

CHAPTER 73

NATURAL RESOURCES

HOUSE BILL 19-1113

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also SENATOR(S) Donovan, Bridges, Danielson, Fenberg, Ginal, Lee, Pettersen, Rodriguez, Story, Winter, Garcia.

AN ACT**CONCERNING THE PROTECTION OF WATER QUALITY FROM ADVERSE IMPACTS CAUSED BY MINERAL MINING.**

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

SECTION 1. In Colorado Revised Statutes, 34-32-116, **amend** (3), (7) introductory portion, and (7)(g) as follows:

34-32-116. Duties of operators - reclamation plans. (3) On the anniversary date of the permit each year, the operator shall submit:

(a) ~~a report and~~ A map showing the extent of current disturbances to affected land; AND

(b) A REPORT DESCRIBING THE AFFECTED LAND AND THE SURROUNDING AREA, INCLUDING:

(I) CHANGES OVER THE PRECEDING YEAR REGARDING ANY DISTURBANCES TO THE PREVAILING HYDROLOGIC BALANCE;

(II) CHANGES OVER THE PRECEDING YEAR REGARDING ANY DISTURBANCES TO THE QUALITY AND QUANTITY OF WATER IN SURFACE AND GROUNDWATER SYSTEMS;

(III) Reclamation accomplished to date and during the preceding year;

(IV) New disturbances that are anticipated to occur during the upcoming year; and

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(V) Reclamation that will be performed during the upcoming year.

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

(g)(I) 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 groundwater systems both during and after the mining operation and during reclamation shall be minimized.

(II) EXCEPT AS SPECIFIED IN SUBSECTIONS (7)(g)(III) AND (7)(g)(IV) OF THIS SECTION, A RECLAMATION PLAN FOR A NEW OR AMENDED PERMIT MUST DEMONSTRATE, BY SUBSTANTIAL EVIDENCE, A REASONABLY FORESEEABLE END DATE FOR ANY WATER QUALITY TREATMENT NECESSARY TO ENSURE COMPLIANCE WITH APPLICABLE WATER QUALITY STANDARDS.

(III) THE BOARD MAY APPROVE A RECLAMATION PLAN THAT LACKS SUBSTANTIAL EVIDENCE OF A REASONABLY FORESEEABLE END DATE FOR ANY NECESSARY WATER QUALITY TREATMENT IF THE NEW OR AMENDED PERMIT INCLUDES AN ENVIRONMENTAL PROTECTION PLAN AND RECLAMATION PLAN ADEQUATE TO ENSURE COMPLIANCE WITH APPLICABLE WATER QUALITY STANDARDS AND UPON MAKING A WRITTEN DETERMINATION:

(A) FOR AN AMENDED RECLAMATION PLAN, EXCEPT AS PROVIDED IN SUBSECTION (7)(g)(III)(B) OF THIS SECTION, THAT THE WATER QUALITY IMPACTS THAT HAVE OCCURRED OR ARE OCCURRING FOR WHICH NO REASONABLY FORESEEABLE END DATE FOR WATER QUALITY TREATMENT CAN BE ESTABLISHED WERE EITHER UNFORESEEN AT THE TIME OF APPROVAL OF THE RECLAMATION PLAN OR EXISTING AT A MINE SITE PERMITTED BEFORE JANUARY 1, 2019; OR

(B) FOR A NEW OR AMENDED RECLAMATION PLAN FOR A PERMIT INVOLVING A SITE THAT WAS PREVIOUSLY MINED BUT WAS NOT PERMITTED AS OF JANUARY 1, 2019, THAT EXISTING WATER QUALITY CONDITIONS DO NOT MEET APPLICABLE WATER QUALITY STANDARDS AND NO REASONABLY FORESEEABLE END DATE FOR WATER QUALITY TREATMENT CAN BE ESTABLISHED.

(IV) THE BOARD MAY APPROVE A NEW RECLAMATION PLAN THAT LACKS SUBSTANTIAL EVIDENCE OF A REASONABLY FORESEEABLE END DATE FOR ANY NECESSARY WATER QUALITY TREATMENT IF A PERMIT APPLICATION IS SUBMITTED AND THE RECLAMATION PLAN IS LIMITED TO RECLAMATION OF ALREADY-MINED ORE OR OTHER WASTE MATERIALS, INCLUDING MINE DRAINAGE OR RUNOFF, AS PART OF A CLEANUP.

(V) Nothing in this paragraph (g) shall be construed to allow SUBSECTION (7)(g) ALLOWS the operator to avoid compliance with other APPLICABLE statutory provisions governing well permits, and augmentation requirements, and replacement plans. when applicable.

