included in the national register of historic places, except as provided for in Subsection A of 19.8.2.201 NMAC;

- F.** for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under Subsection B of 19.8.7.703 NMAC;
- G.** the applicant has either:
 - (1) submitted the proof required by Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; or
 - (2) made the demonstration required by Paragraph (2) of Subsection C of 19.8.11.1105 NMAC;
- H.** the applicant has submitted proof that all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 have been paid;
- I.** the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the act;
- J.** surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;
- K.** the applicant will submit the performance bond or other equivalent guarantee required under 19.8.14 NMAC of these rules and regulations, prior to the issuance of the permit;
- L.** the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 19.8.10.1004 and 1006 NMAC;
- M.** the proposed postmining land use of the permit area has been approved by the director in accordance with the requirements of 19.8.20.2073 NMAC;
- N.** the director has made all specific approvals required under 19.8.19 through 19.8.28 NMAC;
- O.** the director has found that the activities would not affect the continued existence of endangered or threatened species, indigenous to the state, or any other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to state or federal law;
- P.** the director has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the national register of historic places; this finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the director has determined that no additional protection measures are necessary. [11-29-97; 19.8.11.1106 NMAC - Rn, 19 NMAC 8.2.11.1106, 9-29-2000; A, 1-15-2002; A, 4-28-2006; A, 12-31-2007]

19.8.11.1107 IMPROVIDENTLY ISSUED PERMITS: GENERAL PROCEDURES:

- A.** Permit review. When the director has reason to believe that the director improvidently issued a surface coal mining and reclamation permit the director shall immediately review the circumstances under which the director issued the permit, using the criteria in Subsection B of 19.8.11.1107 NMAC. If the director finds that the director improvidently issued the permit, then the director shall comply with Subsection C of 19.8.11.1107 NMAC.
- B.** Review criteria. The director shall find that the director improvidently issued a surface coal mining and reclamation permit if:
 - (1) under the regulatory program's violations review criteria at the time the director issued the permit:
 - (a) the director should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or
 - (b) the director issued the permit on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and
 - (2) the violation, penalty or fee:
 - (a) remains unabated or delinquent; and
 - (b) is not subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the responsible agency's satisfaction; and
 - (3) where the permittee was linked to the violation, penalty or fee through ownership or control under the regulatory program's violations review criteria at the time the director issued the permit, an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link has been severed, the permittee continues to be responsible for the violation, penalty or fee.
- C.** When determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships to which 19.8.11.1107 NMAC will apply, the director shall use the applicable violations review criteria contained in the preamble of the federal register 54 FR 18440-18441.
- D.** The provisions of 19.8.11.1118 NMAC shall be applicable when the director determines:

- (1) whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected or is the subject of a good faith appeal, and
- (2) whether any ownership or control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists or has been severed.

E. Remedial measures. When the director, under Subsection B of 19.8.11.1107 NMAC, finds that because of an unabated violation or a delinquent penalty or fee the director improvidently issued a permit, the director shall use one or more of the following remedial measures:

- (1) implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;
- (2) impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;
- (3) suspend the permit until the violation is abated or the penalty or fee is paid; or
- (4) rescind the permit under 19.8.11.1110 NMAC.

F. If the director decides to suspend the permit, it shall afford at least 30 days written notice to the permittee. If the director decides to rescind the permit, it shall issue a notice in accordance with 19.8.11.1110 NMAC. In either case, the permittee shall be given the opportunity to request administrative review of the notice as provided for in 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency, unless the district court grants temporary relief.

[11-29-97; A, 12-15-99: 19.8.11.1107 NMAC - Rn, 19 NMAC 8.2.11.1107, 9-29-2000; A, 4-28-2006]

19.8.11.1108 CRITERIA FOR PERMIT APPROVAL OR DENIAL: EXISTING STRUCTURES:

A. No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application that the structure meets the performance standards of the act and 19.8.19 through 28 NMAC.

