

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 8 COAL MINING
PART 13 PERMIT REVIEWS, REVISIONS AND RENEWALS, AND TRANSFER, SALE AND
ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

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

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

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

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

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

19.8.13.6 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.
[19.8.13.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

19.8.13.8 - 19.8.13.1299 [RESERVED]
[19.8.13.8 - 19.8.13.1299 NMAC - N, 9-29-2000]

19.8.13.1300 DIRECTOR'S REVIEW OF OUTSTANDING PERMITS:

A. The director shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 19.8.10.1000, 1001, 1003 and 1005 NMAC.

B. For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

C. Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the director at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. Copies of the decision of the director shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of 19.8.12 NMAC.

D. The director may, by order, require reasonable revisions or modification of the permit provisions to ensure compliance with the act and 19.8 NMAC.

E. Copies of the decision of the director shall be sent to the permittee.

F. Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of decisions in 19.8.12 NMAC.
[11-29-97; 19.8.13.1300 NMAC - Rn, 19 NMAC 8.2.13.1300, 9-29-2000; A, 7-30-2004]

19.8.13.1301 PERMIT REVISIONS:

A. A revision to a permit shall be obtained:
(1) for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the

method of conducting mining or reclamation operations contemplated by the original permit; significant departures as used herein include, but are not limited to:

- (a) significant changes in the permit area boundary;
 - (b) changes in the method of extracting coal from the earth (e.g. change from surface to underground mine);
 - (c) experimental practices as that term is used in 19.8.10 NMAC and Section 69-25A-33 NMSA 1978 of the act;
 - (d) changes which would require a variance under 19.8.10.1003 NMAC;
 - (e) changes which may have an adverse effect on the environment of a nature not originally covered by the approved permit; or
 - (f) changes which may have an effect on performance bond requirements.
- (2) when required by an order issued under 19.8.13.1300 NMAC;
- (3) in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability or self-insurance performance bond, or other equivalent guarantee upon which the original permit was issued; or
- (4) as otherwise required by the act and 19.8 NMAC.

B. A permit modification shall be obtained for all other changes to a permit that are not classified as a permit revision.

C. The operator may not implement any permit revision or permit modification before obtaining the director's written approval.

D. The application for revision shall be filed in accordance with the following:

(1) the permittee shall submit the application to the director within the time provided for in Paragraph (2) of Subsection B of 19.8.5.504 NMAC;

(2) applications for all types of revisions of a permit shall contain:

- (a) an identification of the permit by permit number or other appropriate reference which is the subject of the revision;
- (b) a specific description of the requested change in the terms of the permit;
- (c) a specific description of any changes in the mining and reclamation operation which may have an effect on performance bond requirements; and
- (d) such other information as may be deemed necessary to the director to determine if the proposed revision will comply with the act and 19.8 NMAC.

E. Hearing and notice requirements.

(1) Permit revision. Any application for a revision shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC.

(2) Permit modification.

(a) Within 10 days after the filing of a complete application for a permit modification, the director shall issue a decision approving or denying the application in whole or in part. A written copy of the decision shall be promptly provided to the permittee and to all persons on a list maintained by the director who have requested notice of applications under the act for the specific permit being modified.

(b) Within 30 days after the decision notification required by Subparagraph (a) of Paragraph (2) of Subsection E of 19.8.1301 NMAC, the permittee or any person with an interest which is or may be adversely affected may request a formal hearing in regard to the director's decision, in accordance with 19.8.12.1200 NMAC.

F. An application for a permit revision shall be reviewed by the director to determine whether a new or updated determination of the probable hydrologic consequences as described in Subsection C of 19.8.9.907 NMAC or a new or updated assessment of the probable cumulative impacts as described in Subsection C of 19.8.11.1106 NMAC shall be required.

G. Any revisions which propose significant departures in the experimental practice shall require concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

H. The director shall approve or disapprove the complete application for revision, in accordance with the requirements of 19.8.11 NMAC and Subsection B of 19.8.5.504 NMAC.

I. Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this part.

[11-29-97; 19.8.13.1301 NMAC - Rn, 19 NMAC 8.2.13.1301, 9-29-2000; A, 7-30-2004; A, 12-31-2007]

19.8.13.1302 PERMIT RENEWALS: GENERAL REQUIREMENTS:

A. Any valid, existing permit issued pursuant to the act and 19.8 NMAC shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with 19.8.13.1303 through 1305 NMAC. Successive renewal shall be available only for those areas which were specifically approved by the director on the application for the existing permit as within the boundaries of the permit.

B. Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the mine plan area described in the application for the existing permit, shall be obtained in accordance with Paragraph (2) of Subsection B of 19.8.13.1303 NMAC.

[11-29-97; 19.8.13.1302 NMAC - Rn, 19 NMAC 8.2.13.1302, 9-29-2000]

19.8.13.1303 PERMIT RENEWALS: COMPLETE APPLICATIONS:

A. Contents. Complete applications for renewals of a permit shall be made at least 120 days before the expiration of the permit involved. Renewal applications shall include at a minimum:

(1) a statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

(2) a copy of the newspaper notice and proof of publication of same under Subsection A of 19.8.11.1100 NMAC; and

(3) evidence that liability insurance policy or adequate self-insurance under 19.8.14.1414 NMAC will be provided by the applicant for the proposed period of renewal.

B. Processing and review.

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 19.8.11.1100 through 1103 NMAC.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the act, 19.8.5 NMAC, 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, 19.8.10 NMAC, 19.8.11 NMAC, 19.8.12 NMAC, 19.8.13 NMAC, 19.8.14 NMAC.

