

**DRAFT**  
**NEW MEXICO COAL SURFACE MINING COMMISSION**  
**RULE MAKING HEARING AND PUBLIC MEETING**

November 1, 2007

The New Mexico Coal Surface Mining Commission held a Public Meeting on November 1, 2007. The hearing was in Mining and Minerals Division Conference in Room, Wendell Chino Building, at 1220 South St. Francis Drive, Santa Fe, New Mexico. The venue was changed due to an ongoing OCD hearing in Porter Hall.

Chairman Bailey called the meeting to order at 1:05 P.M and opened with introductions. This is the first meeting for newly appointed Commissioner Robert Russell.

**1. Roll call**

The Chairman directed Mr. O'Hara to call the roll.

The following members were present:

Chairman Jami Bailey	State Land Office
Ms. Gretchen Hoffman	NM Bureau of Geology and Mineral Resources
Mr. Michael Johnson	State Engineer's Office
Dr. Steven Loring	NMSU – Agricultural Experiment Station
Mr. Robert Russell	Public Member
Mr. Craig Walling	Public Member
Ms. Derrith Watchman-Moore	NM Environment Department

The following members were absent:

Mr. Larry Winn	Soil and Water Conservation Commission
Dr. Matthew Wunder	Department of Game and Fish

Also present:

Mr. James O'Hara	CSMC Clerk/Coal Program Manager
Mr. Bill Brancard	Director, MMD
Mr. Mike Thomas	EMNRD Assistant General Counsel
Ms. Karen W. Garcia	Bureau Chief, MMD
Mr. Dave Clark	Chief Inspector-Coal Program, MMD
Mr. Mark Hiles	Lee Ranch Coal Company (LRCC)
Ms. Sally Malave	CSMC Counsel, Assistant Attorney General

Mr. Michael Johnson was substituting for Mr. Andy Core at the request of the State Engineer.

Mr. O'Hara noted a quorum was present. The Chairman began the proceedings.

**2. Approval of the agenda**

Chairman Bailey asked if there were any comments or changes needed for the agenda. No changes were requested. Mr. Walling made the motion. Dr. Loring provided a second. The motion to adopt the Agenda was approved by unanimous voice vote.

### **3. Adoption of minutes of November 16, 2005 New Mexico Coal Surface Mining Commission Meeting**

Chairman Bailey asked if there were any changes needed for the minutes of October 20, 2006. No changes to the minutes were identified. A Motion to approve the minutes was proposed by Mr. Russell, seconded by Mr. Walling. The motion to approve the October 20, 2006 minutes passed unanimously on a voice vote.

### **4. Public Hearing on Proposed Amendments to the Coal Surface Mining Commission (CSMC) Rule 19.8**

Chairman Bailey opened the rule making public hearing. MMD Director Bill Brancard presented a synopsis and justification for the proposed amendments. The amendments fell into two general categories, technical (NMAC style requirements, grammatical, cross references, or editorial changes) and substantive changes. Parts 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 19, 20, 24, 26, 27, 29, 30, 31, 34 and 35 contained numerous technical changes. Mr. Brancard did not describe each and every technical amendment.

Mr. Brancard proceeded to describe and justify the substantive amendments, which can be summarized as follows:

- 19.8.5.504 Permit Application Filing Deadlines**
  - repeal mandatory public hearing for new mines
- 19.8.7.701 Identification of Interests**
  - application must identify owners and resident of structure within ½ mile
- 19.8.8.812 Maps: General Requirements**
  - Maps must identify owners and resident of structure within ½ mile
- 19.8.11.1100 Public Notices of Filing of Permit Applications**
  - Require plan to supplement public notice for new permits and revisions
  - Require agency to notify interested persons and post on website
  - Require director to hold public meeting within 60 days of completed application
- 19.8.11.1102 Right to File Written Objections**
  - Include tribal governments in right to file
- 19.8.11.1103 Hearings and Conferences**
  - Repeal public hearing option (1103. E and F)
  - Allow informal conference to be required by director (as stated in Act) or requested by tribal government
- 19.8.11.1109 Permit Approval or Denial Actions**
  - eliminate references to public hearing.
- 19.8.13.1301 Permit Revisions**
  - clarify who must be notified of, and who may appeal, modification decisions

-strike unnecessary language on revision requirements

**19.8.13.1307 Transfer, Assignment, or Sale of Permit Rights: Obtaining Approval**

-Include tribal governments in right to file

**19.8.14.1412 Requirement to Release Performance Bonds**

-Include tribal governments in notice and comment provisions

Mr. Brancard pointed out the public notice requirements had not been updated since promulgation of the rules in 1980. Changes in media, Governor's Richardson's directives concerning environmental justice and recent judicial decisions created a need to re-invent our commitment to public notice and involvement for new permit, permit renewals and major permit revisions. The other major change is listing tribal governments with federal, state and local agencies for notification of significant permitting actions, bond releases and transfers of permit ownership and control.

