

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5981 HOUSE RESOURCES

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(a) The Department may issue a Closure Order when it finds that an operator is conducting surface mining:

(A) for which a permit is required but has not been obtained,

(B) where a site has expanded outside the approved permit area without approval by the Department, or

(C) that is in violation of ORS 517.750-900 and the rules adopted thereunder, the reclamation plan, or permit conditions,

(D) Without having submitted the annual fee

The Department may refer violations of Closure Orders to the Attorney General for legal proceedings under the provisions of ORS 517.880 or to the District Attorney for prosecution according to the provisions of 517.990(3) and (4).

(b) An Operating Permit becomes invalid upon the anniversary date if the fee and annual report form have not been received by the Department, or at any time if any bond or alternate security has expired, or has been cancelled without replacement. Reclamation obligations incurred prior to the date of cancellation of any bond or other security continue until the site is reclaimed.

(c) A Limited Exemption Certificate becomes invalid upon the expiration date if renewal has not been made.

(7) Reclamation by the Department.

(a) Upon a finding of abandonment, the Department may perform the reclamation outlined in the reclamation plan to the extent possible, given the condition of the site when abandoned.

The Department may perform alternative reclamation depending on site conditions. For example, the Department shall not construct a lake if the excavation has not reached the watertable; the Department shall not complete a proposed housing development.

(b) The Department may reclaim the site to:

(A) eliminate or minimize hazards to the health and safety of the public

(B) eliminate or minimize any pollution or erosion

(C) rectify abuses of natural resources, including fish and wildlife habitat and restoring drainage

(D) reach a condition compatible with local comprehensive plan and with federal and state laws.

(8) Applicability of laws and rules.

(a) Permittees, at all times during the terms of the permit, are subject to the provisions of statutes and rules in effect at that time.

Total Exemptions

632-35-016(1) The following excavation, processing or grading activities are exempt from these rules and do not require the payment of fees, posting of bond or submittal of reclamation plans.

(a) Beds and Banks. Excavations of materials from the beds and banks of any waters of this state are exempt from these rules when conducted pursuant to a permit issued under ORS 541.605 to 541.625 and 541.627 to 541.660.

(b) Operations producing less than 5,000 cubic yards of material per year and disturbing less than one acre of land are exempt from these rules but may require a permit from DEQ and other government agencies.

(c) Exploration. Mineral exploration activities are exempt until the cumulative area affected by one operation exceeds one of the following:

(A) More than one acre within any 8 contiguous acres explored including road construction.

(B) A total of five acres is disturbed.

(C) More than one contiguous acre per year is affected.

(D) More than 5,000 cubic yards of material is extracted or processed per year, or the site has the capacity to process more than 5,000 cubic yards per year.

(d) Surface effects, created by underground mining prior to October 1, 1983, which have not been reclaimed.

(2) Applications for total exemption certificate if desired shall be made to the Department using the established form. The Department may require the applicant claiming this exemption to provide data to establish the validity of the exemption. The data required may include but is not limited to, the name of the operator, location of the surface mine, size of the site, date of commencement of the surface mining, a summary of the previous 12 months' surface mining, and an estimate of the activity for the succeeding 12 months.

Limited Exemption

632-35-017(1) Limited exempt status is applicable to land surfaces which were affected by surface mining before July 1, 1972, and which are not reclaimed.

(2) To receive a Limited Exemption Certificate the applicant must:

(a) submit the appropriate application form and fee

(b) document with aerial photographs or other acceptable information that the site was affected by surface mining before July 1, 1972.

(c) demonstrate that the site has not stabilized to the point where it

is at least revegetated to 50 percent of original cover, when compared to adjacent lands, or has not reverted to any beneficial use such as wildlife habitat or grazing.

(3) The Department will review each request and make a determination based on the documentation provided, and on-site inspection, if necessary. If it refuses to approve the application for a limited exemption certificate, the Department will notify the applicant in writing specifying the reasons for the refusal and giving the applicant opportunity to supply additional documentation to support the application.

(4) The holder of a limited exemption certificate must renew the limited exemption annually by submitting the renewal form and fee before the certificate expires. As a courtesy the Department may notify the holder that the certificate is due for renewal by mailing the necessary renewal form and fee schedule at least 45 days before the renewal date. The Department may request information to determine continued eligibility.

(5) Expansion of surface mining under limited exempt status into previously unmined land, which exceeds 5,000 cubic yards per year of material disturbed or one acre affected in any period of 12 consecutive months, requires an Operating Permit. Any land mined under a valid Limited Exemption Certificate is exempt from the bonding and reclamation requirements for the life of the mine. An Operating Permit must be obtained before any expansion occurs. Expansion of a site before an Operating Permit is issued constitutes surface mining without a permit and is prohibited by ORS 517.790.

Procedures for Applying for an Operating Permit

632-35-020 Obtaining an Operating Permit:

(1) The applicant shall submit an Operating Permit application as defined in rule 632-35-025 including a map acceptable to the Department which delineates the proposed permit area.

(2) The application for an Operating Permit shall be accompanied by the fee authorized in ORS 517.800, 517.920 and determined by the Department. The balance of the actual cost of processing the application, if any, shall be submitted prior to issuance of the permit.

Requirements of an Operating Permit Application

632-35-025 (1) Prior to initiating any permitting action the applicant is encouraged to meet with the Department and with the Department of Environmental Quality (DEQ) for conceptual understanding and coordination of plans of study, baseline data collection and the permit application process. Division 35 rules do not apply to recycling or non-mining related facilities. These rules do apply to mine areas with ore processing facilities at or removed from the mine site, and apply to monitoring facilities. The Department shall closely coordinate its permit requirements with DEQ so as to avoid duplication of effort and unnecessary delay. All waste water treatment and/or pollution control systems require DEQ permitting.

(2) An Operating Permit application shall contain five sections. Those sections are:

- (I) Existing Environment
- (II) General Information
- (III) Operating Plan
- (IV) Reclamation Plan
- (V) Bonding

(a) Existing Environment

(A) The Department may require environmental baseline information including characterization of the following:

- (1) vegetation
- (2) soil/overburden
- (3) climate/air quality
- (4) fish and aquatic biology*
- (5) wildlife* (terrestrial, avian)
- (6) surface and ground water
- (7) area seismicity
- (8) geologic hazards
- (9) noise

* These characterizations may be necessary for determinations by the Oregon Department of Fish and Wildlife.

(B) Other state and federal agencies may have similar baseline requirements. Where possible the Department shall coordinate with agencies that have similar baseline needs in order to avoid duplication for the applicant.

(C) The level of detail required for (2)(a)(A) 1-9 of this rule may vary depending on location, size, scope, and type of mining operation. The applicant should contact the Department prior to baseline data collection to determine the level of detail necessary for the applicant's proposal.

(b) General Information

(A) The name(s) and address(es) of all owners of the surface estate.

(B) The legal structure (e.g. corporation, partnership, individual) of the applicant.

(C) The name and mailing address of the facility for correspondence.

(D) The name and mailing address of the applicant's resident agent.

(E) The proposed starting date and expected life of the proposed operation.

(F) A description of the present land use and the proposed post-mine use of the site following mining. The proposed post-mine use must be compatible with the local comprehensive plan as determined by local land use planning agencies.

(G) Maps, aerial photographs or design drawings of appropriate scale may be required by the Department. Information that typically may be required on maps, aerial photographs or design drawings includes but is not limited to:

- (i) permit area boundary
- (ii) mine location
- (iii) waste rock or overburden stockpiles
- (iv) processing facilities location
- (v) ancillary facilities location
- (vi) haul road location
- (vii) topsoil stockpile locations
- (viii) typical cross sections
- (ix) plan views and profiles
- (x) existing watercourses and ponds
- (xi) interim watercourses and ponds
- (xii) reconstructed watercourses and ponds
- (xiii) post-mining topography
- (xiv) property lines
- (xv) general orebody location

(H) The applicant should contact the Department for recommendations regarding scale and amount of detail required. The applicant may be required to submit extra copies of materials to be circulated to other agencies.

(I) Written evidence that the surface estate and mineral estate owners concur with the reclamation plan and the proposed use after reclamation and that they will allow the Department access to complete reclamation within the permit area if the permittee fails to comply with the approved reclamation plan. If the applicant can document a legal right to mine without the consent of the surface estate owner, and the applicant can assure the Department will have a right to enter upon the permit area to complete the reclamation within the permit area if the permittee fails to complete with the approved reclamation, the Department may issue an Operating Permit.

(c) Operating Plan

The Department may require the following in an operating plan.

- (A) A detailed description of the proposed mining methods
- (B) A general list of equipment required for operation
- (C) A general schedule of construction and operation starting with the beginning of construction and ending with the completion of mining
- (D) General design assumptions plus plans profile, typical cross sections and capacities for mine facilities including but not limited to:
 - (i) leach pads
 - (ii) impoundments
 - (iii) ponds
 - (iv) diversion systems

- (v) disposal systems
- (vi) stockpiles and dumps
- (vii) pits
- (viii) tailing disposal facilities

(E) When appropriate, mine facilities must be designed conceptually as zero discharge/leak facilities. Leaching facility design and construction materials are at the discretion of the applicant. A coefficient of permeability for facilities shall be agreed to by the applicant, DEQ and the Department prior to construction. The applicant must provide for the conservation of the pre-mine quantity and maintenance of the pre-mine quality of the surface and ground water resource so as not to degrade the pre-mine use. Any discharge of ore processing solutions off-site would be required to meet DEQ discharge permit standards.

(F) A water budget analysis including but not limited to:

- (i) precipitation/evaporation data
- (ii) make-up water needs
- (iii) make-up water source
- (iv) procedures to dispose of precipitation water in excess of designed capacities to include but not be limited to solution treatment facilities or proposed irrigation strategies. This section should be coordinated with procedures for seasonal closure and decommissioning of the operation.
- (v) surface water runoff determination for the watershed containing the mine operation
- (vi) As a minimum, projects shall be designed to handle the 100-year, 24-hour precipitation event.

(G) Seasonal closure procedures if applicable including but not limited to:

- (i) target seasonal storage volumes
- (ii) total system storage capacity
- (iii) procedures to handle volumes of water in excess of seasonal storage capacities
- (iv) estimated target dates for closure

(H) Credible accident contingency plan including but not limited to:

- (i) accidental discharge scenarios
- (ii) immediate response strategy
- (iii) procedures to mitigate impacts to ground water
- (iv) procedures to mitigate impacts to surface water
- (v) procedures to mitigate impacts to soil/overburden
- (vi) procedures to mitigate impacts to living resources
- (vii) notification procedures
- (viii) chemical constituents representative of ore processing solutions

(I) Operational monitoring programs including but not limited to, surface and ground water monitoring systems within and outside the permit boundary, water balance of the process system and leak detection systems. Monitoring may be required after cessation of mining or milling operations to insure compliance with decommissioning performance standards.

(J) Surface water management procedures to provide for protection against contamination of ground water and the off-site discharge of sediments into adjacent waterways.

(K) Stable storage of overburden. A vegetative cover of overburden stockpiles may be required by the Department to prevent erosion of the overburden storage or spoils area.

(L) Isolation and stable storage of the topsoil or equivalent growth media material maintained for use in revegetation.

(M) Stable storage of mine dumps. The pre-dump topography, ground preparation, method of emplacement of dump material, height of lifts, total height and final slopes shall be described. The Department may require design and review by a registered professional engineer or certified engineering geologist.

(N) Stable storage of mill tailings. Plans and specifications of all dams or impoundments proposed to be constructed for the purpose of storing mill tailings or other materials consequent to the mining and milling operation may be required by the Department to be prepared by a registered professional engineer or certified engineering geologist. Plans shall be reviewed by the Department and other regulatory agencies. Construction of such dams may be required to be reviewed by a registered professional engineer. Procedures to prevent pollution of air, water, and land shall be described. Depending upon the the commodity to be mined, tailings impoundments must meet various requirements of the Department of Environmental Quality, the Health Division of the Department of Human Resources, the Department of Fish & Wildlife, the Oregon Department of Energy, Department of Water Resources, Army Corps of Engineers and the U.S. Nuclear Regulatory Commission. Details on how each tailings disposal facility will be reclaimed must be submitted.

(O) Stable storage of mined ore. Plans and specifications prepared by a registered professional engineer or certified engineering geologist of all ore storage facilities may be required by the Department. Storage facilities as used here include but are not limited to stored ore on leach pads, stored ore on permanent leach pads, ore stockpiles, storage bins and silos.

(P) Subsidence Control Plan for Underground Mines.

(i) At the discretion of the Department an application for underground mining activities must include an inventory which shows whether structures, renewable or nonrenewable resources, or water resources exist within the proposed permit area and adjacent area and whether subsidence might cause material damage to, or diminution of reasonably foreseeable uses of the structures, or renewable or nonrenewable resources, or water resources.

(ii) If the Department finds, after reviewing the survey, that no structure or renewable or nonrenewable resources exists or no material damage or diminution could be caused in the event of mine subsidence, no further information need be provided under this subsection. (iii) If the Department finds, after reviewing the survey, that any structure, renewable or nonrenewable resources, or water resources exist and that subsidence could cause material damage or diminution of value of foreseeable use of the land, then the applicant shall submit a subsidence control plan which contains:

(I) a detailed description of all proposed methods of operation which may cause subsidence, including

(I-a) the technique of ore removal, and

(II-b) the extent, if any, to which planned and controlled subsidence is intended;

(II) a detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonably foreseeable use of the surface including

(I-a) the anticipated effects of planned subsidence, if any,

(II-b) measures to be taken in the mine to reduce the likelihood of subsidence, and

(III) measures to be taken on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface;

(IV) a detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including measures such as

(IV-a) the results of pre-subsidence surveys of all structures and surface features which might be materially damaged by subsidence, and

(IV-b) monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

(Q) A list and procedures for the handling and storage of any chemicals, acid-forming materials or radioactive material generated from or required for mining or processing at the proposed operation.