B. If the director finds that the structure does not meet the requirements of Subsection A of 19.8.11.1108 NMAC, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

- (1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 19.8.19 through 19.8.28 NMAC as soon as possible, but not later than six months after issuance of the permit;
- (2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and
- (3) the applicant will monitor the structure to determine compliance with the performance standards of 19.8.19 through 19.8.28 NMAC.

C. Should the director find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety consistent with 19.8.20.2079 NMAC, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory program permit. Abandonment of the structure shall proceed on a schedule approved by the director.

[11-29-97; 19.8.11.1108 NMAC - Rn, 19 NMAC 8.2.11.1108, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1109 PERMIT APPROVAL OR DENIAL ACTIONS:

A. The director shall approve, require modification of, or deny all applications for permits under the act and 19.8. NMAC on the basis of:

- (1) complete applications for permits and revisions or renewals thereof;
- (2) public participation as provided for in 19.8.5 through 19.8.13 NMAC;
- (3) compliance with any applicable provisions of 19.8.10 NMAC; and
- (4) processing and review of applications as required by 19.8.11 NMAC.

B. The director shall take action as required under Subsection A of 19.8.11.1109 NMAC, within the following times.

(1) Initiation of regulatory programs. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC and 19.8.5.501 NMAC, a complete application submitted to the director within the time required by Subsection A of 19.8.5.504 NMAC shall be processed by the director so that an application is approved or denied:

- (a) within eight months after the date of approval of the state program; and

(b) if an informal conference has been held pursuant to 19.8.11.1103 NMAC within 60 days from the close of the conference.

(2) Subsequent permanent program applications. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC, a complete application submitted to the director after the time required in Subsection A of 19.8.5.504 NMAC and in accordance with NMAC shall be processed by the director, so that an application is approved or denied within the following times:

(a) if an informal conference has been held under 19.8.11.1103 NMAC within 60 days of the close of the conference; or

(b) if no informal conference has been held under Subsections A through D of 19.8.11.1103 NMAC then within a reasonable time after the receipt by the director of the complete application, the director will process the application; in establishing what is reasonable time in which to approve or deny the application, the director shall take into account the time needed for proper investigation of the proposed permit and adjacent areas; the complexity of the application; and whether written objections to or comments on the complete application have been filed with the director.

(3) Notwithstanding any of the foregoing provisions of 19.8.11.1109 NMAC, no time limit under the act or 19.8.11.1109 NMAC requiring the director to act shall be considered expired from the time the director initiates a proceeding under Subsection E of 19.8.11.1105 NMAC until the final decision of the director.

C. If an informal conference is held under 19.8.11.1103 NMAC, the director shall give his written findings to the permit applicant and to each person who is party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.

D. If no such informal conference, pursuant to Subsections A through D of 19.8.11.1103 NMAC, has been held, the director shall give his written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

E. Simultaneously, the director shall:

(1) give a copy of his decision to:

(a) each person and government official who filed a written objection or comment with respect to the application; and

(b) the regional director of the office of surface mining together with a copy of any permit issued by the director; and

(2) publish a summary of his decision in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations.

F. Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with 19.8.9.14 NMAC, the director shall notify the county clerk of the county where the land to be mined is located that a permit has been issued. The notice shall describe the location of the permit area.

[11-29-97; 19.8.11.1109 NMAC - Rn, 19 NMAC 8.2.11.1109, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1110 IMPROVIDENTLY ISSUED PERMITS: RESCISSION PROCESS: When the director, according to Paragraph (4) of Subsection E of 19.8.11.1107 NMAC, elects to rescind an improvidently issued permit, the director shall serve on the permittee a notice of suspension and rescission which includes the reasons for the finding of the director under Subsection B of 19.8.11.1107 NMAC and states that:

A. automatic suspension and rescission: after a specified period of time, not to exceed 90 days, the permit automatically will be suspended; the permit shall be rescinded within, but not to exceed, 90 days after such suspension, unless the permittee submits proof, and the director finds, within the 90 day period, consistent with the provisions of 19.8.11.1118 NMAC, that:

(1) the director's findings under Subsection B of 19.8.11.1107 NMAC were erroneous;

(2) the permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) the violation, penalty or fee is the subject of good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

B. cessation of operations: after permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the director.

[11-29-97; 19.8.11.1110 NMAC - Rn, 19 NMAC 8.2.11.1110, 9-29-2000; A, 4-28-2006]

19.8.11.1111 PERMIT TERMS:

A. Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if:

(1) the application is full and complete for the specified longer term; and
(2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

B. Due diligence.

(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The director may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

(a) litigation precludes the commencement or threatens substantial economic loss to the permittee, or

(b) there are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the director under Paragraph (2) of Subsection B of 19.8.11.1111 NMAC shall be specifically set forth in the permit and notice of the extension shall be made to the public.

C. Permits may be suspended, revoked, or modified by the director in accordance with 19.8.10.1000, 1002, 1003 and 1005 NMAC, 19.8.13.1300 NMAC and 19.8.29 through 19.8.31 NMAC.

[11-29-97; 19.8.11.1111 NMAC - Rn, 19 NMAC 8.2.11.1111, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1112 CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY: Each permit issued by the director shall ensure that:

A. except to the extent that the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

B. the permittee shall allow the authorized representatives of the secretary of the U.S. department of interior, including, but not limited to, inspectors and fee compliance officers and the director to have the rights of entry provided for in 19.8.29.2900 NMAC; and be accompanied by private persons for the purpose of conducting an inspection in accordance with 19.8.29 NMAC, when the inspection is in response to an alleged violation reported to the director by the private person;

C. the permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 19.8.8 and 19.8.9 NMAC and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to 19.8.14 NMAC;

D. at least 10 days prior to initial surface disturbance, the permittee shall notify the director, in writing, of his intentions to begin operations;

E. the operator shall pay all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 for coal produced under the permit for sale, transfer or use in the manner required by that section.

[11-29-97; 19.8.11.1112 NMAC - Rn, 19 NMAC 8.2.11.1112, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1113 CONDITIONS OF PERMITS: ENVIRONMENT, PUBLIC HEALTH AND SAFETY:

Each permit issued by the director shall ensure and contain specific conditions requiring that:

A. the permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(1) any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) immediate implementation of measures necessary to comply; and

(3) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;

B. the permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 19.8.19 through 19.8.28 NMAC, the act, and these rules and regulations, and which prevent violation of any other applicable state or federal law;

C. the permittee shall conduct his operations:

(1) in accordance with any measure specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

(2) utilizing any methods specified in the permit by the director in approving alternative methods of compliance with the performance standards of the act and these rules and regulations, in accordance with the provisions of the act, Subsection M of 19.8.11.1106 NMAC and 19.8.19 through 19.8.28 NMAC.

[11-29-97; 19.8.11.1113 NMAC - Rn, 19 NMAC 8.2.11.1113, 9-29-2000; A, 4-28-2006]

19.8.11.1114 CONFORMANCE OF PERMIT: The director shall include in the approved permit the following provision: The permittee has expressly undertaken in this permit application to comply with various performance standards and design criteria presently contained in or derived from the New Mexico coal surface mining regulations. Such undertakings are made upon the condition and with the understanding that any amendments to 19.8.11 NMAC shall entitle the permittee to apply for and receive a review of the related permit provision for the purpose of conforming the permit to the amended state regulations or making other appropriate permit amendments. The permittee and the mining and minerals division shall meet within 30 days of request by the permittee or notice by the director for the purpose of considering such amendments to the permit as are appropriate. [11-29-97; 19.8.11.1114 NMAC - Rn, 19 NMAC 8.2.11.1114, 9-29-2000; A, 4-28-2006; A, 08-31-2010]

19.8.11.1115 VERIFICATION OF OWNERSHIP OR CONTROL APPLICATION INFORMATION:

A. In accordance with Subsection E of 19.8.11.1105 NMAC, prior to the issuance of a permit, the director shall review the information in the application provided pursuant to 19.8.7.701 NMAC to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the director shall compare the information provided in the application with information from other reasonably available sources, including:

(1) the director's inspection and enforcement records; and

(2) state corporation commission or tax records, to the extent they contain information concerning ownership or control links; and

(3) the applicant/violator system; and

(4) other information or records that may be available to the director.

