

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 8 COAL MINING
PART 14 GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND RECLAMATION OPERATIONS

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

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

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

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

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

19.8.14.6 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.
[19.8.14.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

19.8.14.8 - 19.8.14.1399 [RESERVED]
[19.8.14.8 - 19.8.14.1399 NMAC - N, 9-29-2000]

19.8.14.1400 PROPOSAL FOR BOND:

A. The applicant shall provide a bonding proposal to the director for review and comment following approval of the permit application but prior to permit issuance. The proposal shall include all information required by this part relating to the nature of bond proposed, including a recommendation as to the margin required in Paragraph (1) of Subsection E of 19.8.14.1409 NMAC.

B. The director shall review and accept or reject such proposal within 60 days of receipt of the proposal. Such determination shall be in writing and shall contain the reasons for the director's determination.
[11-29-97; 19.8.14.1400 NMAC - Rn, 19 NMAC 8.2.14.1400, 9-29-2000]

19.8.14.1401 REQUIREMENT TO FILE A BOND:

A. After a permit application under 19.8.5 NMAC through 19.8.13 NMAC has been approved, but before a permit is issued, the applicant shall file with the director, on a form prescribed and furnished by the director, a bond or bonds for performance made payable to the state of New Mexico and conditioned upon the faithful performance of all the requirements of the act, the regulatory program, the permit, and the reclamation plan.

B. Bond coverage requirements.

(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) Before surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover such increments in accordance with this section.

(3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under 19.8.5 NMAC through 19.8.13 NMAC), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the director become necessary pursuant to 19.8.14.1414 NMAC.

C. An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the director of the required performance bond.

D. The applicant shall file, with the approval of the director, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with 19.8.14.1404 NMAC:

(1) a performance bond or bonds for the entire permit area;

(2) a cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) an incremental bond schedule and the performance bond required for the first increment in the schedule.

[11-29-97; 19.8.14.1401 NMAC - Rn, 19 NMAC 8.2.14.1401, 9-29-2000; A, 12-31-2007]

19.8.14.1402 FORM OF THE PERFORMANCE BOND: The director shall prescribe the form of the performance bond. The director may allow for:

A. a surety bond;

B. a collateral bond;

C. a self-bond; or

D. a combination of any of these bonding methods.

[11-29-97; 19.8.14.1402 NMAC - Rn, 19 NMAC 8.2.14.1402, 9-29-2000]

19.8.14.1403 PERIOD OF LIABILITY:

A. Duration and phased bonding option.

(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in 19.8.20.2065 NMAC or until achievement of the reclamation requirements of the act, regulatory programs, and permit, whichever is later.

(2) With the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under 19.8.14.1405 and 1406 NMAC. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

B. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the director. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the director.

C. If the director approves a long-term, intensive agricultural post-mining land use, in accordance with Subparagraph (c) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

D. Bond liability limitations.

(1) The bond liability of the permittee shall include only those actions which the permittee is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 19.8.20.2075 NMAC.

(2) Implementation of an alternative postmining land use approved under 19.8.20.2075 NMAC which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in Paragraph (2) of Subsection C of 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1403 NMAC - Rn, 19 NMAC 8.2.14.1403, 9-29-2000; A, 12-31-2007]

19.8.14.1404 DETERMINATION OF BOND AMOUNT:

A. The amount of the bond required for each bonded area shall:

(1) be determined by the director;

(2) depend upon the requirements of the approved permit and reclamation plan;

(3) reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) be based on, but not limited to, the estimated cost submitted by the permit applicant.

B. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the state of New Mexico in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than \$10,000.

C. An operator's financial responsibility under 19.8.20.2069 and 2070 NMAC for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under 19.8.14.1415 NMAC.

[11-29-97; 19.8.14.1404 NMAC - Rn, 19 NMAC 8.2.14.1404, 9-29-2000]

19.8.14.1405 ADJUSTMENT OF AMOUNT:

A. The amount of the bond or deposit required and the terms of the acceptance of the permittee's bond shall be adjusted by the director from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The director may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

B. The director shall:

(1) notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Subsection F of 19.8.14.1410 NMAC of any proposed adjustment to the bond amount; and

(2) provide the permittee an opportunity for an informal conference on the adjustment.

C. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the director proving that the permittee's method of operation or other circumstances reduces the estimated cost for the state of New Mexico to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of 19.8.14.1413 NMAC.