(R) Prior to operation, a signed registered engineer's or certified engineering geologist's report, complete with and accurate drawings and specifications depicting the actual construction shall be submitted. It shall be submitted by the permittee to the Department within 30 days after the completion of the construction. Alternatively, if the construction proceeded in substantial compliance with the approved plans and specifications, a statement to that effect may be submitted by the registered professional engineer or certified engineering geologist. In either case, specific provisions shall be made for agency inspection during construction or installation of mine facilities.

(d) Reclamation Plan

The Department may require the following in a reclamation plan:

(A) Provisions for recontouring, stabilization and/or topsoil replacement of all disturbed areas

(B) Provisions for the revegetation of all disturbed areas consistent with future use. This shall include seedbed preparation, mulching, fertilizing, species selection, plus seeding or planting rates and schedules. The Department shall, in most instances, consider revegetation successful if it is comparable in stability and utility to adjacent analogous areas. In arid or semi-arid regions, the Department may allow three years of growth prior to evaluation of revegetation. Otherwise revegetation will be evaluated after one growing season. Vegetation test plots and chemical/physical soil and subsoil analysis may be required to ensure establishment feasibility. If applicable the applicant must include a plan for the control of noxious weeds.

(C) Provisions for protection of public health and safety.

(D) Provisions specifying adequate setbacks.

(E) Procedures for all stream channels and stream banks to be rehabilitated so as to minimize bank erosion, channel scour, and siltation. Disturbance within the beds and banks of streams may require a permit from the Division of State Lands.

(F) The Department may require the applicant to provide for the prevention of stagnant water.

(G) Final slopes shall be stable.

(H) Reclaimed cutbanks shall not have slopes exceeding 1-1/2 horizontal to 1 vertical (1-1/2:1). The Department may grant exceptions for steeper slopes when the applicant can document that the slopes will be stable and if the steeper slopes:

- (i) blend into adjacent terrain features or
- (ii) existed prior to mining or
- (iii) are consistent with approved subsequent beneficial use

(I) Fill slopes shall be 2:1 or flatter unless steeper slopes are approved by the Department. Technical data supporting steeper slope stability may be required by the Department.

(J) Procedures for the salvage, storage and replacement of topsoil or acceptable substitute.

(K) Provisions for the establishment of 3:1 in-water slopes to six feet below low water level for permanent water impoundments. Reasonable alternatives may be approved by the Department when they are consistent with the reclamation plan. For example, safety benches no more than two feet below low water level and five feet wide may be substituted for the slope requirement where the Department determines that sloping is not

practical.

(L) Visual screening of the proposed operation may be required, if economically practical, when the operating area is visible from a public highway or residential area. Techniques for visual screening include, but are not limited to, vegetation, fencing or berms.

(M) Procedures for the removal or disposal of all equipment, refuse, structures and foundations from the permit area. Permanent structures may remain if they are part of an approved reclamation plan.

(N) Provisions to maintain access to utilities when a utility company right-of-way exists.

(1) Procedures or information for decommissioning mine facilities including but not limited to:

(i) procedures for ore storage sites to meet decommissioning performance standards for protection of surface and ground water quality, living resources, and to achieve revegetation requirements

(ii) procedures for tailing disposal facility to meet decommissioning performance standards for long-term stability, protection of surface and ground water quality, living resources, and provide for attainment of site land use objectives

(iii) procedures for solutions to meet decommissioning performance standards for discharge, containment and evaporation, or other ultimate disposal methods

(iv) removal of all process chemicals

(v) appropriate isolation or removal of waste material

(vi) monitoring system by which the success of the proposed reclamation can be measured for bond release

(vii) Performance standards for spent ore leachate shall be established by DEQ unless the applicant can demonstrate to DEQ that the limits cannot be achieved practicably. Demonstration can be laboratory trials or field evaluations.

(e) Bonding

(A) The applicant shall submit a performance bond or other adequate security deposit for the purpose of assuring performance of the reclamation plan, other requirements of ORS 517.750 to 517.955, and all rules and permit conditions. The bond amount shall be determined and transmitted to the operator after comments by reviewing agencies on the proposed reclamation plan have been received and evaluated. All disturbed land must be bonded prior to disturbance. The Department shall determine the amount of the bond or other security required by estimating the cost of reclamation if the Department were to perform the reclamation.

(B) Factors the Department will consider in determining the amount of

security may include, but are not limited to, the following:

- (i) Supervision
- (ii) Mobilization
- (iii) Costs of equipment
- (iv) Equipment capability
- (v) Costs of labor
- (vi) Removal or disposition of debris, junk, equipment, structures, foundations and unwanted chemicals
- (vii) Reduction of hazards such as: in-water slopes, highwalls, and landslides or other mass failure
- (viii) Disposition of oversize, rejects, scalplings, and overburden
- (ix) Backfilling, contouring or regrading and topsoil replacement
- (x) Draining, establishment of drainage, and erosion control
- (xi) Soil tests
- (xii) Seedbed preparation, seeding, mulching, fertilizing, netting, tackifiers or other stabilizing agents
- (xiii) Tree and shrub planting
- (xiv) Fencing
- (xv) Liability insurance
- (xvi) Long-term stabilization, control, containment or disposal of waste solids and liquids
- (xvii) Final engineering design

(C) Cost estimate information shall be derived from sources such as:

- (i) Comparable costs from similar projects
- (ii) Catalog prices
- (iii) Guides and cost estimates obtained from appropriate government and private sources
- (iv) Operator estimates
- (v) Equipment handbooks

(D) Seedmixes, fertilizer rates, and other requirements will be derived from departmental experience combined with advice from such sources as the Oregon Department of Agriculture, Soil Conservation Service, Oregon State University Extension Service, the Department of Transportation, the Bureau of Land Management or United States Forest Service and private sector experts.

(E) The security amount shall be based on the cost of reclamation at the time of an inspection plus the predicted disturbance within the next 12 months. Security amounts shall not include construction of structures or comparable features such as housing developments or industrial construction even if included in a reclamation plan.

(F) In addition to the performance security required for the mine site, applicants having the capacity to cyanide leach or chemically process more than 5,000 yards of minerals per year shall post a chemical processing bond or appropriate security in an amount not less than \$25,000 and not more than \$500,000. The Chemical Processing Bond or appropriate security may only be used by the Department for the detoxification or disposal of solutions used in ore processing or for the detoxification or restoration of soil, overburden, surface and ground water, or living resources contaminated by ore processing solutions, on or off the permit area.

(G) The Department shall consider the following factors in determining the amount of security required for the Chemical Processing Bond.

(i) The estimated cost of detoxification or disposal of ore processing solutions and solution contaminated ore so as to meet the performance standards for reclamation approved for the operation in the Operating Permit issued by the Department.

(ii) The estimated cost of restoration of contaminated soil, surface and ground water, or living resources within the performance standards should an accident occur at the site.

(iii) The estimated cost of removal and/or disposal of chemicals used on site.

(iv) The operator's credible accident contingency plan.

(v) Estimated agency contracted service expenses including but not limited to supervision, mobilization, labor and equipment needs of the agency for decontamination and restoration should the agency be required to perform such restoration.

(H) The amount of the bond or other security may be reduced upon completion of ore processing and decontamination, provided documentation substantiates the reduction of risk to the environment. Some amount of the bond or other security, not less than \$25,000, shall be maintained through any post closure monitoring which may be required.

(I) Chemical Processing Bond or Other Approved Security release standards and schedules for any specific site shall be established in consultation with the DEQ prior to operation.

(J) The applicant may be required to submit reclamation/decommissioning cost estimates and/or estimated costs for mitigation, reclamation and/or disposal associated with a credible accident for consideration by the Department.

(K) No permit shall be issued or renewed until both performance and chemical processing bonds or other securities for a surface mining site are on file with the Department. The bonds or other securities must be maintained until operations have ceased, reclamation has been completed, and all decommissioning performance standards have been met. The Department may accept performance bonds, security deposit assignments, letters of credit or other security as authorized by ORS 517.810. Performance bonds must be provided by surety companies authorized to do business in Oregon. The security document submitted must be in a form acceptable to the Department. A security submitted for multiple surface mining sites under the provisions of ORS 517.810(4) must be accompanied by a list showing the permits covered by the security, the amount of the bond applicable to each surface mining site, and the number of acres bonded at each site.

Department Action on Operating Permit Application

632-35-030(1) The Department shall approve or deny a complete

application in writing within 120 days of receipt. If an application is incomplete, the Department shall notify the applicant of that fact in writing within 30 days of receipt and the department will specify the deficiencies therein. Within 60 days of receipt of a notice of incompleteness the applicant may appeal the determination of incompleteness or may resubmit the application with deficiencies corrected.

(2) The Department will submit the Operating Permit application to local planning authorities and other appropriate public agencies for review. If the Operating Permit cannot be reviewed and accepted or rejected by the department within 120 days after receipt, the department will notify the applicant.

(3) If the Department refuses to approve the Operating Permit for any reason, the department will notify the applicant in writing within five days of refusal stating the reasons, and including additional requirements as may be prescribed by the department for inclusion in the reclamation plan. Within 60 days after the receipt of a deficiency list or permit conditions, the applicant shall comply with the additional requirements prescribed by the Department or file a written notice of appeal of the decision to the Department in accordance with OAR 632-35-056. Failure to comply with the additional requirements or file a notice of appeal within the 60-day period, unless an extension is granted by the Department, shall result in the application for an Operating Permit being denied. Informal requests for reconsideration may be submitted as provided for in OAR 632-35-056.

(4)(a) The Department will approve the applicant's Operating Permit if it adequately provides for reclamation of surface mined lands as required by these rules.

(b) If the Department finds that reclamation cannot be accomplished it shall not issue an Operating Permit. The applicant shall be notified in writing within 5 days of the decision.

(5) The Department may attach conditions to the Operating Permit. These conditions may be added to reflect special concerns which are not adequately addressed in the reclamation plan and fall within the scope of these rules. The permittee may appeal these conditions by filing a written notice of appeal in accordance with OAR 632-35-056.

(6) The approval of the reclamation plan and the issuance of the Operating Permit by the Department do not constitute a finding of compliance with statewide planning goals or local regulations implementing acknowledged comprehensive land use plans. The Operating Permit may be issued prior to the local land use agency making such a determination. The permittee is responsible for obtaining local land use approval before commencing the proposed surface mining activity. When issuing the permit, the Department will inform the permittee that:

(a) Issuance of the Operating Permit is not a finding of compliance with the Statewide Planning Goals (ORS 197.225) or the acknowledged comprehensive plan; and

(b) The applicant is responsible for compliance with the requirements of

all other agencies including land use determination by local government and compliance with the Statewide Planning Goals before commencing surface mining under the approved Operating Permit.

Modification of an Operating Permit

632-35-035 Modification may be initiated at any time by the permittee or by the Department. An Operating Permit may be modified by approval of the Department after timely notice and opportunity for review as provided by ORS 517.830(4) in order to modify the requirements so that they comply with existing laws, or to accommodate unforeseen developments which may affect the reclamation plan as previously approved. Expansion of an operation beyond original permit area or significant intensification of activity may require recirculation to interested agencies for additional comment.

Maintaining an Operating Permit

632-35-040(1) As provided by ORS 517.830(4) an Operating Permit issued by the Department shall be granted for the period of time required to mine and reclaim the land described in the permit and subject to the requirements of the law. Each operating permit is to be renewed prior to the anniversary date by submitting the required annual fee and filing the annual report. As a courtesy, the Department may notify the permittee by mail at least 45 days prior to the anniversary date of the permit and will provide the necessary renewal forms and fee schedule for permit renewal. In cases of nonrenewal, a second notice may be sent prior to issuance of a Closure Order. The permittee shall maintain an Operating Permit until mining and reclamation, including revegetation (if required), have been completed.

(2)(a) If the Department determines from inspections conducted pursuant to ORS 517.850 or from any other source, that the operation is not in compliance with the approved Operating Permit, permit conditions, ORS 517.750-900, or the rules adopted thereunder, the Department shall give written notice of noncompliance to the operator.

(b) The permittee must begin rectifying all deficiencies within 30 days of receipt of the notice of noncompliance as required in ORS 517.860(1), or file a written appeal to the notice of noncompliance in accordance with OAR 632-35-056. If the permittee appeals the notice within 30 days of receipt, the Department will not issue a Closure Order or revoke the permit pending the appeal, except in cases of reasonable probability of danger to human life, property, water resources, or wildlife. The Department will provide the permittee a written statement of the specific facts leading to that finding and corrective action for the elimination of such danger.

(c) The Department will notify the permittee in writing within 10 days of verification of compliance.

Obtaining Bond Releases

632-35-045(1) The permittee shall notify the Department when the reclamation has been completed.

(2) The Department shall inspect the reclaimed site. If the permittee

has fulfilled the requirements of the approved reclamation plan or decommissioning performance standards, the bonds or other securities shall be released. The Department may authorize bond or other security reduction if the reclamation or decommissioning is partially completed.