B. If it appears from the information provided in the application pursuant to Subsections C and D of 19.8.7.701 NMAC that none of the persons identified in the application has had any previous mining experience, the director shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

C. If, as a result of the review conducted under Subsections A and B of 19.8.11.1115 NMAC, the director identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of:

(1) an amendment to the application; or

(2) a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists; the director shall also take action in accordance with the provisions of 19.8.30 NMAC, where appropriate.

D. Upon completion of the review conducted under this section, the director shall promptly enter into or update all ownership or control information on AVS.

[11-29-97; 19.8.11.1115 NMAC - Rn, 19 NMAC 8.2.11.1115, 9-29-2000; A, 4-28-2006]

19.8.11.1116 REVIEW OF OWNERSHIP OR CONTROL AND VIOLATION INFORMATION:

A. Following the verification of ownership or control information pursuant to 19.8.11.1115 NMAC, the director shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under 19.8.7.702 NMAC. Such information shall include:

(1) with respect to ownership or control links involving the applicant, all information obtained under 19.8.11.1115 NMAC and 19.8.7.701 NMAC; and

(2) with respect to violation notices, all information obtained under 19.8.7.702 NMAC, information obtained from OSM, including information shown in the AVS, and information from the director's own records concerning violation notices.

B. If the review conducted under Subsection A of 19.8.11.1116 NMAC discloses any ownership or control link between the applicant and any person cited in a violation notice:

(1) the director shall so notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and

(2) the director shall not approve the application unless and until it determines, in accordance with the provisions of 19.8.11.1117 and 1118 NMAC, that:

(a) all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted; or

(b) the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

C. Following the director's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the application, the director shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[11-29-97; 19.8.11.1116 NMAC - Rn, 19 NMAC 8.2.11.1116, 9-29-2000; A, 4-28-2006]

19.8.11.1117 PROCEDURES FOR CHALLENGING OWNERSHIP OR CONTROL LINKS SHOWN IN AVS:

A. Challenging AVS linkage and violation status.

(1) Any applicant or other person shown in AVS in an ownership or control link to any person may challenge such link in accordance with the provisions of Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the link.

(2) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a federal violation notice may challenge the status of the violation such notice covers in accordance with the provisions of Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the violation's status.

(3) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a state violation notice may challenge the status of the violation covered by such notice in accordance with the state program equivalents to Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC for the state that issued the violation notice, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the violation's status.

B. Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or a federal violation's status, and who is eligible to do so under the provisions of Paragraphs (1) or (2) of Subsection A of 19.8.11.1117 NMAC, shall submit a written explanation of the challenge's basis, along with any relevant evidentiary materials and supporting documents, to the director.

C. The director shall review any information the applicant or other person submitted under Subsection B of 19.8.11.1117 NMAC and shall make a written decision whether or not the applicant or other person has shown the ownership or control link is erroneous or rebutted or whether the violation the notice covers remains outstanding, has been corrected, is in the process of being corrected or is the subject of a good faith appeal within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Notification of decision.

(1) If, as a result of the decision the director reached under Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has shown the ownership or control link is erroneous or rebutted or that the violation the notice covers has been corrected, is in the process of being corrected or is the subject of a good faith appeal, the director shall so notify the applicant or other person and OSM, and shall correct the information in AVS.

(2) If, as a result of the decision the director reached under Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has not shown the ownership or control link is erroneous or rebutted and that the violation the notice covers remains outstanding, the director shall so notify the applicant or other person and OSM, and update the information in AVS, if necessary.