D. In the event that an approved permit is revised in accordance with 19.8.5 NMAC through 19.8.13 NMAC, the director shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

[11-29-97; 19.8.14.1405 NMAC - Rn, 19 NMAC 8.2.14.1405, 9-29-2000]

19.8.14.1406 GENERAL TERMS AND CONDITIONS OF BOND:

A. The performance bond shall be in an amount determined by the director as provided in 19.8.14.1405 NMAC.

B. The performance bond shall be payable to the state of New Mexico.

C. The performance bond shall be conditioned upon faithful performance of all the requirements of the act, 19.8.14 NMAC, the regulatory program, and the approved permit, including completion of the reclamation plan.

D. The duration of the bond shall be for the time period provided in 19.8.14.1403 NMAC.

E. Insolvency or bankruptcy.

(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the director. The director, upon notification received through procedures of Paragraph (1) of Subsection E of 19.8.14.1406 NMAC or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of 19.8.20.2074 NMAC and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the director has determined that an acceptable bond has been posted.

[11-29-97; 19.8.14.1406 NMAC - Rn, 19 NMAC 8.2.14.1406, 9-29-2000; A, 12-31-2007]

19.8.14.1407 BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES AND LONG-TERM COAL-RELATED SURFACE FACILITIES AND STRUCTURES:

A. Responsibilities. The director shall require bond coverage, in an amount determined under 19.8.14.1404 NMAC, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to under-ground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

B. Long-term period of liability.

(1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of 19.8.14.1412 NMAC, or until the bond has been replaced or extended in accordance with Paragraph (3) of Subsection B of 19.8.14.1407 NMAC.

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of 19.8.14.1412 NMAC have been met.

C. Bond forfeiture. The director shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed:

(1) a performance bond for a new term as required for continuous coverage, or

(2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

[11-29-97; 19.8.14.1407 NMAC - Rn, 19 NMAC 8.2.14.1407, 9-29-2000; A, 12-31-2007]

19.8.14.1408 SURETY BONDS:

A. A surety bond shall be executed by the operator and a corporate surety licensed to do business in the state.

B. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the director. The director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area. [11-29-97; 19.8.14.1408 NMAC - Rn, 19 NMAC 8.2.14.1408, 9-29-2000]

19.8.14.1409 COLLATERAL BONDS:

A. Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) the director shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in 19.8.14 NMAC;

(2) the director shall value collateral at its current market value, not at face value;

(3) the director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates; if assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

(4) the director shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

B. Letters of credit shall be subject to the following conditions:

(1) the letter may be issued only by a bank organized or authorized to do business in the United States;

(2) letters of credit shall be irrevocable during their terms; a letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(3) the letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with 19.8.14.1413 NMAC.

C. Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.8.14.1414 NMAC.

(2) In order for the director to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include:

(a) a description of the property;

(b) the fair market value as determined by an independent appraisal conducted by a qualified appraiser, previously approved by the director; and

(c) proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

D. Cash accounts shall be subject to the following conditions:

(1) the director may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico; the total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with 19.8.14.1412 NMAC;

(2) any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the director has approved the payment of interest to the operator;

(3) certificates of deposit may be substituted for a cash account with the approval of the director;

(4) the director shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

E. Fluctuating collateral value.

(1) If the nature of the collateral proposed to be given as security for a bond is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the bond amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated as probable of occurrence over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral.

(2) The annual report shall report percentage changes in the fair market value of any collateral accepted by the director pursuant to this subsection since the time of the last report.

(3) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

F. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the director at the time collateral is offered.

[11-29-97; 19.8.14.1409 NMAC - Rn, 19 NMAC 8.2.14.1409, 9-29-2000; A, 12-31-2007]

19.8.14.1410 SELF-BONDING:

A. The director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant, or its parent corporation guarantor:

(1) the applicant designates a suitable agent to receive service of process in the state.

(2) the applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(a) The director may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(b) When calculating the period of continuous operation, the director may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(a) the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's investor service or Standard and Poor's corporation;

(b) the applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(c) the applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(a) financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(b) unaudited financial statements for completed quarters in the current fiscal year; and

(c) additional unaudited information as requested by the director.