Appeals

632-35-050(1) Prior to the initiation of a formal appeal of any department order, notice, or other action, made pursuant to ORS 517.750-517.955 or the rules adopted thereunder, the applicant or permittee shall first request that the State Geologist informally review and resolve the matter. The State Geologist will provide a written decision within 20 days of receipt of such an informal request. If the State Geologist is unable to resolve the informal request, the applicant or permittee may request a contested case hearing the Board or its designee for final resolution of the matter. Appeals must be filed within 30 days of receipt of the State Geologist's written decision except as otherwise provided by OAR 632-35-030(2) of these rules and by the applicable provisions of ORS 183.310 thru 183.550. A final determination by the Board must be made before any appeal for judicial review under ORS 183.480 is allowed.

(2) An applicant or permittee requesting a hearing for consideration of any appeal shall state the reasons for requesting the hearing and the objections to the department's order, notice, or other action in accordance with ORS 183.430 thru 183.470.

Penalties

632-35-055(1) Any landowner or operator who conducts a surface mining operation, for coal or a metal-bearing ore, without a valid Operating Permit as required by ORS 517.750-517.955 shall be punished, upon conviction, by a fine of not more than \$10,000.

(2) Violation of any provision of ORS 517.750 to 517.955, or of any rule or order made pursuant to ORS 517.910 to 517.950, or of any conditions of an Operating Permit, is punishable, upon conviction, by a fine of not more than \$10,000.

TITLE 82

Chapter 4

RECLAMATION

Part 3 - Metal Mine Reclamation

- 82-4-301. Legislative findings.
- 82-4-302. Purpose.
- 82-4-303. Definitions.
- 82-4-304. Exemption - works performed prior to promulgation of rules.
- 82-4-305. Exemption - small miners - written agreement.
- 82-4-306. Confidentiality of application information.
- 82-4-307. Review of existing files.
- 82-4-308. Release by waiver.
- 82-4-309. Exemption - operations on federal lands.
- 82-4-310. Exemption - sample collectors.
- 82-4-311. Hard-rock mining account.
Sections 82-4-312 through 82-4-320 reserved.
- 82-4-321. Exploration license required - employees included.
- 82-4-322. Exploration license.
- 82-4-323. Interagency cooperation - receipt and expenditure of funds.
Sections 82-4-324 through 82-4-330 reserved.
- 82-4-331. Exploration license required - employees included.
- 82-4-332. Exploration license.
- 82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.
- 82-4-334. Exception - geological phenomena.
- 82-4-335. Operating permit.
- 82-4-336. Reclamation plan and specific reclamation requirements.
- 82-4-337. Inspection - issuance of operating permit - modification.
- 82-4-338. Performance bond.
- 82-4-339. Annual report of activities by permittee - fee.
- 82-4-340. Successor operator.
- 82-4-341. Compliance with reclamation plan - reclamation by board.
Sections 82-4-342 through 82-4-350 reserved.
- 82-4-351. Reasons for denial of permit.
- 82-4-352. Reapplication with new reclamation plan.
- 82-4-353. Administrative remedies - notice - parties.
- 82-4-354. Mandamus to compel enforcement
- 82-4-355. Action for damages to water supply - replacement.
Sections 82-4-356 through 82-4-360 reserved.
- 82-4-361. Violation - penalties
- 82-4-362. Suspension of permits.

Part 3

Metal Mine Reclamation

Part Cross-References

Prospecting permits and mining leases on state lands, Title 77, ch. 3, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in

this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

- (a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;
 - (b) authority for cooperation between private and governmental entities in carrying this part into effect;
 - (c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and
 - (d) priorities and values to the aesthetics of our landscape, waters, and ground cover.
- (2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.
- (2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.
- (3) "Department" means the department of state lands.
- (4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.
- (5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.
- (6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.
- (7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other

processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 386 in (11)(b) near end, after "mining", deleted "or exploration".

Chapter 453 in (4) after "overburden", inserted "tailings, waste materials"; inserted (8):

in (9) after "exploration for", deleted "or development" and after "earth", inserted "reprocessing of tailings or waste materials, or operation of a hard-rock mill"; in (11)(a) after "business of mining", inserted "or reprocessing of tailings or waste materials".

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. No provision of this part is applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at such a mill that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219, amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence, after "82-4-321", inserted "relating to exploration and mining"; and inserted second and third sentences.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

- (a) that he shall not pollute or contaminate any stream;
- (b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and
- (c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

- (a) if the small miner is a natural person, that:
 - (i) no business association or partnership of which he is a member or partner has a small-miner exemption; and
 - (ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:
 - (i) none of the associates or partners holds a small-miner exemption; and
 - (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or
- (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:
 - (i) holds a small-miner exemption;
 - (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
 - (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted present language for "Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners or operators of said project to a fine of not less than \$10 or more than \$100, payable to

the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine."

Cross-References

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under an operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by

the department or by judicial order. Failure to comply with the secrecy provisions of this part shall be punishable by a fine of up to \$1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; am l. Sec. 193, Ch. 575, L. 1983.

Compiler's Comments

1981 Amendment: Substituted "an operating permit" for "a development or an operating permit" at the end of the first sentence.

Proof of official records, Rule 44, M.R.Civ.P. (see Title 25, ch. 20).

Admissibility of public records, Rule 803(8), Montana Rules of Evidence (see Title 26, ch. 10).

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Disposition of fines and forfeitures, 46-18-603, 82-4-311.

Administrative procedure, 82-4-353.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

82-4-308. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2.

82-4-309. Exemption — operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

Cross-References

Jurisdiction of the state, Title 2, ch. 1, part 1.

State jurisdiction in federal enclaves, 2-1-201.

82-4-310. Exemption — sample collectors. This part shall not be applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding \$100 per year.

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224.

82-4-311. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of this part shall be placed in the state special revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

No money expended except upon appropriation, Art. VIII, sec. 14, Mont. Const., 17-8-101.

"Fiscal year" defined, 17-2-110.

Reversion of unexpended appropriation.
17-7-304.

82-4-312 through 82-4-320 reserved.

82-4-321. Administration. The board is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part. The board shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204.

Cross-References

Board of Land Commissioners created. Art. X, sec. 4, Mont. Const.

Adoption and publication of administrative rules, Title 2, ch. 4, part J.

Department of State Lands created, 2-15-3201.

82-4-322. Investigations, research, and experiments. The board shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205.

82-4-323. Interagency cooperation — receipt and expenditure of funds. The board shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the board requests that they provide. The board may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required — employees included. (1) No person shall engage in exploration in the state without first obtaining an exploration license from the board to do so, such license to be issued for a period of 1 year from date of issue and to be renewable from year to year on application therefor filed at any time within the 30 days next preceding the expiration of the current license and payment of like fee as required for a new license, provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. Such license shall be subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part shall be deemed included in and covered by such license.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979.

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-332. Exploration license. (1) An exploration license shall be issued to any applicant therefor who shall:

- (a) pay a fee of \$5 to the board;
- (b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board;
- (c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979.

Cross-References

Certificate of claim location to be filed,
82-4-332.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

82-4-334. Exception — geological phenomena. Upon proper application by the holder of an exploration license, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979.

82-4-335. Operating permit. (1) No person shall engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the

state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of \$25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that activities under the permit may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has

obtained a waiver of the impact plan requirement from the hard rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 345 inserted (1)(h) through (1)(k).

Chapter 453 in (1) near beginning, after "engage in mining", inserted "ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill" and after "anticipation of", substituted "those activities" for "mining"; at end of second sentence of (1) substituted "complex" for "mine complex"; at end of (1)(d) substituted "operations" for "mining"; in (1)(g) after "plan" deleted "of mining" and after "completion of", substituted

"the operation" for "mining and associated land disturbances".

Chapter 582 in (2) changed "subsection (3)" to "subsection (4)"; and inserted (3).

1983 Amendment: Near beginning of (2), substituted "activities under the permit" for "mining".

1981 Amendment: Added subsections (2) and (3) (now (4)).

Cross-References

Landowner notification of surface operations, Title 82, ch. 2, part J.

82-4-336. Reclamation plan and specific reclamation requirements. (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with the operation and in any case shall be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, non-combustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable

effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover shall meet county standards for noxious weed control.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(8) A reclamation plan shall be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 345 in (6) inserted second sentence; in (7) substituted "shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the board shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands" for "need not reclaim the areas to a better condition or different use than that which existed prior to development or mining"; and inserted (9).

Chapter 453 throughout (1) substituted "the operation" for "mining"; at end of first sentence of (1), after "disturbance", deleted "by the mining operation"; and in middle of first sentence and at end of (1), substituted "the complex" for "mine complex".

Cross-References

Denial of operating permit for failure of reclamation plan to comply with air quality, water quality, or public water treatment criteria. 82-4-351.

82-4-337. Inspection — issuance of operating permit — modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 30 days of receipt. The board shall

notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30 days of receipt.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within such time period, the operating permit shall be issued upon receipt of the bond as required in 82-4-338. The department shall promptly notify the applicant of the form and amount of bond which will be required. No permit may be issued until sufficient bond has been submitted pursuant to 82-4-338.

(c) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit shall be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit shall be granted for the period required to complete the operation and shall be valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 221, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 19-30-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: In (1)(b) in two places, substituted "plan of operation" for "plan of

mining"; in (2) after "period required to", substituted "complete the operation" for "mine the land covered by the plan" and after "until the",

substituted "operation" for "surface or underground mining".

Cross-References

Contested administrative cases, Title 2, ch. 4, part 6.

82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of such bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.

(2) No bond filed in accordance with the provisions of this part shall be released by the department until the provisions of this part, the rules adopted pursuant thereto, and this reclamation plan have been fulfilled.

(3) No bond filed for an operating permit obtained under 82-4-335 may be released until the public has been provided an opportunity for a hearing.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

Cross-References

Surety bonds and companies, Title 28, ch. 11, part 4; Title 33, ch. 26, part 1.

82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of \$25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); and
- (e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

- (i) the permit area;
- (ii) the unit of disturbed land;
- (iii) the area to be disturbed during the next 12-month period;
- (iv) if completed, the date of completion of operations;
- (v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
- (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985.

Compiler's Comments

1985 Amendment. Inserted (1)(d) and (2).

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 291, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning after "uncompleted", deleted "mining".

82-4-341. Compliance with reclamation plan — reclamation by board. (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said

area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the board may permit on permittee's application therefor or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213.

Cross-References

Public contracts generally, Title 18, ch. 1.

82-1-342 through 82-4-350 reserved.

82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit shall be in writing and state the reasons therefor.

History: En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985.

Compiler's Comments

19: Amendment In (1)(a) substituted "plan of operation or reclamation" for "plan of development, mining, or reclamation".

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the board a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215.

82-4-353. Administrative remedies — notice — parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216.

Cross-References

Montana Administrative Procedure Act, Title 2, Ch. 2

82-4-354. Mandamus to compel enforcement. (1) Any person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform his duties. If he fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) Any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with

this part against any person for the violation of this part or any rule, order, or permit issued under it. However, no such action may commence:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order or permit issued under it. Any person having an interest that is or may be adversely affected may intervene as a matter of right in any such civil action.

(4) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

History: En. Sec. 4, Ch. 345, L. 1985.

Cross-References

Mandamus — Writ of Mandate, Title 27, ch. 26.

82-4-355. Action for damages to water supply — replacement. (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in a mining or exploration operation to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must

be approved by the department prior to the commencement of exploration or mining.

History: En. Sec. 5, Ch. 345, L. 1985.

82-4-356 through 82-4-360 reserved.

82-4-361. Violation — penalties. (1) A person who violates any of the provisions of this part or rules or orders adopted under this part, except 82-4-339, or conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 284 near beginning of (1) after "this part", inserted "except 82-4-339".

Chapter 386 in (1) near beginning, after "under this part", inserted "or conditions of a small-miner exemption".

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 29);
Injunctions, Title 27, ch. 19.

Criminal responsibility of corporations, 45-2-311.

Disposition of fines and penalties, 45-15-601, 82-4-311.

"Person" defined, 82-4-300(3).

Small-miner exemption, 82-4-305.

82-4-362. Suspension of permits. (1) If any of the requirements of this part or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this part, the rules, or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply

within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (3).

An Act

SENATE BILL NO. 162.

BY SENATORS Bishop, Cole, DeNier, McCormick, Norton, Rizzuto, Strickland, and Winkler;
also REPRESENTATIVES Fleming, Allison, Anderson, Carpenter, Chlouber, Entz, Masson, Paulson, Ruddick, Taylor-Little, D. Williams, and S. Williams.

CONCERNING REVISIONS TO THE MINED LAND RECLAMATION ACT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 34-32-102, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-102. Legislative declaration. (1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that it is the intent of this article to require the development of a mined

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The mined land reclamation board or the division, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the mined land reclamation board or the division. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

SECTION 2. 34-32-103 (1) and (13), Colorado Revised Statutes, 1984 Repl. Vol., are amended, and the said 34-32-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

34-32-103. Definitions. (1) "Affected land" means the disturbed surface of an area within the state where a mining operation is being or will be conducted, including, WHICH SURFACE IS DISTURBED AS A RESULT OF SUCH OPERATION. AFFECTED LANDS SHALL INCLUDE, but SHALL not BE limited to, on-site private ways, roads, EXCEPT THOSE ROADS EXCLUDED PURSUANT TO THIS SUBSECTION (1), and railroad lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise includable INCLUDED as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board. AFFECTED LAND SHALL NOT INCLUDE OFF-SITE ROADS WHICH EXISTED PRIOR TO THE DATE ON WHICH NOTICE WAS GIVEN OR PERMIT APPLICATION WAS MADE TO THE DIVISION AND WHICH WERE CONSTRUCTED FOR PURPOSES UNRELATED TO THE PROPOSED MINING OPERATION AND WHICH WILL NOT BE SUBSTANTIALLY UPGRADED TO SUPPORT THE MINING OPERATION.

