

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 8 COAL MINING
PART 26 SPECIAL PERFORMANCE STANDARDS - OPERATIONS ON STEEP SLOPES

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

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

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

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

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

19.8.26.6 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.
[19.8.26.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

19.8.26.8 - 19.8.26.2599 [RESERVED]
[19.8.26.8 NMAC - 19.8.26.2599 NMAC - N, 9-29-2000]

19.8.26.2600 APPLICABILITY:
A. Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this part.
B. The standards of this part do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 19.8.25 NMAC.
[11-29-97; 19.8.26.2600 NMAC -Rn, 19 NMAC 8.2.26.2600, 9-29-2000]

19.8.26.2601 STEEP SLOPES: PERFORMANCE STANDARDS: Surface coal mining and reclamation operations subject to this part shall comply with requirements of 19.8.5 NMAC and the following, except to the extent a variance is approved under 19.8.26.2602 NMAC.
A. Materials not allowed on downslopes.
(1) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope:
(a) spoil;
(b) waste materials, including waste mineral matter;
(c) debris, including that from clearing the grubbing of haul road construction; and
(d) abandoned or disabled equipment.
(2) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the materials used and embankment design comply with the requirements of 19.8.20.2076 through 2078 NMAC and the material is moved and placed in a controlled manner.
B. The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 19.8.20.2054 through 2059 NMAC including, but not limited to, the return of the site,

to the approximate original contour. The person who conducts the surface coal mining and reclamation operations must demonstrate to the director, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

C. Land above the highwall shall not be disturbed, unless the director finds that the disturbance facilitates compliance with environmental protection standards of this part and the disturbance is limited to that necessary to facilitate compliance.

D. Material in excess of that required by the grading and backfilling provisions of Subsection B of 19.8.26.2601 NMAC shall be disposed of in accordance with the requirements of 19.8.20.2034 through 2037 NMAC.

E. Woody materials shall not be buried in the backfilled area unless the director determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in Subsection B of 19.8.26.2601 NMAC. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the director.

F. Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the director as stable and not subject to erosion.

[11-29-97; 19.8.26.2601 NMAC - Rn, 19 NMAC 8.2.26.2601, 9-29-2000; A, 12-31-2007]

19.8.26.2602 STEEP SLOPES: LIMITED VARIANCES:

Persons may be granted variances from the approximate original contour requirements of Subsection B of 19.8.26.2601 NMAC for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 19.8.10.1003 NMAC.

A. The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

B. The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

C. Land above the highwall may be disturbed only to the extent that the director deems appropriate and approves as necessary to facilitate compliance with the provisions of this part and if the director finds that the disturbance is necessary to:

- (1) blend the solid highwall and the backfilled material;
- (2) control surface runoff; or
- (3) provide access to the area above the highwall.

D. The landowner of the permit area has requested, in writing, as part of the permit application under 19.8.10.1003 NMAC, that the variance be granted.

E. The operations are conducted in full compliance with a permit issued in accordance with 19.8.10.1003 NMAC.

F. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the act and these rules and regulations shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 19.8.20.2034 through 2037 and 2054 and 2055 NMAC.

[11-29-97; 19.8.26.2602 NMAC -Rn, 19 NMAC 8.2.26.2602, 9-29-2000]

19.8.26.2603 STEEP SLOPES: MULTIPLE SEAM:

In multiple-seam steep slope affected areas, spoil not required to reclaim and restore the permit area may be placed on a pre-existing bench, if approved by the director and if the following requirements are met:

A. all excess spoil must be hauled, placed, and retained on the solid bench;

B. the spoil must be graded to the most moderate slope so as to eliminate the existing highwall to the extent possible with the available spoil;

C. the fill must comply with 19.8.20.2034, 2035, or 2036 NMAC and the other requirements of 19.8.19 NMAC through 19.8.28 NMAC;

D. the bench on which the spoil is to be placed must have been created and abandoned due to coal mining prior to August 3, 1977.

[11-29-97; 19.8.26.2603 NMAC - Rn, 19 NMAC 8.2.26.2603, 9-29-2000]

HISTORY OF 19.8.26 NMAC:**Pre-NMAC History:**

The material in Part 26 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, filed 11-13-97.

Renumbered 19 NMAC 8.2 Subpart 26 Special Performance Standards - Operations on Steep Slopes, filed 11-13-97, to 19.8.26 NMAC Special Performance Standards - Operations on Steep Slopes, effective 09-29-2000.