(a) The director shall serve a copy of the decision on the applicant or other person by certified mail. Service shall be complete upon the notice or mail's tender and shall not be deemed incomplete because of a refusal to accept.

(b) The applicant or other person may appeal the director's decision in accordance with 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency, unless the district court grants temporary relief.

[11-29-97; 19.8.11.1117 NMAC - Rn, 19 NMAC 8.2.11.1117, 9-29-2000; A, 4-28-2006]

19.8.11.1118 STANDARDS FOR CHALLENGING OWNERSHIP OR CONTROL LINKS AND THE STATUS OF VIOLATIONS:

A. The provisions of this section shall apply whenever a person has and exercises a right, under the provisions of 19.8.11.1107, 1110, 1116, or 1117 NMAC or under the provisions of 19.8.12 NMAC, to challenge (1) an ownership or control link to any person and/or (2) the status of any violation covered by a notice.

B. Responsibility for decision-making.

(1) Except as provided in Paragraph (3) of Subsection B of 19.8.11.1118 NMAC:

(a) the director before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application;

(b) the director that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit;

(c) the state director for the state that issued a state violation notice shall have responsibility for making decisions with respect to the ownership or control relationships of the violation;

(d) the regulatory agency that issued a violation notice, whether state or federal, shall have responsibility for making decisions concerning the status of the violation covered by such notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

(2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.

(3) OSM review.

(a) With respect to information shown on AVS, the responsibilities referred to in Paragraph (1) of Subsection B of 19.8.11.1118 NMAC shall be subject to the plenary authority of OSM to review any state regulatory authority decision regarding an ownership or control link.

(b) With respect to ownership or control information which has not been entered into AVS by a state and with respect to information shown on AVS relating to the status of a violation, state regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR Parts 733, 842, and 843.

C. Burden of proof.

(1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the person challenging such link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period:

(a) that the facts relied upon by the responsible agency to establish ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC or a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC, do not or did not exist;

(b) that a person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or

(c) that the violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; provided that the existence of the violation at the time it was cited may not be challenged under the provisions of 19.8.11.1117 NMAC by a permittee, unless such challenge is made by the permittee within the context of 19.8.11.1108 and 1110 NMAC; by any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or by any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

(2) In meeting the burden of proof set forth in Paragraph (1) of Subsection C of 19.8.11.1118 NMAC, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include before the responsible agency:

(a) affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation;

(b) if certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(c) if certified, copies of documents filed with or issued by any state, municipal, or federal governmental agency;

(d) an opinion of counsel, when supported by (1) evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(3) Before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.

D. Following any determination by a state director or other state agency, or any decision by an administrative or judicial tribunal reviewing such determination, the director shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the director shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

[11-29-97; 19.8.11.1118 NMAC - Rn, 19 NMAC 8.2.11.1118, 9-29-2000; A, 4-28-2006]

19.8.11.1119 POST-PERMIT ISSUANCE REQUIREMENTS AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL AND VIOLATION INFORMATION:

A. For the purposes of future permit eligibility determinations and enforcement actions, the director shall enter into AVS all:

(1) permit records, within 30 days after the permit is issued or subsequent changes made;

(2) unabated or uncorrected violations, within 30 days after the abatement or correction period for a violation expires;

(3) changes to information initially required to be provided by an applicant under 19.8.7.701 NMAC, within 30 days of receiving notice of a change; and

(4) changes in violation status, within 30 days after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

B. If, at any time, the director discovers that any person owns or controls an operation with an unabated or uncorrected violation, the director will determine whether enforcement action is appropriate under 19.8.31.3109 NMAC. The director shall enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

C. The director shall serve a preliminary finding of permanent permit ineligibility under Subsection C of Section 69-25A-14 NMSA 1978 on an applicant or operator, if the criteria in Paragraphs (1) and (2) of Subsection C of 19.8.11.1119 NMAC are met. In making a finding under this subsection, the director will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under Subsection C of 19.8.11.1105 NMAC or Subsection I of 19.8.11.1106 NMAC. The director shall make a preliminary finding of permanent permit ineligibility if it finds that:

(1) the applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under Subsection C of Section 69-25A-14 NMSA 1978; and

(2) the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant's or operator's intent not to comply with the act, its implementing regulations, the regulatory program, or the permit.