(4.5) "Director" means the director of the division of mined land reclamation or such officer as may lawfully succeed to the powers and duties of such director.

(4.7) "Division" means the division of mined land reclamation or such agency as may lawfully succeed to the powers and duties of such division.

(13) "Reclamation" means the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the rehabilitation-of-affected

~~land-through-the-rehabilitation~~ ESTABLISHMENT of plant cover, STABILIZATION OF soil, ~~stability,~~ THE PROTECTION OF water resources, or other measures appropriate to the subsequent beneficial use of such ~~mined-and-reclaimed~~ AFFECTED lands. RECLAMATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERFORMANCE STANDARDS OF THIS ARTICLE.

SECTION 3. 34-32-104, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the department DIVISION has the full power and authority to carry out and administer the provisions of this article.

SECTION 4. 34-32-105 (1) and (2), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-105. Division of mined land reclamation - mined land reclamation board - created. (1) There is hereby ~~created, as-a-part-of-the-office-of-the-executive-director,~~ in the department of natural resources, THE DIVISION OF MINED LAND RECLAMATION AND the mined land reclamation board.

(2) The board shall consist of seven members: The executive director, who shall serve as secretary to the board; a member of the state soil conservation board appointed by such board; and five persons appointed by the governor with the consent of the senate. Such appointed members shall be: Three individuals with substantial experience in agriculture or conservation no more than two of whom shall have had experience in agriculture or conservation; and two individuals with substantial experience in the mining industry. Effective July 1, 1976, the terms of office of the existing members of the MINED land reclamation board shall terminate, and, prior thereto, the governor shall appoint two members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1977, and three members of the board, effective July 1, 1976, whose terms of office shall expire March 1, 1979. Subsequent appointments shall be made for a term of four years. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term. All members of the board shall be residents of the state of Colorado. Appointed members of the board shall receive no compensation for their service on the board but shall be reimbursed for necessary expenses incurred in the performance of their duties on the board. The board shall, by majority vote of all members, elect its chairman from among the appointed members at its first meeting in July, 1976, and the board shall elect its chairman from among the appointed members biannually thereafter.

SECTION 5. 34-32-107, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-107. Powers of board. (1) The board may initiate and encourage studies and programs through the department and in other agencies and institutions of state government relating to the development of less destructive methods of mining operations, better methods of land reclamation, more effective reclaimed land use, and coordination of the provisions of this article with the programs of other state agencies dealing with environmental, recreational, rehabilitation, and related concerns.

(2) THE BOARD MAY DELEGATE AUTHORITY TO THE DIVISION AS NECESSARY TO EFFICIENTLY CARRY OUT AND ADMINISTER THE PROVISIONS OF THIS ARTICLE. ANY PERSON AGGRIEVED BY ANY FINAL ACTION OF THE DIVISION MAY FILE AN APPEAL OF SUCH ACTION WITH THE BOARD. SUCH APPEALS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 6. 34-32-109, Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

34-32-109. Necessity of reclamation permit - application to existing permits. (1) RECLAMATION permits for mining operations shall be obtained as specified in this article.

(2) After June 30, 1976, any operator proposing to engage in a new mining operation must first obtain from the board OR DIVISION a RECLAMATION permit as specified in this article.

(3) (a) Applications for RECLAMATION permits filed under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to and pending on July 1, 1976, shall be processed in accordance with the provisions of this article. RECLAMATION permits granted under the provisions of the "Colorado Open Mining Land Reclamation Act of 1973" prior to July 1, 1976, are valid RECLAMATION permits for the purposes of this article and are subject to the provisions of this article for the purpose of renewal. An application for renewal shall be filed at least ninety days prior to the expiration of the RECLAMATION permit. Such applications shall be in accordance with section 34-32-112; except that the applicant need not supply information, materials, and undertakings previously supplied. The application for renewal of a RECLAMATION permit shall show the area mined or disturbed and the area reclaimed since the original RECLAMATION permit or the last renewal.

(b) (I) An operator with an existing RECLAMATION permit granted under the provisions of the "Colorado Open Mining Land

Reclamation Act of 1973" may apply for the conversion of his existing RECLAMATION permit to a RECLAMATION permit for the life of the mine under the provision for renewal set forth in this subsection (3) at any time on or after July 1, 1976. The fee for the conversion of such an existing RECLAMATION permit shall not exceed one hundred dollars if the conversion is made during the first year of the RECLAMATION permit.

(II) Thereafter, the provisions of section 34-32-112 (6) shall apply; except that the fee shall not exceed five hundred dollars for conversion during the second year of the RECLAMATION permit, one thousand dollars for conversion during the third year of the RECLAMATION permit, one thousand five hundred dollars for conversion during the fourth year, and two thousand dollars thereafter.

(4) Mining operations which were lawfully being conducted prior to July 1, 1976, without a RECLAMATION permit may continue to be so conducted until October 1, 1977, if, between July 1, 1976, and October 1, 1977, the operators of such existing mining operations apply for a RECLAMATION permit as specified in this article. Any such operator, having made application by October 1, 1977, but not having received a RECLAMATION permit by that date, shall be permitted to continue his mining operation until such RECLAMATION permit is either granted or denied. Any such operator who is denied a RECLAMATION permit and continues operations after such denial or who has not applied for a RECLAMATION permit by October 1, 1977, and continues operations after October 1, 1977, shall be considered in violation of this article and subject to the provisions of section 34-32-123. An operator of an existing operation who is in compliance with all requirements of the statutes in effect prior to July 1, 1976, and the rules, regulations, and orders issued thereunder, and any applicable stabilization and reclamation agreements shall not be denied a RECLAMATION permit if he provides performance and financial warranties and undertakes such new reclamation program as may reasonably be required in relation to his existing operation, pursuant to the provisions of this article.

(5) RECLAMATION permits granted pursuant to applications, including applications for renewal, filed after June 30, 1976, shall be effective for the life of the particular mining operation if the operator complies with the conditions of such RECLAMATION permits and--with--applicable statutes,--rules,--and--regulations. AND WITH THE PROVISIONS OF THIS ARTICLE AND RULES PROMULGATED PURSUANT TO THIS ARTICLE WHICH ARE IN EFFECT AT THE TIME THE PERMIT IS ISSUED OR AMENDED. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ABROGATE THE DUTY OF THE OPERATOR TO COMPLY WITH OTHER APPLICABLE STATUTES AND RULES AND REGULATIONS.

(6) No governmental office of the state, other than the board, nor any political subdivision of the state shall have the authority to issue a RECLAMATION permit pursuant to this article, and ~~in accordance with the criteria set forth in section 24-22-116~~ TO REQUIRE RECLAMATION STANDARDS DIFFERENT THAN THOSE ESTABLISHED IN THIS ARTICLE, or to require any performance or financial warranty of any kind for mining operations. However, ~~the board shall not grant a permit in violation of~~ THE OPERATOR SHALL BE RESPONSIBLE FOR ASSURING THAT THE MINING OPERATION AND THE POST-MINING LAND USE COMPLY WITH city, town, county, or city and county zoning ~~or subdivision regulations or contrary~~ LAND USE REGULATIONS to AND any master plan for extraction adopted pursuant to section 34-1-304 unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected political subdivisions. ~~Nothing in this article shall be construed to preempt~~ ANY MINING OPERATOR SUBJECT TO THIS ARTICLE SHALL ALSO BE SUBJECT TO zoning and land use authority and regulation by political subdivisions pursuant to AS PROVIDED BY LAW. ~~article 20 of title 29, article 28 of title 30, and article 23 of title 31, C.R.S.~~

(7) An operator shall obtain a development ~~and extraction~~ RECLAMATION permit from the board for each mining operation WITH THE EXCEPTION OF THOSE SPECIFIED IN SECTION 34-32-110 (1) AND (2).

(8) ~~The board shall not grant a permit for a new mining operation if the operator's reclamation plan for an area is inconsistent with an adopted plan by any county, city and county, city, or town unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected government subdivisions. However, the operator shall not be required to install improvements to or on the area reclaimed.~~ After the filing of any application for a RECLAMATION permit under this article, the board shall notify each county in which the area proposed to be mined is located and each municipality located within two miles of the area to be mined of the filing of the application.

SECTION 7. 34-32-110, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-110. Limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations on less than two acres which mining operations will result in the extraction of less than seventy thousand tons per year of mineral or overburden may apply for the expedited processing of his permit. If such person desires to conduct mining operations on less than two acres, but such operations will be for sand, gravel, or quarry aggregate, or will be

located in or adjacent to a stream channel, or will process minerals by acid or toxic-forming chemical means, or which operation will be subject to the provisions of section 34-32-115 (4) (d) or (4) (f), he shall apply for a permit under the provisions of section 34-32-110 (2). Any person applying for a permit pursuant to this subsection (1) shall file with the division, on a form approved by the board, an application for permit prior to commencing mining operations. The form shall contain the following:

(I) The name, address, and telephone number of the person or organization responsible for the mining operation;

(II) A statement that the mining operation will be conducted in accordance with the terms and conditions listed on the form;

(III) A brief description of the type of mining operation which will be undertaken;

(IV) A statement that the operator has applied for necessary local government approval;

(V) A map sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) An approximate date of the commencement of operation;

(VII) A description of the measures which shall be taken to reclaim any affected land consistent with the requirements of section 34-32-116;

(VIII) The name, address, and telephone number of the owner of the surface of the affected land;

(IX) The name of the owner of the subsurface rights of the affected land;

(X) A brief description and map of the location of the proposed mining operation relative to streams, drainages, or other prominent features and manmade structures; and

(XI) A copy of a notice stating the name and address of the applicant, the location of the proposed mining operation, and the proposed date of commencement of the operation. The applicant shall furnish a copy of such notice to all owners of surface rights to the affected land and to owners of immediately adjacent lands. The applicant shall also include, as part of the application, a list of such owners who were provided a copy of the notice.

(b) No mining operation subject to the provisions of this subsection (1) shall commence until:

(I) The division notifies the operator that it has approved the proposed operations; or

(II) The division notifies the operator that it has approved the proposed operations subject to the operator's agreement to comply with special conditions; or

(III) The division fails to notify the operator within fifteen calendar days of the date the operator filed an application for a permit to conduct mining operations. Such failure to notify the operator shall be deemed to be approval of the mining operations proposed in the application.

(c) The division shall not disapprove any mining operations which are proposed pursuant to this subsection (1) unless it finds that the proposed operations cannot be conducted in accordance with the terms and conditions listed in the application and in accordance with the provisions of this article and the rules promulgated pursuant to this article at the time the permit was approved or amended.

(d) A financial warranty may be required to be posted by the mine operator, which warranty shall not exceed one thousand five hundred dollars. Such warranty, if forfeited pursuant to section 34-32-118, may be utilized by the board to reclaim any mined land subject to section 34-32-110 (1).

(e) The board or division may deny an application under this subsection (1) if there is evidence that the applicant intends to avoid the procedures for permitting of larger acreage operations by successive application for similar and proximate two-acre operations.

(2) (a) Any person desiring to conduct mining operations on more than two acres and less than ten acres, which mining operations will result in the extraction of less than seventy thousand tons of mineral or overburden per calendar year, prior to commencement of mining, shall file with the division, on a form approved by the board, an application for a permit to conduct mining operations. This application shall contain the following:

(I) The address and telephone number of the general office and the local address or addresses and telephone number of the operator;

(II) The name, address, and telephone number of the owner of the surface of the affected land;

(III) The name of the owner of the subsurface rights of the affected land;

(IV) A statement that the operations will be conducted pursuant to the terms and conditions listed on the application and in accordance with the provisions of this article and the rules and regulations promulgated pursuant to this article at the time the permit was approved or amended;

(V) A map showing information sufficient to determine the location of the affected land and existing and proposed roads or access routes to be used in connection with the mining operation;

(VI) The approximate size of the affected land;

(VII) Information sufficient to describe or identify the type of mining operation proposed and how the operator intends to conduct it;

(VIII) A statement that the operator has applied for necessary local government approval;

(IX) Measures to be taken to reclaim any affected land consistent with the requirements of section 34-32-116.

(b) The application required by this subsection (2) shall be sent to the division. If the division denies the application, the applicant may appeal to the board for final determination.

(3) A fee of twenty-five dollars, plus ten dollars for each acre of affected land, and a financial warranty not to exceed five thousand dollars, as the board shall determine, shall accompany the application and shall be paid by the applicant. The five thousand dollar financial warranty limit shall not apply to any mining operation which uses cyanide compounds in a leaching process. Instead, the financial warranty limit shall be twenty thousand dollars. In the event of permit denial, seventy-five percent of the fee shall be refunded. If the refund will be thirty-five dollars or less, no refund shall be made.

(4) The operator, at any time after the completion of reclamation, may notify the board that the land has been reclaimed. Upon receipt of the notice that the affected land or a portion of it has been reclaimed, the board shall cause the land to be inspected and shall release the performance and financial warranties or appropriate portions thereof within thirty days after the board finds the reclamation to be satisfactory and in accordance with a plan agreed upon by the board and the operator.

