

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8      COAL MINING**  
**PART 19        PERFORMANCE STANDARDS - COAL EXPLORATION**

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

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

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

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

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

**19.8.19.6        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.  
[19.8.19.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.19.8 - 19.8.19.1899 [RESERVED]**  
[19.8.19.8 - 19.8.19.1899 NMAC - N, 9-29-2000]

**19.8.19.1900    GENERAL RESPONSIBILITY OF PERSONS CONDUCTING COAL EXPLORATION:**  
**A.** Each person who conducts coal exploration which substantially disturbs the natural land surface in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 19.8.6.601 NMAC and shall comply with 19.8.19.1902 NMAC.

**B.** Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the director, shall comply with the procedures described in the exploration and reclamation operations plan approved under 19.8.6.603 NMAC and shall comply with 19.8.19.1902 NMAC.

[11-29-97; 19.8.19.1900 NMAC - Rn, 19 NMAC 8.2.19.1900, 9-29-2000; A, 1-15-2002]

**19.8.19.1901    REQUIRED DOCUMENTS:** Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval from the director for the activities granted under 19.8.6.603 NMAC. The written approval shall be available at the exploration site for review by the director or the office of surface mining upon request.  
[11-29-97; 19.8.19.1901 NMAC - Rn, 19 NMAC 8.2.19.1901, 9-29-2000]

**19.8.19.1902    PERFORMANCE STANDARDS FOR COAL EXPLORATION:** The performance standards in this section are applicable to coal exploration, which substantially disturbs land surface.

**A.** Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in Subsection B of 19.8.9.905 NMAC shall not be disturbed during coal exploration.

**B.** The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to

the area and to provide supportive information for any permit application that person may submit under 19.8.5 NMAC through 19.8.13 NMAC.

**C. Roads and off-road travel.**

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road or other transportation facility shall comply with the provisions of Subsections B through F of 19.8.20.2076 and 19.8.20.2077 and 19.8.20.2078 NMAC.

(3) Existing roads or other transportation facilities may be used for exploration in accordance with the following:

(a) all applicable federal, state, and local requirements shall be met;

(b) if the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Subsection G of 19.8.19.1902 NMAC shall apply to all areas of the road which are altered or which result in such additional contributions;

(c) if the road or other transportation facility is significantly altered for exploration activities, the person conducting exploration shall ensure that the requirements of Subsections B through F of 19.8.20.2076 NMAC and 19.8.20.2077 and 19.8.20.2078 NMAC are met for the design, construction, alteration, and maintenance of the road.

(4) Any road or transportation facility that will be retained after exploration activities are complete shall comply with the applicable provisions of 19.8.20.2076, 2077, 2078 or 2079 NMAC, as applicable. Any road that will not be retained will be promptly reclaimed.

**D.** If excavations, artificial flat areas, or embankments are created during exploration, those areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

**E.** Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the director.

**F.** Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the director and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) all disturbed lands shall be seeded or planted with species of the same aspect native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph;

(2) the vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

**G.** With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area in accordance with 19.8.20.2009 through 2026 NMAC and the pertinent state water quality control commission regulations standards; and

(3) complies with all other applicable state or federal requirements.

**H.** Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 19.8.20.2001 through 2003 NMAC.

**I.** All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the director determines may remain to:

(1) provide additional environmental quality data;

(2) reduce or control the on and off-site effects of the exploration activities; or

(3) facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

**J.** Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as provided in 19.8.20.2013 NMAC of these

rules and regulations and the pertinent state water quality control commission standards or sedimentation ponds which comply with 19.8.20.2014 NMAC. The director may specify additional measures which shall be adopted by the person engaged in coal exploration.

**K.** Toxic or acid-forming materials shall be handled and disposed of in accordance with 19.8.20.2016 and 2056 NMAC. If specified by the director, additional measures shall be adopted by the person engaged in coal exploration.

[11-29-97; 19.8.19.1902 NMAC - Rn, 19 NMAC 8.2.19.1902, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

**19.8.19.1903 REQUIREMENT FOR A PERMIT:**

**A.** Any person who extracts coal for commercial sale or use during coal exploration operations must obtain a permit for those operations from the director under 19.8.5 NMAC through 19.8.13 NMAC.

**B.** With the prior written approval of the director, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the director. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

- (1) the name of the testing firm and the locations at which the coal will be tested.
- (2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user; or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:
  - (a) the specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
  - (b) the amount of coal necessary for the test and why a lesser amount is not sufficient; and
  - (c) a description of the specific tests that will be conducted.
- (3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.
- (4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

[11-29-97; 19.8.19.1903 NMAC - Rn, 19 NMAC 8.2.19.1903, 9-29-2000]

**HISTORY OF 19.8.19 NMAC:**

**Pre-NMAC History:**

The material in Part 19 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 19 Performance Standards - Coal Exploration, filed 11-13-97, to 19.8.19 NMAC Performance Standards - Coal Exploration, effective 09-29-2000