United States Department of the Interior

BUREAU OF LAND MANAGEMENT
New Mexico State Office
~~XXXXXXXXXX~~
P.O. Box 27115
Santa Fe, New Mexico 87502-0115
www.blm.gov/nm

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:
3809 (9200) P

March 4, 2010

EMS Transmission - 03/19/2010
Instruction Memorandum No. NM-2010- 012
Expires: 09/30/2011

To: DMs and FMs (except FMs, Oklahoma and Amarillo)

From: DSD, Mineral Resources

Subject: Acknowledgement of a Notice under 43 CFR 3809

Program Area: Surface Management under the Mining Law

Purpose: To standardize correspondence to an operator in response to a Notice submission.

Time Frame: Implement immediately.

Budget Impact: No effect.

Background: Correspondence to operators is not consistent among the Field Offices (FO) and is sometimes incorrect or confusing, especially as to the dual requirements of the Bureau of Land Management (BLM) and the State Mining and Minerals Division (MMD).

Policy/Action:

Opening Paragraph

State in the correspondence, to the operator, that the proposed operation is also subject to regulation by the State of New Mexico, Mining and Minerals Division (MMD). Provide the MMD contact information.

Operation Bonded Solely by the BLM

Currently the MMD's General Permit and the MMD's Mining Permit of less than two acres disturbance are not bonded by the MMD. The MMD bonds all exploration operations, as defined by their regulations. If necessary, review the MMD rules and/or contact the MMD to verify that they will not bond the proposed operation. Correspondence will be in two separate parts:

- Acknowledgement of the submission and a listing or reference to the required performance standards (43 CFR 3809.420) and/or a listing of submission deficiencies.

- A separate "Determination of Financial Guarantee Amount" will be included in the same mailing. This is appealable and is to be written as a decision. The 3809 appeal language will be included or cited (43 CFR 3809.800).

The decision will provide the BLM's reclamation cost determination (RCD) (bond amount) and will inform the operator to contact the New Mexico State Office, Division of Minerals - Solids (NM922) to obtain the bond. Provide a name, address, and phone number for NM922. State that operations cannot begin until the bond is approved. Enter the RCD on to the Serial Register Page (SRP). The RCD date is the starting date of the two year term/bond review for a Notice. Attachment 1 is a suggested format.

Operation Bonded by the MMD

Currently all MMD Exploration Permits and Mining Permits of two acres or more disturbances are bonded by MMD. If necessary, review the MMD rules and/or contact the MMD to verify that they will bond the operation.

Correspondence to the operator will state that a joint State/BLM bond must be provided to and approved by the MMD as part of their permit approval and that operations cannot begin until the bond is accepted. The correspondence will acknowledge the submission and contain a listing or reference to required performance standards (43 CFR 3809.420) and/or a listing of submission deficiencies. This correspondence is not appealable. Attachment 2 is a suggested format.

You may calculate a RCD, but it will not be provided to the operator. Contact the MMD to determine if the joint bond amount that they determine is adequate to cover activities on the BLM land and inform them that the bond needs a BLM signature from the NM922.

The MMD will approve a permit and joint bond under their regulations in a letter to the operator with a copy to the BLM Field Office and State Office. Enter the joint bond amount as the RCD on the SRP effective the date of the MMD approval. The RCD date is the starting date of the two year term/bond review for a notice.

Other Information

The correspondence, whether the operator is to be bonded by the BLM or the MMD, must be copied to the MMD and the NM922. Do not refer to a Notice as a Notice of Intent (NOI). NOI is no longer used in the 3809 regulations. It is not necessary to list mining claims involved in the operation, in as much as operations under 43 CFR 3809 are independent of any mining claims.

Coordination: These procedures have been coordinated with the MMD. The FO's will need to closely coordinate with the MMD and the NM922.

Contact: Bill Auby, Geologist, (505) 954-2159.

Tony J. Herrell

Tony J. Herrell

2 Attachments:
1 - Sample Acknowledgement Letter for BLM Bonded Operation (4 pp)
2 - Sample Acknowledgement Letter for Joint Bonded Operation (1p)

Distribution
WO (320)

3809 (XXXX)
NMNM XXXXX

Date

CERTIFIED - RETURN RECEIPT REQUESTED
XXXX XXXX XXXX XXXX

Acknowledgement of Notice

XYZ Company	:	43 CFR 3809
P. O. Box XXXX	:	
Somewhere, NM XXXXX	:	

This is your formal notification that your notice is complete and your proposed notice level operations under 43 CFR 3809.300 may begin subject to the following conditions:

1. You must obtain all necessary federal and state environmental permits, as required under 43 CFR 3809.420 and CFR 3715.5(b). The proposed operation is also subject to regulation by the State of New Mexico, Mining and Minerals Division (MMD). Contact the MMD for more information (505-476-3400); www.emnrd.state.nm.us/MMD/MARP/MARPMainPage.htp). While it is not necessary for you to forward any permits to the Bureau of Land Management (BLM) at this time, you may be asked for them during subsequent surface management inspections of your operation.