(5) After July 1, 1988, any operator proposing to engage in a mining operation as provided in this section shall file a permit application to engage in mining prior to the start of the mining operation.

(6) Applications for permits made pursuant to subsection (2) of this section shall be processed and final action taken thereon within thirty days of the filing of such application. If action upon the application is not completed within thirty days, the permit shall be deemed approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount provided in subsection (3) of this section. The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall, so far as practicable, apply to this section, but the board shall, by regulation, provide simplified and reduced procedures and requirements which are applicable to the thirty-day period. Within the thirty-day period, the board may make a determination on an application as provided in sections 34-32-114 and 34-32-115.

(7) (a) Any operator conducting an operation under a permit issued under this section who has held the permit for two consecutive years or more and who subsequently desires to expand it to a size in excess of the limitation set forth in subsections (1) or (2) of this section may request the conversion of his permit by filing an application for a permit pursuant to section 34-32-110 (2) or 34-32-112; except that the applicant need not supply information, materials, and other data and undertakings previously supplied, including any additional materials provided to the board during the course of his current operation, or resulting from the board's inspections thereof.

(b) Applications for conversion of a permit under this subsection (7) shall be processed and final action taken thereon in accordance with section 34-32-110 (2) or 34-32-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (7) or section 34-32-115, the conversion shall be deemed approved, and a permit for the life of the mine shall be promptly issued upon presentation by the applicant of a financial warranty subject to the limitations provided in section 34-32-110 (3), 34-32-115 (3), or 34-32-117 (4).

(c) The provisions of sections 34-32-112, 34-32-114, and 34-32-115 concerning publication, notice, written objections, petitions, and supporting documents shall so far as practicable apply to this section.

(d) The board or division shall not deny the conversion

of a permit for any reason other than those set forth in section 34-32-115 (4).

(8) If the operator is a unit of county government or the state department of highways, the operator may, at its discretion, submit one composite application and annual report for all similarly situated sand, gravel, or quarry operations. Such composite application and annual report shall comply with subsections (2) to (7) of this section; except that no application fee or annual report fee shall be required of county government or the state department of highways, whether or not a composite application is submitted. Financial warranty under subsection (3) of this section shall not be required of the operator if it is a unit of county government or the state department of highways and the operator submits a written guarantee, in lieu of financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit and section 34-32-116.

SECTION 8. 34-32-111 (3) (f) and (3) (i), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-111. Special permits - ten-day processing.
(3) (f) The measures to be taken to comply with the applicable provisions of section 34-32-116-(1)-(b)-to-(1)-(r) 34-32-116 (7) (a) TO (7) (s) (r);

~~(i) A certificate of compliance, by the local government having jurisdiction, that the mining operation would be in compliance with zoning, subdivision regulations, and any master plan for extraction adopted pursuant to section 34-1-304 unless a prior declaration of intent to change or waive the prohibition is obtained by the applicant from the affected local government. A STATEMENT THAT THE OPERATOR HAS APPLIED FOR NECESSARY LOCAL GOVERNMENT APPROVAL.~~

SECTION 9. The introductory portion to 34-32-112 (1), 34-32-112 (2) (f) and (2) (h), the introductory portion to 34-32-112 (3), and 34-32-112 (3) (c), (3) (e) (1), (6), (7), (8), (9), and (10) (a), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-112. Application for reclamation permit - fee - notice. (1) Any operator desiring to obtain a RECLAMATION permit shall make written application to the board for a permit on forms provided by the board. The RECLAMATION permit or the renewal of an existing permit, if approved, shall authorize the operator to engage in such mining operation upon the affected land described in his application for the life of the mine. Such application shall consist of the following:

~~(2) (f) The detailed description of the method of mining~~

~~to--be-employed~~ INFORMATION SUFFICIENT TO DESCRIBE OR IDENTIFY THE TYPE OF MINING OPERATION PROPOSED AND HOW THE OPERATOR, IN HIS SOLE DISCRETION, INTENDS TO CONDUCT IT;

(h) The timetable estimating the periods of time which will be required for the various stages of the mining operation. THE OPERATOR SHALL NOT BE REQUIRED TO MEET THE TIMETABLE, NOR SHALL THE TIMETABLE BE SUBJECT TO INDEPENDENT REVIEW BY THE BOARD.

(3) The reclamation plan shall ~~be--based--upon~~ INCLUDE provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the operator. Reclamation shall be required on all the affected land. The reclamation plan shall include:

(c) A proposed ~~timetable~~ PLAN OR SCHEDULE indicating when and how ~~the reclamation plan shall~~ WILL be implemented. SUCH PLAN OR SCHEDULE SHALL NOT BE TIED TO ANY DATE SPECIFIC, BUT SHALL BE TIED TO THE IMPLEMENTATION OR COMPLETION OF DIFFERENT STAGES OF THE MINING OPERATION.

(e) (i) The expected physical appearance of the area of the affected land, correlated to the proposed timetables required by paragraph (h) of subsection (2) of this section and THE PLAN OR SCHEDULE REQUIRED BY paragraph (c) of this subsection (3); and

(6) A basic fee of fifty dollars and, in addition, a fee of fifteen dollars per acre for the first fifty acres, ten dollars per acre for the second fifty acres, five dollars per acre for the third fifty acres, and one dollar per acre for any additional acres shall be paid. If the operator is a unit of county government or the state department of highways, no application, renewal, or amendment fee is required. In no case shall the RECLAMATION permit fee exceed two thousand dollars. A fraction of an acre shall be considered a full acre for computing the fee. In the event of RECLAMATION permit denial, seventy-five percent of the RECLAMATION permit fee shall be refunded. If the refund will be two hundred dollars or less, no refund shall be made.

(7) Each phase of reclamation is to be completed within five years after the date the operator advises the board that such phase has commenced, as provided in the introductory portion of section 34-32-116 ~~(1)-(f)~~ (7) (q); except that such period may be extended by the board upon a finding that additional time is necessary for the completion of the terms of the reclamation plan.

(8) An operator may, within the term of a RECLAMATION permit, apply to the board for a RECLAMATION permit ~~renewal-or~~

~~For--an~~ amendment to the permit increasing the acreage to be affected or otherwise revising the ~~the--mining--operation.~~ THE RECLAMATION PLAN. Where applicable, there shall be filed with any application for amendment a map and an application with the same content as required for an original application. The ~~renewed-or~~ amended application shall be accompanied by a basic fee of twenty-five dollars plus seven dollars and fifty cents per acre for the first fifty acres, five dollars per acre for the second fifty acres, two dollars and fifty cents per acre for the third fifty acres, and fifty cents per acre for each additional acre. In no case shall the renewal or amendment fee be less than one hundred dollars or more than one thousand dollars. A fraction of an acre shall be considered a full acre for the purpose of computing the fee. In addition, supplemental performance and financial warranties, as determined by the board, for any additional acreage shall be submitted. If the area of the original application is reduced, the amount of the financial warranty, as determined by the board, shall proportionately be reduced. Renewal applications shall contain the information required in the original application if different from that in the original application or renewal. The renewal RECLAMATION permit shall show the area mined or disturbed and the area reclaimed since the original permit or the last renewal. Applications for renewal or amendment of a RECLAMATION permit shall be reviewed by the board in the same manner as applications for new RECLAMATION permits.

(9) Information provided the board in an application for a RECLAMATION permit relating to the location, size, or nature of the deposit or information required by subsection (5) of this section and marked confidential by the operator shall be protected as confidential information by the board and not be a matter of public record in the absence of a written release from the operator or until such mining operation has been terminated. A person who willfully and knowingly violates the provisions of this subsection (9) or section 34-32-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(10) (a) Upon the filing of his application for a RECLAMATION permit with the board, the applicant shall place a copy of such application for public inspection at the office of the board and at the office of the county clerk and recorder of the county in which the affected land is located. The copy of the application placed at the office of the county clerk and recorder shall not be recorded, but shall be retained there until said application has been heard by the board and be available for inspection during such period, and at the end of such period, such copy may be reclaimed or destroyed by the applicant. The information exempted by subsection (9) of this section shall be deleted from such file

copies.

SECTION 10. The introductory portion to 34-32-115 (4) and 34-32-115 (4) (g), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

34-32-115. Action by board - appeals. (4) The board shall grant a permit to an operator if the application complies with the requirements of this article. ~~and all applicable local, state, and federal laws.~~ The board shall not deny a permit, except for one or more of the following reasons:

(g) The proposed ~~mining operation and~~ reclamation ~~would not be carried out in conformance with~~ PLAN DOES NOT CONFORM TO the requirements of section 34-32-116.

SECTION 11. 34-32-116, Colorado Revised Statutes, 1984 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

34-32-116. Duties of operators - reclamation plans.

(1) Every operator to whom a permit is issued pursuant to the provisions of this article shall perform such reclamation as is prescribed by the reclamation plan adopted pursuant to this section.

(2) Reclamation plans shall be based upon provisions for, or satisfactory explanation of, all general requirements for the type of reclamation chosen. The details of the plan shall be appropriate to the type of reclamation designated by the operator and shall be based upon the advice of experienced and technically trained personnel.

(3) On the anniversary date of the permit each year, the operator shall submit a report and a map showing the extent of current disturbances to affected land, reclamation accomplished to date and during the preceding year, new disturbances that are anticipated to occur during the upcoming year, and reclamation that will be performed during the upcoming year.

(4) Except for operators having permits pursuant to section 34-32-110, and except for operators which are units of county government or the state department of highways, the operators shall submit, in addition to the plan and map, an annual fee of three hundred fifty dollars if the operation is an open mining operation or two hundred seventy-five dollars for any other operation.

(5) For operators having permits under section 34-32-110 (2), the operator shall submit, in addition to the plan and

map, an annual fee of fifty dollars.

(6) For operators who have filed an application pursuant to section 34-32-110 (1), the operator shall submit an annual fee of twenty-five dollars and a map or sketch describing the acreage affected to date and the acreage reclaimed to date.

(7) Reclamation plans and the implementation thereof shall conform to the following general requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in accordance with paragraph (j) of this subsection (7).

(b) Earth dams shall be constructed, if necessary to impound water, if the formation of such impoundments will not interfere with mining operations, damage adjoining property, or conflict with water pollution laws, rules or regulations of the federal government or the state of Colorado, or any local government pollution ordinances.

(c) Acid-forming or toxic-producing material that has been mined shall be handled in a manner that will protect the drainage system from pollution.

(d) All refuse shall be disposed in a manner that will control unsightliness, or deleterious effects from such refuse.

(e) In those areas where revegetation is part of the reclamation plan, land shall be revegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration and at least equal in extent of cover to the natural vegetation of the surrounding area. Native species should receive first consideration, but introduced species may be used in the revegetation process when found desirable by the board.

(f) Where it is necessary to remove overburden in order to mine the mineral, topsoil shall be removed from the affected land and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation. If, in the discretion of the board, such topsoil is of insufficient quantity or of poor quality for sustaining vegetation or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in a like manner such other

strata which are best able to support vegetation.

(g) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and ground water systems both during and after the mining operation and during reclamation shall be minimized.

(h) Areas outside of the affected land shall be protected from slides or damage occurring during the mining operation and reclamation.

(i) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion and attendant air and water pollution.

(j) On all affected land, the operator in consultation with the landowner where possible, subject to the approval of the board, shall determine which parts of the affected land shall be reclaimed for forest, range, crop, horticultural, homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife. Prior to approving any new reclamation plan or approving a change in any existing reclamation plan as provided in this section, the board shall confer with the local board of county commissioners and the board of supervisors of the soil conservation district if the mining operation is within the boundaries of a soil conservation district. Reclamation shall be required on all the affected land.

(k) If the operator's choice of reclamation is forest planting, he may, with the approval of the division, select the type of trees to be planted. Planting methods and care of stock shall be governed by good planting practices. If the operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, he may defer planting until planting stock is available to plant such land as originally planned, or he may select an alternate method of reclamation.

(l) The operator shall construct fire lanes or access roads when necessary through the area to be planted. These lanes or roads shall be available for use by the planting crews and shall serve as a means of access for supervision and inspection of the planting work.

(m) On lands owned by the operator, the operator may permit the public to use the same for recreational purposes, in accordance with the limited landowner liability law contained in article 41 of title 33, C.R.S., except in areas where such use is found by the operator to be hazardous or

objectionable.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to the satisfaction of the board to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The legume seed shall be properly inoculated in all cases. The area may be seeded either by hand or power or by the aerial method. The species of grasses and legumes and the rates of seeding to be used per acre shall be determined primarily by recommendations from the agricultural experiment stations established pursuant to article 33 of title 23, C.R.S., and experienced reclamation personnel of the operator, after considering other research or successful experience with range seeding. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local soil conservation district, if any, shall determine when grazing may start.

(o) If the operator's choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the operator shall grade so that the area can be traversed with farm machinery. Preparation for seeding or planting, fertilization, and seeding or planting rates shall be governed by general agricultural and horticultural practices, except where research or experience in such operations differs with these practices.

(p) If the operator's choice of reclamation is for the development of the affected land for homesite, recreational, industrial, or other uses, including food, shelter, and ground cover for wildlife, the basic minimum requirements necessary for such reclamation shall be agreed upon by the operator and the board.