B. The director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (1) through (4) of Subsection A of 19.8.14.1410 NMAC as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) if the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the state of New Mexico sufficient to complete the reclamation plan, but not to exceed the bond amount;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least 90 days in advance of the cancellation date, and the director accepts the cancellation;

(3) the cancellation may be accepted by the director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

C. For the director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

D. If the director accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) the indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally;

(2) corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations; a copy of such authorization shall be provided to the director along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws; in addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement;

(3) if the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

(4) pursuant to 19.8.14.1413 NMAC, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the state of New Mexico an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

E. The director may require self-bonded applicants and corporate guarantors to submit an update of the information required under Paragraphs (3) and (4) of Subsection A of 19.8.14.1410 NMAC within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of Paragraph (3) of Subsection A of 19.8.14.1410 NMAC and Subsection C of 19.8.14.1410 NMAC are not satisfied, the permittee shall notify the director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Subsection E of 19.8.14.1406 NMAC shall apply.

[11-29-97; 19.8.14.1410 NMAC - Rn, 19 NMAC 8.2.14.1410, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1411 REPLACEMENT OF BONDS:

A. The director may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

B. The director shall not release existing performance bonds until the permittee has submitted, and the director has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1411 NMAC - Rn, 19 NMAC 8.2.14.1411, 9-29-2000; A, 12-31-2007]

19.8.14.1412 REQUIREMENT TO RELEASE PERFORMANCE BONDS:

A. Bond release application.

(1) The permittee may file an application with the director for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the director in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the mining and reclamation plan approved by the director.

(2) An application for a bond release shall at a minimum contain the following information:

(a) the permittee's name, address and the appropriate permit number;

(b) an accurate legal description of the land sought for bond release (either metes and bounds or precise section, township and range designations);

(c) the location of the area proposed for bond release shown on a USGS 7.5' map, which should also show the permit boundaries;

(d) a brief narrative summarizing the past history of the mine, the type, amount and date of the current bonding instrument, the number of acres included in the bond release application and the portion it represents of the total permit area, a description of the type and dates of the reclamation performed with a summary of the results achieved as they relate to the approved reclamation plan, and any other pertinent information that the applicant or the director may consider appropriate;

(e) a table listing the names, addresses and number of acres held by each of the surface and mineral owners of record in the area proposed for bond release;

(f) copies of letters sent to adjoining landowners, local governmental bodies, tribal governments, planning agencies, sewage and water treatment authorities, and water companies in the locality of the reclamation operation, notifying them of the permittee's intention to seek bond release; and

(g) other maps or other information as may be appropriate or required by the director to locate or characterize the areas proposed for bond release, revegetation, hydrological or other reclamation issues;

(h) the permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the act, the regulatory program, and the approved reclamation plan; a certification shall be submitted for each application or phase of bond release.

(3) Within 30 days after an application for bond release has been filed with the director, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the director, to whom written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to Subsections F and H of 19.8.14.1412 NMAC.

B. Inspection by director.

(1) Upon receipt of the bond release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the director in making the bond release inspection. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to Subsection F of 19.8.14.1412 NMAC, or, within 30 days after a public hearing has been held pursuant to Subsection F of 19.8.14.1412 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under Subsection F of 19.8.14.1409 NMAC, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

C. The director may release all or part of the bond for the entire permit area or incremental area if the director is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of phases I, II, and III.

(1) At the completion of phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 69-25A-19 NMSA 1978 of the act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Paragraph (10) of Subsection B of Section 69-25A-19 NMSA 1978 of the act and by 19.8.19 NMAC through 19.8.28 NMAC or until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Paragraph (16) of Subsection B of Section 69-25A-10 NMSA 1978 of the act and 19.8.24 NMAC. Where a silt dam is to be retained as a permanent impoundment pursuant to 19.8.19 NMAC through 19.8.28 NMAC, the phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

(3) At the completion of phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 19.8.20.2065 NMAC. However, no bond shall be fully released under provisions of this section until reclamation requirements of the act and the permit are fully met.

D. If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection F of 19.8.14.1409 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

E. When any application for total or partial bond release is filed with the director, the director shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

F. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, tribal or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the director within 30 days after the last publication of the notice required by Paragraph (3) of Subsection A of 19.8.14.1412 NMAC. If written objections are filed and a hearing is requested, the director shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the

locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, or at the location of the director's office, at the option of the objector.