SECTION 2. In Colorado Revised Statutes, 34-32-117, **amend** (4)(b)(I), (6)(b), and (6)(c); and **repeal** (3)(f)(VI) and (3)(f)(VII) as follows:

34-32-117. Warranties of performance - warranties of financial responsibility - release of warranties - applicability - repeal. (3) (f) Proof of financial responsibility may consist of any one or more of the following, subject to approval by the board:

(VI) ~~A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that:~~

~~(A) The financial warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;~~

~~(B) Said obligations enjoy a rating of 'A' or better; and~~

~~(C) At the close of the financial warrantor's most recent fiscal year, his or her net worth was equal to or greater than two times the amount of all financial warranties;~~

(VII) ~~A certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that as of the close of said year:~~

~~(A) The financial warrantor's net worth was at least ten million dollars and was equal to or greater than two times the amount of all financial warranties;~~

~~(B) The financial warrantor's tangible fixed assets in the United States were worth at least twenty million dollars;~~

~~(C) The financial warrantor's total liabilities-to-net-worth ratio was not more than two to one; and~~

~~(D) The financial warrantor's net income, excluding nonrecurring items, was positive. Nonrecurring items which affect net income should be stated in order to determine if they materially affect self-bonding capacity.~~

(4) (b) (I) In any single year during the life of a permit, the amount of required financial warranties ~~shall~~ MUST not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. For the purpose of this ~~paragraph (b)~~ SUBSECTION (4)(b)(I), reclamation costs shall be computed with reference to current reclamation costs. The amount of the financial warranty ~~shall~~ MUST be sufficient to assure the completion of reclamation of affected lands if the office has to complete ~~such~~ THE reclamation due to forfeiture, ~~Such~~ INCLUDING ALL MEASURES COMMENCED OR REASONABLY FORESEEN TO ASSURE THE PROTECTION OF WATER RESOURCES, INCLUDING COSTS NECESSARY TO COVER WATER QUALITY PROTECTION, TREATMENT, AND MONITORING AS MAY BE REQUIRED BY PERMIT. THE financial warranty ~~shall~~ MUST include an additional amount equal to five percent of the amount of the financial warranty to defray the administrative costs incurred by the office in conducting the reclamation.

(6) (b) (I) Each financial warrantor providing proof of financial responsibility in a form described in ~~subparagraphs (IV) to (VII) of paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or ~~in subsection (8) of this section~~ shall annually

cause to be filed with the board a certification by an independent auditor that, as of the close of the financial warrantor's most recent fiscal year, the financial warrantor continued to meet all applicable requirements of ~~said subparagraphs~~ THE APPLICABLE SUBSECTION. Financial warrantors ~~who~~ THAT no longer meet ~~said~~ THE requirements shall instead cause to be filed an alternate form of financial warranty.

(II) (A) THE BOARD SHALL PROVIDE A REASONABLE PERIOD OF TIME, NOT TO EXCEED ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (6)(b)(II), TO FINANCIAL WARRANTORS THAT, AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (6)(b)(II), HAD PROOF OF FINANCIAL RESPONSIBILITY UNDER SUBSECTION (3)(f)(VI) OR (3)(f)(VII) OF THIS SECTION, AS THEY EXISTED IMMEDIATELY BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (6)(b)(II), TO FILE AN ALTERNATE FORM OF FINANCIAL WARRANTY.

(B) THIS SUBSECTION (6)(b)(II) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

(c) Each financial warrantor providing proof of financial responsibility in a form described in ~~subparagraphs (IV) to (VII) of paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or ~~in subsection (8) of this section~~ shall notify the board within sixty days of any net loss incurred in any quarterly period.

SECTION 3. In Colorado Revised Statutes, 34-32-122, **amend** (2) as follows:

34-32-122. Fees, civil penalties, and forfeitures - deposit - emergency response cash fund - created - definition. (2) Any applicant that desires to utilize the self-insurance provisions listed in section 34-32-117 (3)(f)(IV), ~~to (3)(f)(VII)~~ (3)(f)(V), or (8) shall pay an annual fee to the office sufficient to defray the actual cost to the office of establishing and reviewing the financial warranty of the applicant. These funds are hereby annually made available to the office, which shall utilize outside financial and legal services for this purpose.

SECTION 4. Act subject to petition - effective date - applicability. (1) Section 34-32-117 (6)(c), as amended in section 2 of this act, takes effect August 2, 2020, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: April 4, 2019