(q) All reclamation provided for in this section shall be carried to completion by the operator with all reasonable diligence, and each phase of reclamation shall be completed prior to the expiration of five years after the date on which the operator advises the board that such phase has commenced, unless such period is extended by the board pursuant to section 34-32-112 (7); except that:

(I) No planting of any kind shall be required to be made on any affected land being used or proposed to be used by the operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse, or proposed for future mining, or within depressed haulage roads or final cuts while such roads or final cuts are being used or made, or where permanent pools or lakes have been formed;

(II) No planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures. Where natural weathering and leaching of any of such affected land, over a period of ten years after commencement of reclamation, fails to remove the toxic and physical characteristics inhibitory to plant growth or if, at any time within such ten-year period, the board determines that any of such affected land is, and during the remainder of said ten-year period will be, unplantable, the operator's obligations under the provisions of this article with respect to such affected land may, with the approval of the board, be discharged by reclamation of an equal number of acres of land previously mined and owned by the operator not otherwise subject to reclamation under this article.

(III) With the approval of the board and the owner of the land to be reclaimed, the operator may substitute land previously mined and owned by the operator not otherwise subject to reclamation under this article or, in the alternative, with the approval of the board and the owner of the land, reclamation of an equal number of acres of any lands previously mined but not owned by the operator if the operator has not previously abandoned unreclaimed mining lands. The board also has authority to grant in the alternative the reclamation of lesser or greater acreage so long as the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If any area is so substituted, the operator shall submit a map of the substituted area, which map shall conform to all of the requirements with respect to other maps required by this article. Upon completion of reclamation of the substituted land, the operator shall be relieved of all obligations under this article with respect to the land for which substitution has been permitted.

(IV) Reclamation may be completed in phases, and the five-year period may be applied separately to each phase as it is commenced during the life of the mine.

(r) If affected land is owned by a legal entity other than any local, state, or federal entity, any buildings or any structures having significant historical value placed thereon during mining operations which are conducted in accordance with section 34-32-116 (7) (j) may remain on the affected land at the option of the operator and landowner.

SECTION 12. 34-32-122 (1) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

34-32-122. Fees, civil penalties, and forfeitures - deposit. (1) (a) ~~All fees collected under the provisions of this article shall be deposited in the mined-land-reclamation cash-fund-created-in-section-24-32-126.~~ All AND civil penalties collected under the provisions of this article shall be deposited in the general fund. The proceeds of all financial warranties forfeited under the provisions of section 34-32-118 shall be deposited in a special account established by the board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such financial warranties have been forfeited.

SECTION 13. 34-32-123 (2), Colorado Revised Statutes, 1984 Repl. Vol., is amended, and the said 34-32-123 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

34-32-123. Operating without a permit - penalty. (2) Any operator who operates without a permit ~~or~~ a prospector ~~who~~ ~~prospects~~ ~~without~~ ~~filing~~ ~~a~~ ~~notice~~ ~~of~~ ~~intent~~ shall be subject to a civil penalty of not less than one hundred dollars per day ~~or~~ ~~more~~ ~~than~~ one thousand dollars per day during ~~which~~ ~~such~~ ~~violation~~ ~~occurs~~, NOR MORE THAN FIVE THOUSAND DOLLARS PER DAY FOR EACH DAY THE LAND HAS BEEN AFFECTED. SUCH PENALTIES SHALL BE ASSESSED FOR A PERIOD NOT TO EXCEED SIXTY DAYS. OPERATORS WHO MINE SUBSTANTIAL ACREAGE BEYOND THEIR APPROVED PERMIT BOUNDARY MAY BE FOUND TO BE OPERATING WITHOUT A PERMIT. ~~except that any operator eligible for a permit under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars or more than two hundred dollars per day during which such violation occurs.~~

(3) Any operator or prospector who operates without filing a notice of intent or a permit under section 34-32-110 shall be subject to a civil penalty of not less than fifty dollars nor more than two hundred dollars per day for each day the land has been affected. Such penalties shall be assessed for not less than one day and not more than sixty days. Operators operating under a permit approved pursuant to section 34-32-110 who affect more than two acres may be found to be operating without a permit.

SECTION 14. 24-1-124 (2.1) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

24-1-124. Department of natural resources - creation - divisions of. (2.1) The department of natural resources shall include, as a part of the office of the executive director:

(a) The mined land reclamation board AND THE DIVISION OF MINED LAND RECLAMATION, created by article 32 of title 34, C.R.S., and said board AND DIVISION, shall exercise its powers and perform its duties and functions under the department as if the same were transferred to the department by a type 1 transfer;

SECTION 15. 24-33-104 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-33-104. Divisions under the department. (1) (j) The division of mined land reclamation.

SECTION 16. Repeal. 34-32-112 (3) (d), 34-32-115 (4) (e), 34-32-122 (1) (b), and 34-32-126, Colorado Revised Statutes, 1984 Repl. Vol., as amended, and 24-33-104 (2), Colorado Revised Statutes, 1982 Repl. Vol., are repealed.

SECTION 17. Effective date. This act shall take effect July 1, 1988.

SECTION 18. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ted L. Strickland

Ted L. Strickland
PRESIDENT OF
THE SENATE

Carl B. Bledsoe

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi

Joan M. Albi
SECRETARY OF
THE SENATE

Lee C. Bahych

Lee C. Bahych
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED

May 6, 1988 at 5:15 PM

Roy Romer

Roy Romer
GOVERNOR OF THE STATE OF COLORADO

Chapter 78.44 RCW

SURFACE MINING

SECTIONS

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78.44.170	Appeals.
78.44.175	Surface mining of coal—Preemption of chapter by federal laws, programs.
78.44.180	Confidentiality.
78.44.910	Previously mined land.
78.44.920	Effective date—1970 ex.s. c 64.
78.44.930	Severability—1970 ex.s. c 64.

RCW 78.44.010 LEGISLATIVE FINDING. The legislature recognizes that the extraction of minerals by surface mining is a basic and essential activity making an important contribution to the economic well-being of the state and nation. At the same time, proper reclamation of surface mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of many types of surface mining operations precludes complete restoration of the land to its original condition. However, the legislature finds that reclamation of surface mined lands

as provided in this chapter will allow the mining of valuable minerals and will provide for the protection and subsequent beneficial use of the mined and reclaimed land. [1970 ex.s. c 64 § 2.]

RCW 78.44.020 PURPOSE. The purpose of this chapter is to provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration. It is a further purpose of this chapter to provide a means of cooperation between private and governmental entities in carrying this chapter into effect. [1970 ex.s. c 64 § 3.]

RCW 78.44.030 DEFINITIONS. As used in this chapter, unless the context indicates otherwise:

(1) "Surface mining" shall mean all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and including the production of surface mining refuse. Surface mining shall not include on-site processing of minerals such as concrete batching or rock crushing operations. For the purpose of this chapter surface mining shall mean those operations described in this paragraph which collectively result in more than three acres of land being disturbed or that result in pit walls more than thirty feet high and steeper than one horizontal to one vertical. Surface mining shall not include disturbances of greater than three acres of land during any time period if the cumulative area that has not been rehabilitated according to the reclamation requirements outlined in this chapter is less than three acres. Surface mining shall not include excavation or removal of sand, gravel, clay, rock, top soil, or other materials in remote areas by an owner or holder of a possessory interest in land for the primary purpose of construction or maintenance of access roads to or on such landowner's property. Surface mining shall not include excavation or grading conducted for farming, on-site road construction or other on-site construction, but shall include adjacent or off-site borrow pits except those on landowner's property for use on access roads on such property. Prospecting and exploration activities shall be included within the definition of surface mining when they are of such nature and extent as to exceed the qualifying sizes listed above or when collectively they disturb more than one acre per eight acres of land area.

(2) "Unit of surface mined area" shall mean the area of land and water covered by each operating permit that is actually newly disturbed by surface mining during each twelve-month period of time, beginning at the date of issuance of the permit, and shall comprise the area from which overburden and/or minerals have been removed, the area covered by spoil banks, and all additional areas used in surface mining operations which by virtue of such use are thereafter susceptible to excessive erosion.

(3) "Abandonment of surface mining" shall mean a cessation of surface mining, not set forth in an operator's plan of operation or by any other sufficient written notice, extending for more than six consecutive months or when, by reason of examination of the premises of

by any other means, it becomes the opinion of the department of natural resources that the operation has in fact been abandoned by the operator: PROVIDED, That the operator does not, within thirty days of receipt of written notification from the department of his intent to declare the operation abandoned, submit evidence to the department's satisfaction that the operation is in fact not abandoned.

(4) "Minerals" shall mean coal, clay, stone, sand, gravel, metallic ore, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction uses.

(5) "Overburden" shall mean the earth, rock, and other materials that lie above a natural deposit of mineral.

(6) "Surface mining refuse" shall mean all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of minerals during the surface mining operations on the operating permit area, and shall include all waste materials deposited on or in the permit area from other sources.

(7) "Spoil bank" shall mean a deposit of excavated overburden or mining refuse.

(8) "Operator" shall mean any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(9) "Department" means the department of natural resources.

(10) "Reclamation" shall mean the reasonable protection of all surface resources subject to disruption from surface mining and rehabilitation of the surface resources affected by surface mining including the area under stockpiled materials. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to reestablish on a continuing basis the vegetative cover, soil stability, water conditions, and safety conditions appropriate to the intended subsequent use of the area.

(11) "Reclamation plan" shall mean the operator's written proposal, as required and approved by the department, for reclamation of the affected resources which shall include, but not be limited to:

(a) A statement of the proposed subsequent use of the land after reclamation which is signed by all individuals with a possessory interest in the land, or a copy of the conveyance that expressly grants or reserves the right to extract the mineral by surface mining methods, or if the conveyance does not expressly grant the right to extract the mineral by surface mining methods, then documentation that under applicable state law, the operator has the legal authority to extract the mineral by those methods: PROVIDED, That the applicant must provide notice reasonably calculated to advise all individuals with a possessory interest of the intent to remove minerals and the proposed subsequent use. If any individual with a possessory interest does not respond to the notice within sixty days, that person's signature shall not be required;

(b) Evidence that this subsequent use would not be illegal under local zoning regulations;

(c) Proposed practices to protect adjacent surface resources;

(d) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(e) Manner and type of revegetation or other surface treatment of disturbed areas;

(f) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(g) Method of control of contaminants and disposal of surface mining refuse;

(h) Method of diverting surface waters around the disturbed areas;

(i) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution;

(j) Such maps and other supporting documents as reasonably required by the department; and

(k) A time schedule for reclamation that meets the requirements of RCW 78.44.090. [1987 c 258 § 1; 1984 c 215 § 1; 1970 ex.s. c 64 § 4.]

RCW 78.44.035 "SEGMENT" TO BE DEFINED BY RULE. The department shall by rule define the term "segment" as used in RCW 78.44.090 and 78.44.140 to establish the depth or extent of the operation covered. [1987 c 258 § 3.]

RCW 78.44.040 ADMINISTRATION OF CHAPTER—RULE-MAKING AUTHORITY. The department of natural resources is charged with the administration of this chapter. In order to implement the chapter's terms and provisions, the department, under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter. [1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

RCW 78.44.050 CHAPTER CUMULATIVE AND NONEXCLUSIVE—OTHER LAWS NOT AFFECTED. This chapter shall not affect any of the provisions of the state fisheries laws (Title 75 RCW), the state water pollution control laws (Title 90 RCW), the state game laws (Title 77 RCW), or any other state laws, and shall be cumulative and nonexclusive. [1970 ex.s. c 64 § 6.]

RCW 78.44.060 INVESTIGATIONS, RESEARCH, ETC.—DISSEMINATION OF INFORMATION. The department shall have the authority to conduct or authorize investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of surface mined lands. [1970 ex.s. c 64 § 7.]

RCW 78.44.070 COOPERATION WITH OTHER AGENCIES—RECEIPT AND EXPENDITURE OF FUNDS. The department may cooperate with other governmental and private agencies in this state and other states and agencies of

the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1970 ex.s. c 64 § 8.]

RCW 78.44.080 OPERATING PERMITS—REQUIRED—APPLICATIONS. After January 1, 1971, no operator shall engage in surface mining without having first obtained an operating permit from the department. Except as otherwise permitted in this section a separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department an operator must submit an application on a form provided by the department, which shall contain the following information and any other pertinent data required by the department:

(1) Name and address of the legal landowner, any purchaser of the land under a real estate contract, and the operator and, if any of these are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;

(2) Materials to be surface mined;

(3) Type of surface mining to be performed;

(4) Expected starting date of surface mining;

(5) Anticipated termination date of the surface mining project;

(6) Expected amount of mineral to be surface mined;

(7) Maximum depth of surface mining;

(8) Size and legal description of the area that will be disturbed by surface mining. If more than ten acres will be disturbed by surface mining or, regardless of the amount of land to be disturbed, if the department finds that conditions warrant it and so requests, a map of the area to be surface mined shall be submitted. The map shall show the boundaries of the area of land which will be affected; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built in conjunction with the surface mining operation; and the names of the surface and mineral owners of all lands within the surface mining area;

(9) A plan of surface mining that will provide, within limits of normal operational procedure of the industry, for completion of surface mining and associated disturbances on each segment of the area for which a permit is requested so that reclamation can be initiated at the earliest possible time on those portions of the surface mined area that will not be subject to further disturbance by the mining operation. Whenever feasible, visual screening, vegetative or otherwise, will be maintained or established on the property containing the surface mining to screen the view of the operation from public highways, public parks, and residential areas.