D. The applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility as stated in Subsection E of 19.8.11.1105 NMAC.

E. Entry into AVS.

(1) If the applicant or operator does not request a hearing, and the time for seeking a hearing has expired, the director shall enter its finding into AVS.

(2) If the applicant or operator requests a hearing, the director shall enter its finding into AVS only if that finding is upheld on administrative appeal.

F. At any time, the director may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the director identifies such a person, the director shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The director's written preliminary finding shall be based on evidence sufficient to establish a prima facie case of ownership or control.

G. After the director issues a written preliminary finding under Subsection F of 19.8.11.1119 NMAC, the director shall allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate the person's lack of ownership or control. If, after reviewing any information the person submits, the director is persuaded that the person is not an owner or controller, the director shall serve the person a written notice to that effect. If, after reviewing any information the person submits, the director still finds that the person is an owner or controller, or if the person does not submit any information within the 30-day period, the director shall issue a written finding and enter its finding into AVS.

H. If the director identifies the person subject to the preliminary finding as an owner or controller under Subsection G of 19.8.11.1119 NMAC, the person may challenge the finding as provided in 19.8.11.1117 and 1118 NMAC.

[19.8.11.1119 NMAC - N, 08-31-2010]

19.8.11.1120 POST-PERMIT ISSUANCE INFORMATION REQUIREMENTS FOR PERMITTEES:

A. Within 30 days after the issuance of a cessation order in accordance with 19.8.30.3000 NMAC, or a federal cessation order issued in accordance with 30 CFR 843.11, the permittee must provide or update all the information required under Subsection C and D of 19.8.7.701 NMAC.

B. The permittee does not have to submit information under Subsection A of 19.8.11.1120 NMAC if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

C. Within 60 days of any addition, departure, or change in position of any person identified in Subsections C or D of 19.8.7.701 NMAC, the permittee must provide:

(1) the information required under Subsections C or D of 19.8.7.701 NMAC; and

(2) the date of any departure.

[19.8.11.1120 NMAC - N, 08-31-2010]

19.8.11.1121 CERTIFYING AND UPDATING EXISTING PERMIT APPLICATION INFORMATION:

A. If the applicant or operator has previously applied for a permit and the required information is already in AVS, then the applicant or operator may update the information as follows:

(1) if all or part of the information already in AVS is accurate and complete, then the applicant or operator may certify to the director by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date;

(2) if part of the information in AVS is missing or incorrect, the applicant or operator must submit to the director the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant or operator submitted is accurate and complete;

(3) if the applicant or operator can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant or operator must include in his or her permit application the information required under 19.8.7.701 and 702 NMAC.

B. The applicant or operator must swear or affirm, under oath and in writing, that all information he or she provides in an application is accurate and complete.

C. The director may establish a central file to house the applicant's or operator's identity information, rather than place duplicate information in each permit application file. The director shall make the information available to the public upon request.

D. After the director approves an application, but before the director issues a permit, the applicant or operator must update, correct, or indicate that no change has occurred in the information previously submitted under 19.8.7.701 and 702 NMAC and 19.8.11.1121 NMAC.

[19.8.11.1121 NMAC - N, 08-31-2010]

HISTORY OF 19.8.11 NMAC:

Pre-NMAC History:

The material in Part 11 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 11-29-1997.

Renumbered 19 NMAC 8.2 Subpart 11 Review, Public Participation, and Approval or Disapproval of Permit Applications, Terms and Conditions (filed 11-13-97) to 19.8.11 NMAC Review, Public Participation, and Approval or Disapproval of Permit Applications, Terms and Conditions, effective 09-29-2000.