

**TITLE 19      NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 8    COAL MINING**  
**PART 30      ENFORCEMENT**

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

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

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

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

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

**19.8.30.6      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.  
[19.8.30.6 NMAC - N, 9-29-2000; A, 1-15-2002]

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

**19.8.30.8 - 19.8.30.2999 [RESERVED]**  
[19.8.30.8 - 19.8.30.2999 NMAC - N, 9-29-2000]

**19.8.30.3000    CESSATION ORDERS:**

**A.** The director, or his duly authorized representative shall immediately order a cessation of coal exploration operations or surface coal mining and reclamation operations or relevant portions thereof, if he determines, on the basis of an inspection, any conditions or practices exist or that any permittee is in violation of any requirements of the act, 19.8 NMAC or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

**B.** Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

**C.** If the cessation order will not completely abate the imminent danger or harm in the most expeditious manner possible, the inspector shall impose affirmative obligations to abate the condition, practice or violation, specifying the time by which the abatement shall be accomplished. If affirmative obligations to abate are imposed, the inspector may consider suggestions by the operator concerning the economic and technological feasibility, in determining the most expeditious means of abatement and the period for correction of the condition, practice or violation causing an imminent danger to the health or safety of the public or significant environmental harm to land, air or water resources.

**D.** The director, or his duly authorized representative, shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations or relevant portions thereof, if he finds that a violation has not been abated within the period specified in a notice of violation issued under 19.8.30.3001 NMAC.

The cessation order shall specify measures deemed necessary by the inspector to abate the violations in the most expeditious manner possible.

**E.** A cessation order shall be effective upon prompt delivery to the permittee or his agent. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the director or his duly authorized representative. A cessation order shall be in writing, signed by the director or his duly authorized representative, and shall set forth with reasonable specificity:

- (1) the nature of the violation, including a citation to the requirement allegedly violated and the imminent danger or harm allegedly involved;
- (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

**F.** Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

**G.** The director, or his duly authorized representative may modify, terminate or vacate a cessation order for a good cause, provided that no cessation order may be vacated because of inability to comply. The director may extend the time for abatement if he determines that good cause exists and that the failure to abate within the time previously set forth was not caused by lack of diligence on the part of the person to whom the cessation order was issued.

**H.** The director or his duly authorized representative shall terminate a cessation order by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right to assess civil penalties for violations included in the order.

**I.** A modification of an order shall result in the commencement of a new period within which to abate. However, before any extension in the total abatement time is granted, the requirements of Subsection F of 19.8.30.3000 NMAC must be complied with.

**J.** A cessation order which requires cessation of mining, expressly or by implication, shall expire within thirty (30) days after it has been served unless a hearing has been held within that time, or unless the cessation order has been previously terminated, modified, or vacated in writing. The hearing shall be held on site or within such reasonable proximity as will permit viewing of the site during the course of the hearing. A cessation order shall not expire as provided above if the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Expiration of the cessation order for failure to hold a hearing within thirty (30) days from notice of issuance does not affect the right of the director to assess any civil penalty for violations giving rise to such cessation order.

**K.** The hearing shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

**L.** Within sixty days after issuing a cessation order, the director shall notify in writing any person who has been identified under Subsection F of 19.8.11.1119 NMAC, Subsection C of 19.8.7.701 NMAC and Subsection D of 19.8.7.701 NMAC as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

[11-29-27; 19.8.30.3000 NMAC - Rn, 19 NMAC 8.2.30.3000, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

#### **19.8.30.3001 NOTICES OF VIOLATION:**

**A.** The director, through his duly authorized representative shall issue a notice of violation if, on the basis of an inspection, he determines a violation of any requirement of the act, 19.8 NMAC or any permit or exploration approval condition which does not create an imminent danger or harm for which a cessation order must be issued under 19.8.30.3000 NMAC.

**B.** A notice of violation shall be in writing, signed by the director or by his duly authorized representative and shall set forth with reasonable specificity:

- (1) the nature of the violation, including a citation to the requirement allegedly violated;
- (2) the remedial action required which may include interim steps;
- (3) a reasonable time, but not more than ninety days for abatement, which may include time for accomplishment of interim steps;

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies; and

(5) a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

**C.** The director or his authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in Subsection D of 19.8.30.3001 NMAC. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

**D.** Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he has no other effective legal remedy;

(3) where the permittee cannot abate within 90 days due to a labor strike;

(4) where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

**E.** Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

**F.** If any of the conditions in Subsection D of 19.8.30.3001 NMAC exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of Subsections C and D of 19.8.30.3001 NMAC. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his concurrence or disapproval in the file.

**G.** Any determination made under Subsection F of 19.8.30.3001 NMAC shall contain a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

**H.** No extension granted under Subsection F of 19.8.30.3001 NMAC may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of Subsection F of 19.8.30.3001 NMAC.

**I.** The director or his duly authorized representative shall terminate a notice of violation by written notice to the person to whom it was issued, when the director determines that all violations listed in the notice of violation have been abated.

**J.** Failure-to-abate cessation order.

(1) If the director or his duly authorized representative finds that a violation has not been abated within expiration of the time originally fixed or subsequently extended, he shall immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portion of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

(2) If the director or his duly authorized representative finds an interim step has not been accomplished within the time originally fixed or subsequently extended he may immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portions of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

**K.** A notice of violation which requires cessation of mining, expressly or by necessary implication, shall not be effective to cause cessation of mining following thirty (30) days after it is served unless an informal public hearing has been held within that time. The public hearing shall be on site within such reasonable proximity as will permit viewing of the site during the course of the hearing. The hearing on a notice of violation shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

**L.** A notice of violation shall not be vacated simply by virtue of the fact that the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Termination of a notice of violation by the director or expiration of a notice of violation for failure to hold a public hearing within thirty (30) days shall not affect the director's right to assess civil penalties for the violation mentioned in the notice.