(10) A reclamation plan that must be acceptable to and approved by the department, except as provided in RCW 78.44.100. An operator may not depart from an approved plan without having previously obtained from the department written approval of his proposed change.

The department may adopt rules and regulations permitting an operator of more than one surface mining operation to submit a single

application for a combined operating permit covering all of his surface mining operations. Such application may require detailing of information required by this section for each separate location. An operator operating under such a combined permit may submit a consolidated reclamation program covering all his operations under rules and regulations prescribed by the department, but may be required to furnish specific information relative to reclamation of any single operating area if the department determines that such is necessary to carry out the purposes of this chapter. [1970 ex.s. c 64 § 9.]

RCW 78.44.090 RECLAMATION PLANS. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with surface mining and in any case shall be initiated at the earliest possible time after completion or abandonment of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a permit is requested.

A reclamation plan will be approved by the department if it adequately provides for the accomplishment of the activities specified in the definition of "reclamation plan", RCW 78.44.030(11), and meets those of the following minimum standards that are applicable:

(1) Excavations made to a depth not less than two feet below the low groundwater mark, which will result in the establishment of a lake of sufficient area and depth of water to be useful for residential, recreational, game, or wildlife purposes, shall be reclaimed in the following manner:

(a) All banks in soil, sand, gravel, and other unconsolidated materials shall be sloped to two feet below the low groundwater line at a slope no steeper than one and one-half feet horizontal to one foot vertical;

(b) Portions of solid rock banks shall be stepped or other measures be taken to permit a person to escape from the water.

(2) In all other excavations in soil, sand, gravel, and other unconsolidated materials, the side slopes and the slopes between successive benches shall be no steeper than one and one-half feet horizontal to one foot vertical for their entire length.

(3) The sides of all strip pits and open pits in rock and other consolidated materials shall be no steeper than one foot horizontal to one foot vertical, or other precautions must be taken to provide adequate safety.

(4) The slopes of quarry walls in rock or other consolidated materials shall have no prescribed angle of slope, but where a hazardous condition is created that is not indigenous to the immediate area, the quarry shall be either graded or backfilled to a slope of one foot horizontal to one foot vertical or other precautions must be taken to provide adequate safety.

(5) In strip mining operations the peaks and depressions of the spoil banks shall be reduced to a gently rolling topography which will minimize erosion and which will be in substantial conformity with the immediately surrounding land area.

(6) In no event shall any provision of this section be construed to allow stagnant water to collect or remain on the surface mine

area. Suitable drainage systems shall be constructed or installed to avoid such conditions if natural drainage is not possible.

(7) All grading and backfilling shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the director for a supervised sanitary fill.

(8) In all types of surface mining, in order to prevent water pollution, all acid-forming surface mining refuse shall be disposed of by covering all acid-forming materials with at least two feet of clean fill. The final surface covering shall be graded so that surface water will drain away from the disposal area.

(9) Vegetative cover will be required in the reclamation plan as appropriate to the future use of the land.

(10) All surface mining that will disturb streams must comply with the requirements of the state fisheries laws (Title 75 RCW), and every application for an operating permit for such operations must have a reclamation plan that shall have been approved by the department of fisheries with regard to operations in streams as required by Title 75 RCW. [1970 ex.s. c 64 § 10.]

RCW 78.44.100 INSPECTIONS—PERMITS—DURATION OF OPERATING PERMITS—MODIFICATION OF RECLAMATION PLAN—SUCCESSOR OPERATORS. Upon receipt of an application for a permit, the surface mining site must be inspected by a representative of the department. Within twenty-five days of receipt of the application and reclamation plan by the department and receipt of the permit fee, the department shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies.

Failure to act within the twenty-five day period on the reclamation plan shall not be cause for a denial of a permit. The department shall set the amount of the bond or other security required for a permit governing the surface mining operation set forth in the application.

If the department refuses to approve a reclamation plan in the form submitted by the operator, it shall notify the operator, in writing, stating the reasons for its refusal and listing such additional requirements to the operator's reclamation plan as are necessary for the approval of the plan by the department. Within thirty days, the operator shall either accept such additional requirements as part of the reclamation plan or file notice of appeal.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface mining authorized by the permit is completed or abandoned, unless the permit is suspended by the department as provided in this chapter. The operating permit shall provide that the reclamation plan may be modified, after timely notice and opportunity for hearing, at any time during the term of the permit for any of the following reasons:

(1) To modify the requirements so that they will not conflict with existing laws;

(2) The department determines that the previously adopted reclamation plan is clearly impossible or impracticable to implement and maintain;

(3) The department determines that the previously adopted reclamation plan is obviously not accomplishing the intent of this chapter or

(4) The operator and the department mutually agree to change the reclamation plan.

When one operator succeeds to the interest of another in any uncompleted surface mining operation by sale, assignment, lease, or otherwise, the department may release the first operator from the duties imposed upon him by this chapter as to such operation: PROVIDED, That both operators have complied with the requirements of this chapter and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this chapter. [1984 c 215 § 3; 1970 ex.s. c 64 § 11.]

RCW 78.44.110 FEES. The permit fees required under this chapter shall be as follows:

(1) The basic fee for the permit shall be two hundred fifty dollars per permit year for each separate location, payable with submission of the application and annually thereafter with submission of the report required in RCW 78.44.130: PROVIDED, That a person who has held a valid surface mining permit and whose property has never been disturbed for surface mining may keep such permit in effect by paying an annual fee of fifty dollars. Before a person holding a fifty dollar permit begins surface mining during any permit year, that person shall pay the remainder of the two hundred fifty dollar fee.

(2) In addition, there shall be a five dollar per acre fee for all acreage exceeding ten acres which was newly disturbed by surface mining during the previous permit year, which acreage fee shall be paid at the time of submission of the report required in RCW 78.44.130.

(3) All fees collected shall be deposited in the general fund. [1987 c 258 § 2; 1984 c 215 § 4; 1970 ex.s. c 64 § 12.]

RCW 78.44.120 PERFORMANCE BONDS AND OTHER SECURITY. Upon receipt of an operating permit an operator other than a public or governmental agency shall not commence surface mining until the operator has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under the provisions of chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to the estimated cost of completing the reclamation plan for the area to be surface mined during the next twelve-month period and any previously surface mined area for which a permit has been issued and on which the reclamation has not been satisfactorily completed and approved. If an operator increases the area to be surface mined during the twelve month period, the department may increase the amount of the bond to compensate for the increase. The department shall have the authority to determine the amount of the bond that shall be required, and for any reason may refuse any bond not deemed adequate.

The bond shall be conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations adopted under it.

In lieu of the surety bond required by this section the operator may file with the department a cash deposit, negotiable securities acceptable to the department, an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department, or bank letters of credit acceptable to the department.

Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released prior thereto as hereinafter provided. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon completion of compliance or acceptance by the department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

A public or governmental agency shall not be required to post a bond under the terms of this chapter.

A blanket performance bond covering two or more surface mining operations may be submitted by an operator in lieu of separate bonds for each separate operation. [1984 c 215 § 5; 1977 c 66 § 1; 1970 ex.s. c 64 § 13.]

RCW 78.44.130 REPORTS. Within thirty days after completion or abandonment of mining on an area under permit or within thirty days after each annual anniversary date of the operating permit, whichever is earlier, or at such later date as may be provided by department rules and regulations, and each year thereafter until reclamation is completed and approved, the operator shall file a report of activities completed during the preceding year on a form prescribed by the department, which report shall:

- (1) Identify the operator and permit number;
- (2) Locate the operation by subdivision, section, township, and range, and with relation to the nearest town or other well known geographic feature;
- (3) Estimate acreage to be newly disturbed by surface mining in the next twelve-month period; and
- (4) Update any maps previously submitted or provide such maps as may be specifically requested by the department. Such maps shall show:
 - (a) The operating permit area;
 - (b) The unit of surface mined area;
 - (c) The area to be surface mined during the next twelve-month period;
 - (d) If completed, the date of completion of surface mining;
 - (e) If not completed, the area that will not be further disturbed by the mining operations; and
 - (f) The date of beginning, amount, and current status of reclamation performed during the previous twelve months. An operator operating under a combined operating permit may submit a single annual report, but such report shall include the data required in this section for each separate operating area. [1970 ex.s. c 64 § 14.]

RCW 78.44.140 INSPECTION OF PERMIT AREA—DEFICIENCIES—EXTENSION OF PERFORMANCE PERIODS—PERFORMANCE ACTIONS BY DEPARTMENT—RECOVERY OF EXPENSES—ENFORCEMENT. Upon receipt of the operator's report, and at any other reasonable time the department may elect, the department shall cause the permit area to be inspected to determine if the operator has complied with the reclamation plan and the department's rules and regulations.

The operator shall proceed with reclamation as scheduled in the reclamation plan. Following any written notice by the department noting deficiencies, the operator shall commence action within thirty days, or as directed by the department if it has determined that emergency actions are required, to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected: PROVIDED, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The department may extend performance periods referred to in this section and in RCW 78.44.090, for delays clearly beyond the operator's control, but only when the operator is, in the opinion of the department, making every reasonable effort to comply.

Within thirty days after notification by the operator and when in the judgment of the department reclamation of a unit of surface mined area is properly completed, the mining operator shall be notified in writing and his bond on said area shall be released or decreased proportionately.

If reclamation of surface mined land is not proceeding in accordance with the reclamation plan and the operator has not commenced action to rectify deficiencies within thirty days after notification by the department or as directed by the department, or if reclamation is not properly completed in conformance with the reclamation plan within two years after completion or abandonment of surface mining on any segment of the permit area, the department is authorized, with the staff, equipment and material under his control, or by contract with others, to take such actions as are necessary for the reclamation of the surface mined areas. If the department intends to undertake the reclamation, the department shall ascertain the probable costs of reclamation and shall notify the operator, the surety, and the owner of the probable costs. The operator or surety, or both, shall pay that amount to the department for reclaiming the surface mined land. The department shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The department shall notify the operator, the owner, and the surety by order. The order shall state the amount of necessary expenses incurred by the department in reclaiming the surface mined land and a notice that the amount is due and payable to the department by the operator and the surety to the extent that the amount has not already been paid. The department shall refund all amounts received above the amount of expenses incurred.

If the amount specified in the notice or order is not paid within thirty days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the notice or order is directed do business to

recover the amount specified. The surety shall be liable to the state to the extent of the bond.

The amount owed the department by the operator for the reclamation performed by the state may be recovered by a lien against the reclaimed property, which may be enforced in the same manner and with the same effect as a mechanic's lien.

In addition to the other liabilities imposed by this chapter, failure to commence action to rectify deficiencies in reclamation within thirty days after notification by the department or failure satisfactorily to complete reclamation work on any segment of the permit area within two years after completion or abandonment of surface mining on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit and refusal to issue another permit to the delinquent operator until such deficiencies are corrected by the operator. [1984 c 215 § 6; 1970 ex.s. c 64 § 15.]

RCW 78.44.150 OPERATING WITHOUT PERMIT—PENALTY. Any operator conducting surface mining within the state of Washington without a valid operating permit shall be guilty of a gross misdemeanor. Each day of operation shall constitute a separate offense. [1970 ex.s. c 64 § 16.]

RCW 78.44.160 ENJOINING OR STOPPING ILLEGAL OPERATIONS—PENALTY—NOTICE—REMISSION OR MITIGATION OF PENALTY—APPEAL. When the department finds that an operator is conducting surface mining on an area for which a valid operating permit is not in effect, or is conducting surface mining in any manner not authorized by his operating permit or by the rules and regulations adopted by the department, the department may forthwith order such operator to suspend all such operations until compliance is effected or assured to the satisfaction of the department. In the event the operator fails or declines to obey such order, the operator shall be subject to a civil penalty in an amount of not more than five hundred dollars for each violation. Every day on which a failure or declining to obey the order continues is a separate violation.

The penalty provided for in this section shall be imposed by notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion considers proper, provided the department considers the remission or mitigation to be in the best interests of carrying out the purposes of this chapter.

A person incurring a penalty under this section may appeal the penalty as provided in RCW 78.44.170. The appeal shall be filed within thirty days of receipt of notice imposing the penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, the appeal shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application.

A penalty imposed under this section becomes due and payable thirty days after receipt of a notice imposing the penalty unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the penalty becomes due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from the disposition. If an appeal of the penalty is filed, the penalty becomes due and payable only upon completion of all review proceedings provided for in RCW 78.44.170 and the issuance of a final decision by the department confirming the penalty in whole or in part.

If the penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any county in which the person incurring the penalty does business, to recover the penalty. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in this chapter. The attorney general shall forthwith take the necessary legal action to enjoin, or otherwise cause to be stopped, such conduct of surface mining. [1984 c 215 § 7; 1970 ex.s. c 64 § 17.]

RCW 78.44.170 APPEALS. Appeals from determinations made under this chapter shall be made under the provisions of the administrative procedure act (chapter 34.04 RCW), as now or hereafter amended and shall be considered a contested case within the meaning of the administrative procedure act (chapter 34.04 RCW). [1970 ex.s. c 64 § 18.]

RCW 78.44.175 SURFACE MINING OF COAL—PREEMPTION OF CHAPTER BY FEDERAL LAWS, PROGRAMS. In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8.]

RCW 78.44.180 CONFIDENTIALITY. All reclamation plans, operators' reports and other required information under this chapter shall be for the confidential use of the department which shall by rule or regulation provide for the release thereof to proper interested persons. [1970 ex.s. c 64 § 20.]

