

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8     COAL MINING**  
**PART 29        INSPECTIONS**

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

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

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

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

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

**19.8.29.6        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.  
[19.8.29.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.29.8 - 19.8.29.2899 [RESERVED]**  
[19.8.29.8 - 19.8.29.2899 - N, 9-29-2000]

**19.8.29.2900     INSPECTIONS:**

**A.** The director through his duly authorized representative shall conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of an operator's compliance with some of the permit conditions and requirements under the act and 19.8 NMAC, and includes collection of evidence of any violations observed. Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: Provided that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under 19.8.30.3000 NMAC shall be investigated on site immediately. And provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of this part. A complete inspection is an on-site review of an operator's compliance with all permit conditions and requirements within the entire area disturbed or affected by the operations, and includes collection of evidence with respect to every violation.

**B.** The director, through his duly authorized representative shall conduct periodic inspections of all inactive surface coal mining operations and exploration sites required to comply, in whole or in part, with the act and 19.8 NMAC, including collection of evidence with respect to every violation of any condition of the exploration approval or surface coal mining and reclamation operation permit, or any requirement of this act or 19.8 NMAC. At least one complete inspection per calendar quarter shall be conducted on inactive surface coal mining operations. For purposes of this part, an inactive surface coal mining operation is one for which the director has received the written notice provided for under 19.8.20.2073 NMAC, or reclamation of phase II as defined in Paragraph (2) of Subsection C of 19.8.14.1412 NMAC has been completed.

**C.** Permits issued under 19.8.11 NMAC shall be inspected quarterly until notice required by Subsection D of 19.8.11.1112 NMAC has been received by the director. Upon receipt of notice, or as determined necessary by the director, inspections will be conducted as required under Subsection A of 19.8.29.2900 NMAC.

**D.** The inspections shall be carried out on an irregular basis so as to monitor compliance at all operations, shall occur without prior notice except for necessary on-site meetings and include the prompt filing of inspection reports adequate to enforce the requirements and carry out the terms and conditions of the act and 19.8 NMAC.

**E.** The authorized representatives of the director without advance notice and upon presentation of appropriate credentials:

(1) shall have the right of entry to, upon or through any coal exploration site, surface coal mining and reclamation operations or any premises in which any records required to be maintained under the act or 19.8 NMAC are located; and

(2) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under the act.

**F.** The inspections shall be in accordance with Subsection D of 69-25A-21 and Subsection E of 69-25A-25 NMSA 1978 of the act, except that a search warrant is required to enter a building to inspect if the permittee or operator does not consent to entry.

**G.** "Abandoned site" means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or OSM has issued at least one notice of violation or the initial program equivalent, and either:

(a) is unable to serve the notice despite diligent efforts to do so; or

(b) the notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(a) is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(b) is taking action pursuant to Section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA or counterparts included in the act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(a) the permit has either expired or been revoked; and

(b) the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

**H.** In lieu of the inspection frequency established in Subparagraphs (a) and (b) of Paragraph (1) of Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per quarter.

(1) In selecting an alternate inspection frequency authorized under Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under Paragraph (2) of Subsection H of 19.8.29.2900 NMAC. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(a) how the site meets each of the criteria under the definition of an abandoned site under Subsection G of 19.8.29.2900 NMAC and thereby qualifies for a reduction in inspection frequency;

(b) whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to become, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(c) the extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(d) the degree to which erosion and sediment control is present and functioning;

(e) the extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(f) the extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(g) based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under Paragraph (1) of Subsection H of 19.8.29.2900 NMAC shall be provided as follows:

(a) the regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments;

(b) the public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

[11-29-97; 19.8.29.2900 NMAC - Rn, 19 NMAC 8.2.29.2900, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

### **19.8.29.2901 CITIZEN'S REQUEST FOR INSPECTION:**

**A.** A citizen may request an inspection by furnishing a signed written statement or an oral report followed by a signed, written statement giving the director reason to believe that a violation, condition, or practice referred to in Subsection B of 19.8.29.2901 NMAC exists and setting forth a phone number and address where the citizen can be contacted.

**B.** The director shall immediately conduct an inspection to enforce any requirement of the act, 19.8 NMAC, or any condition of a permit or an exploration approval imposed under the act and 19.8 NMAC when the representative has reason to believe, on the basis of information available to him (other than information resulting from a previous inspection), that there exists a violation of the act, 19.8 NMAC, or any condition of a permit or exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

**C.** The identity of any person supplying information to the director relating to a possible violation or imminent danger or harm shall remain confidential with the director if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under state law.

**D.** If an inspection is conducted as a result of information provided to the director by a citizen as described in Subsection A of 19.8.29.2901 NMAC, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the director during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he supplied information, but only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

**E.** Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, the director shall send the citizen the following:

(1) if an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) if no inspection was conducted, an explanation of the reason why; and

(3) an explanation of the citizen's right, if any, to informal review of the action or inaction of the director under 19.8.29.2903 NMAC.

**F.** The director shall give copies of all materials in Paragraphs (1) and (2) of Subsection E of 19.8.29.2901 NMAC within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under Subsection C of 19.8.29.2901 NMAC.

**G.** Nothing in this part shall be construed to create any greater degree of liability upon the operator for the safety of the person or property of a private citizen accompanying the authorized representative of the director than may exist under common law.

[11-29-97; 19.8.29.2901 NMAC - Rn, 19 NMAC 8.2.29.2901, 9-29-2000]

**19.8.29.2902 REVIEW OF ADEQUACY AND COMPLETENESS OF INSPECTION:** Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the director in writing of any alleged failure on his part to make adequate and complete or periodic inspections as provided in 19.8.29.2900 NMAC. The notification shall include sufficient information to create a reasonable belief that 19.8.29.2900 NMAC is not being complied with and to demonstrate that the person is or may be adversely affected. The director shall within 15 days of receipt of the notification determine whether 19.8.29.2900 NMAC is being complied with, and if not shall immediately order an inspection to remedy the noncompliance. The director shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.  
[11-29-97; 19.8.29.2902 NMAC - Rn, 19 NMAC 8.2.29.2902, 9-29-2000]

**19.8.29.2903 REVIEW OF DECISION NOT TO INSPECT OR ENFORCE:**

**A.** Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the director to review informally the decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for an inspection under 19.8.29.2901 NMAC. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

**B.** The director shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under state law.

**C.** Informal review under this part shall not affect any right to informal review under 69-25A-29 NMSA 1978 of the act or to a citizen's suit under 69-25A-24 NMSA 1978 of the act.  
[11-29-97; 19.8.29.2903 NMAC - Rn, 19 NMAC 8.2.29.2903, 9-29-2000]

**19.8.29.2904 AVAILABILITY OF RECORDS:** Copies of all records, reports, inspection materials, or information obtained by the director shall be made immediately available to the public in the manner provided for by the state statutes providing for inspection of public records, Sections 14-2-1 through 14-2-3 NMSA 1978.  
[11-29-97; 19.8.29.2904 NMAC - Rn, 19 NMAC 8.2.29.2904, 9-29-2000]

**HISTORY OF 19.8.29 NMAC:**

**Pre-NMAC History:**

The material in Part 29 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 29 Inspections, filed 11-13-97, to 19.8.29 NMAC Inspections effective 9-29-2000