G. For the purpose of the hearing under Subsection F of 19.8.14.1412 NMAC, the director shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion for any party or by order of the director.

H. Without prejudice to the right of an objector or the applicant, the director may hold an informal conference as provided in Subsection B of Section 69-25A-17 NMSA 1978 of the act to resolve such written objections. The director shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The director shall also furnish all parties of the informal conference with a written finding of the director based on the informal conference, and the reasons for said finding.

[11-29-97; 19.8.14.1412 NMAC - Rn, 19 NMAC 8.2.14.1412, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1413 FORFEITURE OF BONDS:

A. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the director shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited; the amount shall be based on the estimated total cost of achieving the reclamation plan requirements;

(2) advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided; such conditions may include, but are not limited to:

(a) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(b) the director may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan; except where the director may approve partial release authorized under 19.8.14.1412 NMAC, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 19.8.14.1403 NMAC.

B. In the event forfeiture of the bond is required by this section, the director shall:

(1) proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the director, or if such appeal, if taken, is unsuccessful;

(2) use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

C. Upon default on the conditions under which the bond was accepted, the director may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in Subsection B of 19.8.14.1401 NMAC, bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Discrepancies between bond amounts and actual costs of reclamation.

(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete, or authorize completion of, reclamation of the bonded area in accordance with the permit terms and may recover from the operator all reasonably incurred costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

[11-29-97; 19.8.14.1413 NMAC - Rn, 19 NMAC 8.2.14.1413, 9-29-2000; A, 12-31-2007]

19.8.14.1414 TERMS AND CONDITIONS FOR LIABILITY INSURANCE:

A. The director shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

B. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under 19.8.14 NMAC.

C. The policy shall include a rider requiring that the insurer notify the director whenever substantive changes are made in the policy including any termination or failure to renew.

D. The director may accept from the applicant, in lieu of a certificate for a public liability insurance policy, a commitment to self-insure for bodily injury and property damage, if the director has approved a self-bond for the applicant in accordance with 19.8.14.1410 NMAC.

[11-29-97; 19.8.14.1414 NMAC - Rn, 19 NMAC 8.2.14.1414, 9-29-2000; A, 12-31-2007]

19.8.14.1415 TERMINATION OF REGULATORY JURISDICTION:

A. The director may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation, or increment thereof, upon a written finding pursuant to Paragraph (3) of Subsection C of 19.8.14.1412 NMAC that all reclamation requirements imposed on the permittee have been successfully completed or the performance bond has been released.

B. The director shall reassert jurisdiction over a site if it is demonstrated that either the bond release or the written finding for termination of jurisdiction are based upon fraud, collusion, or misrepresentation of a material fact.

[NMAC 8.2.14.1415 - N, 1-15-2002]

HISTORY OF 19.8.14 NMAC:

Pre-NMAC History:

The material in Part 14 was derived from that previously filed with the State Records Center and Archives under: SB 73-1 Regulations of the State of New Mexico Coal Surfacing Commission, filed 1-10-73 and its amendment filed 8-4-76

SB 78-1 (Rule 78-1) Regulations of the State of New Mexico Coal Surfacing Commission, filed 8-31-78

SB 79-1 (Rule 79-1) New Mexico Coal Surfacing Regulations, filed 7-11-79

CSMC Rule 80-1 (Rule 80-1) Surface Coal Mining Regulations, filed 9-24-80; and all amendments to CSMC Rule 80-1, filed 7-29-82, 11-10-83, 3-5-84, 7-19-84, filed 8-6-84, 8-23-84, 3-28-89, 6-15-90, 9-18-90, 2-15-91, 5-8-91, 8-26-91, 10-4-91, 7-28-92, 1-25-93, 11-1-94, 3-10-95, 4-12-95, 12-21-95.

Other History:

Renumbered and reformatted CSMC Rule 80-1, Surface Coal Mining Regulations, filed 9-24-80 to 19 NMAC 8.2 Coal Surface Mining, Filed 11-13-97.

Renumbered 19 NMAC 8.2 Subpart 14 General Requirements for Bonding of Surface Coal Mining and Reclamation Operations, filed 11-13-97, to 19.8.14 NMAC General Requirements for Bonding of Surface Coal Mining and Reclamation Operations, effective 09-29-2000.