(3) If the surface coal mining reclamation operations authorized under the original permit were not subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC, because the permittee complied with the exceptions to Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to 19.8.9 NMAC for the original permit shall not be subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC.

(4) Before finally acting to grant the permit renewal, the director shall require any additional performance bond needed by the permittee to comply with the requirements of Paragraph (4) of Subsection A of 19.8.13.1305 NMAC to be filed with the director.

[11-29-97; 19.8.13.1303 NMAC - Rn, 19 NMAC 8.2.13.1303, 9-29-2000; A, 12-31-2007]

19.8.13.1304 PERMIT RENEWALS: TERMS: Any permit renewal shall be for a term not to exceed the period of the original permit established under 19.8.11.1111 NMAC.

[11-29-97; 19.8.13.1304 NMAC - Rn, 19 NMAC 8.2.13.1304, 9-29-2000]

19.8.13.1305 PERMIT RENEWALS: APPROVAL OR DENIAL:

A. The director shall, upon the basis of a complete application for renewal and completion of all procedures required under 19.8.13.1303 and 1304 NMAC, issue a renewal of a permit, unless it is established and written findings by the director are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under the act and 19.8.19 NMAC through 19.8.28 NMAC;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the act and 19.8 NMAC on existing permit areas;

(4) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the director might require pursuant to 19.8.14 NMAC; or

(5) any additional revised or updated information required by the director has not been provided by the applicant.

B. In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

C. The director shall send copies of his decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

D. Any person having an interest which is or may be adversely affected by the decision of the director shall have the right to administrative and judicial review set forth in 19.8.12 NMAC. [11-29-97; 19.8.13.1305 NMAC - Rn, 19 NMAC 8.2.13.1305, 9-29-2000; A, 12-31-2007]

19.8.13.1306 TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS: GENERAL

REQUIREMENTS: No transfer, assignment, or sale of the rights granted under any permit issued pursuant to the act and 19.8 NMAC shall be made without the prior written approval of the director, in accordance with 19.8.13.1306 through 1308 NMAC.

[11-29-97; 19.8.13.1306 NMAC - Rn, 19 NMAC 8.2.13.1306, 9-29-2000]

19.8.13.1307 TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS: OBTAINING APPROVAL:

A. Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued shall, pursuant to the act and 19.8 NMAC, prior to the date of such transfer, assignment or sale:

(1) obtain the performance bond coverage of the original permittee by:

(a) obtaining transfer of the original bond;

(b) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the director. If such an agreement is reached, the director may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(c) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(d) such other methods as would provide that reclamation of all areas affected by the original permittee is assured in an amount required by 19.8.14 NMAC.

(2) provide the director with an application for approval of such proposed transfer, assignment, or sale, including:

(a) the name and address of the existing permittee;

(b) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;

(c) for surface mining activities, the same information as is required by 19.8.7.701, 702, 703, 704.C, 706 and 707 NMAC for applications for new permits for those activities; or

(d) for underground mining activities, the same information as is required by Subparagraph (c) of Paragraph (2) of Subsection A of 19.8.13.1307 NMAC for applications for new permits for those activities.

(3) obtain the written approval of the director for transfer, assignment or sale of rights according to Subsection C of 19.8.13.1307 NMAC.

B. Public notice and comment period.

(1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state, tribal or federal government agency may submit written comments on the application for approval to the director within 30 days.

C. The director may, upon the basis of the applicant's compliance with the requirements of Subsections A and B of 19.8.13.1307 NMAC, grant written approval for the transfer, sale, or assignment of rights under a permit, if he first finds, in writing, that:

(1) the person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in the act, 19.8.10 NMAC and 19.8.11.1106 through 1108 NMAC.

(2) the applicant has, in accordance with Paragraph (1) of Subsection A of 19.8.13.1307 NMAC, submitted a performance bond or other guarantee as required by 19.8.14 NMAC and at least equivalent to the bond or other guarantee of the original permittee; and

(3) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until he has obtained a new permit or a revised permit in accordance with the act and 19.8 NMAC.

(4) the applicant is eligible to receive a permit in accordance with Subsection C of 19.8.11.1105 NMAC.

D. The director shall notify the permittee, the successor in interest, commenters and the director of the office of surface mining of his findings.

E. The successor in interest shall immediately provide notice to the director of the consummation of the transfer, assignment or sale of permit rights.

[11-29-97; 19.8.13.1307 NMAC - Rn, 19 NMAC 8.2.13.1307, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.13.1308 REQUIREMENTS FOR NEW PERMITS FOR PERSONS SUCCEEDING TO RIGHTS GRANTED UNDER A PERMIT:

A. A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

B. Pursuant to Paragraph (3) of Subsection C of 19.8.13.1307 NMAC, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:

(1) make application for a new permit under 19.8.5 NMAC through 19.8.12 NMAC, if the change involves conducting operations outside the original permit area; or

(2) make application for a revised permit under 19.8.13.1301 NMAC.

[11-29-97; 19.8.13.1308 NMAC - Rn, 19 NMAC 8.2.13.1308, 9-29-2000]

HISTORY OF 19.8.13 NMAC:

Pre-NMAC History:

The material in Part 13 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:

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

Renumbered 19 NMAC 8.2 Subpart 13 Permit Reviews, Revisions and Renewals, and Transfer, Sale and Assignment of Rights Granted Under Permits (filed 11-13-97), to 19.8.13 NMAC Permit Reviews, Revisions and Renewals, and Transfer, Sale and Assignment of Rights Granted Under Permits, effective 09-29-2000.