[11-29-27; 19.8.30.3001 NMAC - Rn, 19 NMAC 8.2.30.3001, 9-29-2000; A, 12-31-2007]

### **19.8.30.3002 PERMIT SUSPENSION OR REVOCATION:**

**A.** When on the basis of an inspection the director determines that a pattern of violations of any requirements of the act, 19.8 NMAC or any permit conditions exist or has existed and if the director also finds that such violations are caused by the unwarranted failure of the permittee to comply with such requirements or conditions or that such violations are willfully caused by the permittee, the director shall, except as otherwise provided in Subsection E of 19.8.30.3002 NMAC, issue an order to a permittee requiring him to show cause as to why the permit should not be suspended or revoked. The order shall be in writing, signed by the director and shall set forth with reasonable specificity:

- (1) the nature of the violations, including a citation to the requirements or conditions allegedly violated;
- (2) the conduct alleged to justify the finding that such violations are the result of the permittee's unwarranted failure or were willful; and
- (3) the opportunity for a hearing to be held pursuant to Subsection E of 69-25A-29 NMSA 1978 of the act.

**B.** For purposes of determining the propriety of an order to show cause why a permit should not be suspended or revoked, the following definitions shall apply:

(1) Willful violation means an act or omission which violates the requirements of the act, 19.8 NMAC or any permit condition, committed by a person who intends the result which actually occurs.

(2) Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of any requirement of the act, or 19.8 NMAC or any permit condition, due to indifference, lack of diligence or lack of reasonable care or the failure to abate any violation of a permit, the act or 19.8 NMAC due to indifference, lack of diligence or lack of reasonable care. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes by clear and convincing evidence, that the acts were not within the scope of employment or agency.

(3) The director may determine that a pattern of violations exists or has existed, based upon two (2) or more inspections of the permit area within any twelve month period, after considering:

- (a) the number and seriousness of violations cited on more than one occasion of the same or related requirements of the act, 19.8 NMAC or the permit;
- (b) the number and seriousness of violations cited on more than one occasion of different requirements of the act; and
- (c) the extent to which the violations are isolated departures from lawful conduct.

**C.** The director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the act, the permit or 19.8 NMAC during three or more inspections of the permit area within any twelve month period.

**D.** Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to this section.

**E.** The director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstratively unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case, provided that no show cause order or order revoking or suspending a permit may be vacated because it is subsequently determined that the director or his duly authorized

representative did not have information sufficient to justify an inspection for any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably expect it to cause a significant imminent environmental harm to land, air or water resources.

[11-29-27; 19.8.30.3002 NMAC - Rn, 19 NMAC 8.2.30.3002, 9-29-2000; A, 12-31-2007]

**19.8.30.3003 SERVICE OF NOTICES OF VIOLATION AND CESSATION ORDERS:**

**A.** A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance as follows.

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the director's duly authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be a supervisory employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

**B.** A show cause order may be served on the person to whom it is issued in either manner provided in Subsection A of 19.8.30.3003 NMAC.

**C.** Designation by any person of an agent for service of notices and orders shall be made in writing to the director.

**D.** The director shall cause copies of notices and order to be furnished to any person having an interest in the coal exploration, surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company when so requested in writing.

**E.** Upon request, the director shall furnish copies of notices and orders and all documents relating to inspection and enforcement actions to the director of the office of surface mining reclamation and enforcement, pertaining to coal exploration operations and surface coal mining and reclamation operations which are subject to the provisions of a state-federal cooperative agreement.

[11-29-27; 19.8.30.3003 NMAC - Rn, 19 NMAC 8.2.30.3003, 9-29-2000; A, 08-31-2010]

**19.8.30.3004 INFORMAL HEARINGS:**

**A.** Within ten (10) days of service of a notice of violation under 19.8.30.3001 NMAC or cessation order under 19.8.30.3001 NMAC, the person to whom the notice or order was issued may require an informal hearing by notifying the director, in writing, of his request for such hearing. The director may, for good cause shown, extend the time for requesting a notice of a hearing provided that the total time for request including any such extension, does not exceed fifteen (15) days from service of notice or order.

**B.** The right to an informal hearing, as provided in this section, shall be deemed waived if the person to whom notice of violation or cessation order is given fails to request in writing such hearing within ten (10) days or if granted by the director, within any additional extension of time after service of the notice or order.

**C.** Within five days after the close of an informal hearing the director may affirm, modify or vacate the notice or order in writing. The decision shall be sent to the person to whom the notice or order was issued, or any person who filed a report which led to the notice or order.

**D.** At the request of the operator to whom the notice or order is given, the hearing on a notice of violation or cessation order may be delayed until a proposed civil penalty assessment is served in accordance with 19.8.31.3105 NMAC. In any event, the director may, at an informal hearing, resolve the amount of a civil penalty with the agreement of the operator, notwithstanding that no proposed civil penalty assessment has yet been served in accordance with 19.8.31.3105 NMAC.

[11-29-27; 19.8.30.3004 NMAC - Rn, 19 NMAC 8.2.30.3004, 9-29-2000; A, 08-31-2010]

**HISTORY OF 19.8.30 NMAC:**

**Pre-NMAC History:**

The material in Part 30 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 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, effective 11-29-1997.

Renumbered 19 NMAC 8.2 Subpart 30 Enforcement (filed 11-13-97) to 19.8.30 NMAC Enforcement effective 9-29-2000.