RCW 78.44.910 PREVIOUSLY MINED LAND. This act shall not direct itself to the reclamation of land mined prior to January 1, 1971. [1970 ex.s. c 64 § 22.]

RCW 78.44.920 EFFECTIVE DATE—1970 EX.S. C 64. This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

RCW 78.44.930 SEVERABILITY—1970 EX.S. C 64. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 64 § 24.]

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
STATE OF UTAH

Proposed Amended and New Rules
Minerals Reclamation Program
R613-001 through R613-005

Proposed rules R613-001 through R613-005 replace
Rules M-1 through M-10, Mined Land Reclamation
General Rules and Regulations and Rules of
Practice and Procedure, in their entirety.

The full text of these rules and their accompanying forms
can be viewed at the Office of Administrative Rules,
Archives Building, State Capitol.

Copies are available at the
Division of Oil, Gas and Mining Offices,
Suite 350, 3 Triad Center, 355 West North Temple
Salt Lake City, Utah 84180-1203

Contact: Kenneth E. May/Lowell P. Braxton
(801) 538-5340

September 1, 1988

PROPOSED RULES

September 1988

STATE OF UTAH
MINED LAND RECLAMATION ACT

Title 40, Chapter 8
Utah Code Annotated, as Amended

MINERALS RECLAMATION PROGRAM

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Forms to be used in conjunction with the Rules:

FORM MR-EXP	Notice of Intention to Conduct Exploration
FORM MR-SMO	Notice of Intention to Commence Small Mining Operations
FORM MR-LMO	Notice of Intention to Commence Large Mining Operations
FORM MR-RC	Reclamation Contract
FORM MR-REV	Notice of Intention to Revise Large Mining Operations
FORM MR-EPR	Mineral Exploration Progress Report
FORM MR-AR	Annual Report of Mining Operations
FORM MR-TRS	Transfer of Notice of Intention-Small Mining Operation
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R613-001- MINERALS REGULATORY PROGRAM

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R613-001- MINERALS REGULATORY PROGRAM.

R613-001-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, & Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Paragraph 40-8-2 of the Act states:

"The Utah Legislature finds that: (1) A mining industry is essential to the economic and physical well-being of the State of Utah and the nation. (2) It is necessary to alter the surface of the earth to extract minerals required by our society, but this should be done in such a way as to minimize undesirable effects on the surroundings. (3) Mined land should be reclaimed so as to prevent conditions detrimental to the general safety and welfare of the citizens of this state and to provide for the subsequent use of the lands affected. Reclamation requirements must be adapted to the diversity of topographic, chemical, biologic, geologic, economic and social conditions in the areas in which mining takes place."

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R613-001-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

- 1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.
- 1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State & Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Division of Environmental Health, the Utah Division of State History, the Utah Division of State Lands and Forestry, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R613-001-103. General Rules.

The following are general rules for statewide application. Special rules, regulations and orders will be issued when necessary or advisable, after notice and hearing, and shall prevail as against these general rules, if in conflict therewith.

R613-001-104. Violations & Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R613-001-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of

these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R613-001-106 Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63, Chapter 46b, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto, which has been approved by the Division.

An approved notice of intention is not required for exploration having a disturbed area of five or less surface acres, or for small mining operations.

"Board" means the Utah Board of Oil, Gas and Mining. The Board shall hear all appeals of adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings and other proceedings which commence before the Board. The Board may appoint a Hearing Examiner for its hearings in accordance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters

of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R613-005.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) onsite private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; onsite transportation, concentrating, milling, evaporation, and other primary processing.

"Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; offsite operations and transportation; or reconnaissance activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, including any amendments or revisions thereto.

"Offsite" means the land areas that are outside of or beyond the onsite land.

"Onsite" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the Board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

"Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R613-005. If fairness to the parties is not compromised,

an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of onsite surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: Minerals reclamation
1988

40-8-1
et seq

MINERALS RECLAMATION PROGRAM

R613-002- EXPLORATION

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Forms to be used in conjunction with the Rules:

- FORM MR-EXP Notice of Intention to Conduct Exploration
- FORM MR-EPR Mineral Exploration Progress Report
- FORM MR-RC Reclamation Contract (if greater than five acres)

R613-002 EXPLORATION

R613-002-101. Filing Requirements & Review Procedures

1. A complete Notice of Intention to Conduct Exploration (FORM MR-EXP) or a letter containing all the required information must be filed with the Division before exploration begins. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.
2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the Division will review the proposal and notify the operator in writing:
 - 2.11. That the notice of intention is complete, or
 - 2.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.
 - 2.13. The Division will review any subsequent filings of information within 10 working days of receipt.
3. A notice of intention to conduct exploration will not require Division approval, unless more than five surface acres of disturbance is proposed. However, all of the required information must be provided to the Division. Division approval is required for all variances from Rule R613-002-107, 108, or 109, regardless of the number of surface acres of disturbance planned.
4. Exploration that will disturb more than five surface acres at any given time will require Division approval and a reclamation surety before exploration begins. (See Rule R613-002-111.)
5. Developmental drilling conducted within the disturbed area of an approved large mining operation or within the five acre disturbed area of a small mining operation does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter.

R613-002-102. Duration of the Notice of Intention

A complete Notice of Intention to Conduct Exploration or comparable letter shall be valid until November 30th of the year following the year of submittal. All exploration and reclamation activities should be completed within this time frame. An operator desiring to extend the duration of a notice of intention, must notify the Division in writing, prior to expiration of the notice of intention, specifying the reasons an extension is required, and the anticipated length of time required to complete exploration and reclamation.

R613-002-103. Notice of Intention to Conduct Exploration

The notice of intention shall address the requirements of the following rules:

<u>Rule #</u>	<u>Subject</u>
R613-002-104	Operator(s), Surface and Mineral Owner(s)
R613-002-105	Maps and Drawings
R613-002-106	Project Description
R613-002-107	Operation Practices
R613-002-108	Hole Plugging Requirements
R613-002-109	Reclamation Practices
R613-002-110	Variance

R613-002-104. Operator(s), Surface & Mineral Owner(s)

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for exploration.
2. The name and permanent mailing address of the surface land owner(s) and mineral owner(s) of all land to be affected by the operations.
3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, federal or state leases or permits included in the land affected.

R613-002-105. Maps and Drawings

A topographic base map showing the location of the proposed exploration project must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed exploration project for which the operator is not responsible.

R613-002-106. Project Description

The notice of intention should include the following information:

1. A statement giving general details of the type or method of exploration proposed, including the proposed dates during which exploration will be conducted;
2. The type of minerals to be explored for;
3. The general dimensions of all drill holes, including total depth and diameter;
4. The general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances;
5. The width and length of any new roads constructed; and
6. An estimate of the total number of surface acres to be disturbed.

R613-002-107. Operation Practices

The operator shall conform to the following practices while conducting exploration unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;
 - 1.12. The disposal of trash, scrap metal and wood, and extraneous debris;
 - 1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-002-108;
 - 1.14. The posting of appropriate warning signs in locations where public access to operations is readily available; and
 - 1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.
2. Drainages - If natural channels are to be affected by exploration, then the operator shall take appropriate measures to avoid or minimize environmental damage.
3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.
4. Deleterious Materials - All deleterious or potentially deleterious material, shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.
5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.
6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-002-108. Hole Plugging Requirements

Drill holes shall be properly plugged as soon as practical and not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

- 1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.
 - 1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.
2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:
- 2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, the owner must notify the Division in writing accepting responsibility for the ultimate plugging of the drill hole.
 - 2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:
 - 2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or
 - 2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-002-109. Reclamation Practices

The operator shall conform to the following practices while conducting reclamation unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

- 1.11. The permanent sealing of shafts and tunnels;
 - 1.12. Appropriate disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;
 - 1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-002-108;
 - 1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;
 - 1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.
2. Drainages - If natural channels have been affected by exploration, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.
 3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.
 4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.
 5. Land Use - The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.
 6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.
 7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.
 8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.
 9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.
 10. Trenches and Pits - Trenches and small pits shall be reclaimed.
 11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface so as to minimize erosion, prevent undue compaction and promote revegetation.
13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

- 13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover^a; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

- 13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeded has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether future exploration or mining operations involve a disturbed area of five acres or less.

*Note: If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard.

R613-002-110. Variance

1. The operator may request a variance from Rule R613-002-107, 108, or 109, by submitting the following information, which shall be considered by the Division on a site-specific basis:
 - 1.11. The rule(s) as to which a variance is requested;
 - 1.12. The variance requested and description of the area that would be affected by the variance;
 - 1.13. Justification for the variance;
 - 1.14. Alternate methods or measures to be utilized.
2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.
3. Any variance must be specifically approved by the Division in writing.

R613-002-111. Surety

1. The operator of an exploration project that will result in more than five surface acres being disturbed at any given time must post a reclamation surety prior to commencement of exploration. Disturbed areas which have been reclaimed are not included within the cumulative five acres for purposes of the reclamation surety.

2. The Division will not require a separate surety where a reclamation surety in a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.
3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site-specific calculations reflecting the Division's cost to reclaim the site. An operator's reclamation estimate will be accepted if it is accurate and verifiable.
4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:
 - 4.11. Corporate surety bond,
 - 4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining,
 - 4.13. Cash,
 - 4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or
 - 4.15. Escrow accounts.
 - 4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.
5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.
6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-002-112. Failure to Reclaim

If the operator fails or refuses to conduct reclamation as outlined in the complete notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,
2. The surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings and request that the necessary forfeiture action be taken.

R613-002-113. Confidential Information

Information provided in the notice of intention and in the Mineral Exploration Progress Report (FORM MR-EPR) that relates to the location, size, and nature of the mineral deposit, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator.

R613-002-114. Revised Notice

Minor additions or changes in the location of exploration operations do not require the submittal of a revised notice of intention. A new or revised Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter must be submitted when:

1. The proposed additions or changes will occur outside the originally designated quarter section; or,
2. The proposed additions will cause the total unreclaimed surface disturbance to exceed five (5) acres.

R613-002-115. Reports

On or before December 31st of the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP) or comparable letter, the operator must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

R613-002-116. Practices and Procedures; Appeals

The Administrative Procedures, as outlined in R613-005, shall be applicable to minerals regulatory proceedings.

KEY: Minerals reclamation
1988

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MINERALS RECLAMATION PROGRAM

R613-003- SMALL MINING OPERATIONS

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Forms to be used in conjunction with the Rules:

FORM MR-SMO	Notice of Intention to Commence Small Mining Operations
FORM MR-AR	Annual Report of Operations
FORM MR-TRS	Transfer of Notice of Intention-Small Mining Operations

R613-003 SMALL MINING OPERATIONS

R613-003-101. Filing Requirements & Review Procedures.

1. A Notice of Intention to Commence Small Mining Operations (FORM MR-SMD) or a letter containing all the required information must be filed with the Division before a small mining operation begins. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

Previously exempt mining operations, as defined by Rule 613-001-109, which have a disturbed area of five (5) acres or less and which will continue or resume mining operations, must submit a complete Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) by April 29, 1989.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;
 - 2.11. that the notice of intention is complete, or
 - 2.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.
3. The Division will review any subsequent filings of information within 10 working days of receipt.
4. A notice of intention to commence small mining operations will not require Division approval. However, all of the required information must be provided to the Division.

Division approval is required for all variances from Rules R613-003-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

5. Filing of the complete notice of intention shall enable the operator to conduct small mining operations. The operator is responsible for conducting mining and reclamation activities in compliance with the requirements of the notice of intention, the Act, and these Rules.
6. The operator must notify the Division no later than 30 days after beginning small mining operations.

R613-003-102. Duration of the Notice of Intention.

The notice of intention, including any subsequent amendments or revisions, shall remain in effect for the life of the small mining operation.

R613-003-103. Notice of Intention to Commence Small Mining Operations.

The notice of intention shall address the requirements of the following rules:

<u>Rule #</u>	<u>Subject</u>
R613-003-104	Operator(s), Surface and Mineral Owner(s)
R613-003-105	Map
R613-003-106	Operation Plan
R613-003-107	Operation Practices
R613-003-108	Reclamation Practices
R613-003-109	Variance

R613-003-104. Operator(s), Surface and Mineral Owner(s).

The notice of intention shall include the following general information:

1. The name, permanent mailing address, and telephone number of the operator responsible for the small mining operation and reclamation of the site.
2. The name, and permanent mailing address of the surface landowner(s) and mineral owner(s) of all land to be affected by the mining operation.
3. The federal mining claim number(s), lease number(s) or permit number(s) of all mining claims, federal or state leases or permits included in the land affected.

R613-003-105. Project Location & Map.

A topographic base map showing the location of the proposed small mining operation must be submitted with the notice of intention. A USGS 7.5 minute series map is preferred. The areas to be disturbed should be plotted on the map in sufficient detail so that they can be located on the ground. It is recommended that the operator also plot and label any previously disturbed areas in the immediate vicinity of the proposed small mining operation for which the operator is not responsible.

R613-003-106. Operation Plan.

The operator shall provide a brief narrative description of the proposed mining operation as part of the notice of intention. The description should include the following information:

1. A statement giving general details of the type or method of mining operations proposed, and the type of minerals to be mined;
2. Estimated width and length of any new roads to be constructed;
3. An estimate of the total number of surface acres to be disturbed by the mining operation.

R613-003-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:
 - 1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;
 - 1.12. The disposal of trash, scrap metal and wood, and extraneous debris;
 - 1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-003-108.;