2. You post a financial guarantee as required under 43 CFR 3809.500. See the attached decision. You must not begin any level of surface disturbance greater than "Casual Use" (43 CFR 3809.5) until your financial guarantee is accepted.

In addition, your operations must comply with the performance standards listed in 43 CFR 3809.420.

XXXX XXX
Field Office Manager

Attachment 1-1

3809 (XXXX)
NMNM XXXXX

Decision – Determination of the Amount of Financial Guarantee

XYZ Company	:	43 CFR 3809
P. O. Box XXXX	:	
Somewhere, NM XXXXX	:	

Upon review of your reclamation cost estimate as required under 43 CFR 3809.301(4), the Bureau of Land Management (BLM) _____ Field Office (FO)has determined that you must post a financial guarantee in the amount of $_____. The amount of the financial guarantee required is based on the reclamation measures outlined in your notice. Send the financial guarantee instrument to:

New Mexico State Office
Bureau of Land Management
Attn: Ida Viarreal
301 Dinosaur Trail
Santa Fe, NM 87508

Should your reclamation procedures fail to incorporate these measures you may be required to submit an increased financial guarantee or you may be subject to enforcement actions under 43 CFR 3809.

The amount calculated for your financial guarantee has been determined by the BLM to be sufficient to cover the cost of completing the reclamation of your operation should you fail to do so. It does not in any way limit your liabilities under any law or regulation including, but not limited to, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act.

You may appeal the amount of the financial guarantee under 43 CFR 3809.800. If you elect to appeal, you may post a financial guarantee in the amount shown in this decision to begin operations. If you elect to appeal and do not post a financial guarantee in the amount stated in this decision, you must not begin operations until advised by the Interior Board of Land Appeals (IBLA) or the New Mexico State Director of the Bureau of Land Management.

Pursuant to 43 CFR 3809.800(a), you may ask the New Mexico State Director to review this decision. If you request State Director Review of this decision, your written request must be a single package that includes a brief written statement explaining why the BLM should change its decision and any documents that support your written statement (See 43 CFR 3809.805(a)). This decision will remain in effect during the period of the State Director Review unless a stay is granted by the State Director (See 43 CFR 3809.808(a)). Requests for State Director Review must be sent to the Bureau of Land Management, State Director Review, C/O (your FO address here). When you submit your request for State Director Review, you may also request a meeting with the State Director (See 43 CFR 3809.805(b)).

If you have requested a State Director Review, you may terminate this review by filing an appeal with the IBLA during the 30 days immediately following the date of receipt of the original decision. If you have requested a State Director Review and the State Director decides not to review the decision in your case, you may appeal to IBLA. An appeal to IBLA must be taken during the 30 day period following the date the State Director decides not to review the decision. If the State Director does not make a decision within 21 days of your request, you should consider your request for State Director Review declined and you have 30 days following that 21 day period in which you may appeal the original decision to IBLA (See 43 CFR 3809.806). You may also appeal an unfavorable decision resulting from the State Director Review. If appealing an unfavorable decision from a State Director's Review, you have 30 days from the date you receive or are notified of that decision to appeal to IBLA.

You may also file an appeal directly to IBLA and bypass completely the State Director Review (See 43 CFR 3809.800(b)). If you wish to bypass State Director Review and appeal directly to IBLA, your appeal must be filed within 30 days of the date you received this decision.

Any appeal taken with IBLA must be in accordance with 43 CFR 4.400 et seq. If you decide to appeal, your Notice of Appeal (NOA), must be filed in writing and in accordance with Form 1842-1 (enclosed) at the (your FO address here), and with the Office of the Solicitor, U.S. Department of the Interior, Santa Fe Unit, 1100 Old Santa Fe Trail, Santa Fe, NM 87505 or P. O. Box 1042, Santa Fe, NM 87504.

The required Statement of Reasons (SOR; See 43 CFR 4.412) may be filed with the NOA or, if not, it must be filed with the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, MS 300-QC, Arlington, VA 22203, within 30 days after the NOA was filed (See also required service at 43 CFR 4.413).

The decision, signed by the FO Manager, will remain in effect during the appeal unless a stay is granted. If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, or for a stay pursuant to 43 CFR 3809.808(b) during a State Director Review, the petition for a

stay must accompany your NOA or with your package requesting State Director Review. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision shall show sufficient justification based on the following standards:

Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

XXXX XXX
Field Office Manager

Enclosure

3809 (XXXX)
NMNM XXXXX

Date

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XXXX XXXX XXXX XXXX

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2. You post a joint MMD/BLM financial guarantee (bond) under the MMD regulations. This requirement will satisfy 43 CFR 3809.500. You must not begin any level of surface disturbance greater than "Casual Use" (43 CFR 3809.5) until your financial guarantee has been accepted.

In addition, your operations must comply with the performance standards listed in 43 CFR 3809.420.

XXXX XXX
Field Office Manager