The Commissioners had several questions. Commissioner Walling asked how the notice process would change. Mr. Brancard responded that notices would no longer be limited to legal notices. More generic newspaper announcements, public posting and radio broadcasts would be used. The amendments included a menu of choices for an applicant to use. In addition, the opportunity to notice in a non-English language when appropriate is included.

Mr. Hiles, representing Lee Ranch Coal Company and the New Mexico Mining Association questioned the proposal that MMD place notices of permitting actions on its Internet site for four consecutive weeks. His thought verification presented a problem that could lead to challenges. It was also noted by MMD staff that MMD did not maintain the Internet and therefore could not guarantee the information posted would be available to the public. Ms. Malave responded the Internet was not a legal notice requirement, but basically the Director's attempt to informally disseminate information.

Commissioner Russell questioned Tribal Government notifications. How does MMD decide which tribal nations to notify and would we create a procedural issue by missing a tribe during the process? Commissioner Watchman-Moore noted the Environment Department routinely notified all 22 NM tribes. Mr. Russell also asked if tribes located out of NM would be ignored. Staff responded by describing recent directives from Governor Richardson to work with NM Tribal Governments. MMD also stated it was their practice to use available information about aboriginal use area to include any affected tribal government.

Mr. Russell also questioned the changes to 1301.E.2.a concerning notifying the public about permit modifications. Would the requirement to send notice of a modification to all people on a list kept by the Division create an unacceptable volume of mail-outs?

Chairman Bailey pointed-out the second line of 19.8.201.A appeared incomplete. Mr. Brancard referenced his rules and found that the word "Director" had inadvertently been left out and noted it was not the Division's intent to include that change as one of the amendments.

Finally, Mr. Dave Clark, representing MMD, summarized the Office of Surface Mining's review and comments of the regulatory changes being considered by the Commissioners. He noted MMD had reviewed all of the federal comments, but did not see a need to make any changes to the rules as proposed.

Chairman Bailey asked if Commissioners were satisfied with the presentation and requested a motion to close the public hearing portion of the meeting. Dr. Loring moved that the public hearing on rule making

be closed. The motion received a second from Mr. Walling. The motioned was approved by unanimous voice vote.

With the Public meeting closed, Chairman Bailey requested motions from the Commission on the proposed rule changes. Commissioner Hoffman recommended based on the discussions that 1301.E.2.a be modified to read: “all persons on a list maintained by the director who have requested notice of application under the act for the specific permit being modified.” Dr. Loring moved the change be made and a second was provided by Mr. Johnson. The motioned was approved by unanimous voice vote.

Mr. Walling recommended “for at least 4 consecutive weeks” be dropped from the proposed MMD website posting provision in 1100.E.3. The new rule would read: “The written notification shall be posted on a website maintained by the director after receipt of a complete application.” Mr. Russell moved this change be accepted and a second was provided by Ms. Hoffman. The motion was approved by unanimous voice vote.

The Chairman hearing no other requests for changes asked the commissioners to make a motion on the disposition of the proposed rules. Mr. Walling moved the Commission adopt the proposed regulations as modified. Dr. Loring provided a second. The Commission voted to adopt the proposed regulatory changes as modified by unanimous voice vote.

## **5. Consideration of Open Meetings Resolution**

The Chairman asked Ms. Malave to explain any changes to the resolution. Ms. Malave responded the resolution contained no substantive changes from last year and met the requirements of State Statute. A motion to adopt the resolution was made by Mr. Johnson with a second from Mr. Walling. The motion for the Commissioners to adopt the proposed Open Meetings Resolution passed unanimously on a voice vote.

## **6. Other Business**

Mr. Brancard asked Mr. Hiles to provide a brief summary on the status of El Segundo. Mr. Hiles stated construction of the access road was completed and LRCC was working on completion of the mine facilities. Mr. O’Hara also took the opportunity to briefly describe the archaeological work undertaken by LRCC at El Segundo. El Segundo will replace coal production from the closure of McKinley Mine.

Mr. Brancard proceeded to discuss OSM rule making initiatives concerning stream buffers and ash disposal that would affect the New Mexico program. Ash disposal would perhaps be the most significant initiative to New Mexico coal operations.

On November 13, 2007 the U.S. Senate Energy Committee was going to hold hearings on the 30 years of SMCRA regulation. New Mexico was one of two states invited to provide testimony. Secretary Prukop would be testifying.

Commissioner Hoffman asked for an update on McKinley Mine. Mr. Clark responded by stating mining was complete on the South Mine (MMD jurisdiction). All mining at McKinley would be completed by late 2008. Reclamation would go on for several more years.

## **7. Adjourn**

Having reached an end to the discussion of other business, Chairman Bailey asked for a motion to adjourn. Dr. Loring supplied the motion, which was seconded by Mr. Walling. The motion passed unanimously on a voice vote and the meeting was adjourned, at approximately 3:37 P.M.

Approved:

Minutes by:

\_\_\_\_\_  
Jami Bailey, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
James O'Hara  
Commission Clerk