

CHAPTER 233

**NATURAL RESOURCES**

SENATE BILL 93-247

BY SENATORS Bishop, Blickensderfer, Johnson, Norton, L. Powers, Rizzuto, and Tebedo;  
also REPRESENTATIVES Foster, Adkins, Anderson, Chlouber, Entz, Fleming, Grampsas, R. Hernandez, Kaufman, Keller, Knox,  
Lawrence, Morrison, Reeser, Rupert, Shoemaker, Strom, Taylor, and Wright.

**AN ACT**

**CONCERNING STATE AUTHORITY FOR THE RECLAMATION OF MINED LAND UNDER THE DEPARTMENT OF NATURAL RESOURCES, AND, IN CONNECTION THEREWITH, PROVIDING FOR STATE AUTHORITY CONCERNING THE REGULATION OF DESIGNATED MINING OPERATIONS INCLUDING THE REQUIREMENT OF ENVIRONMENTAL PROTECTION PLANS, FOR THE REOPENING OF MINING OPERATION PERMITS, FOR THE INCREASING OF REQUIREMENTS FOR FINANCIAL WARRANTIES, AND FOR THE CREATION OF AN EMERGENCY RESPONSE SYSTEM INCLUDING THE CREATION OF AN EMERGENCY RESPONSE CASH FUND.**

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

**SECTION 1.** 34-32-102 (3), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**34-32-102. Legislative declaration.** (3) The general assembly further finds, determines, and declares that:

(e) IT IS THE POLICY OF THIS STATE TO ALLOCATE RESOURCES ADEQUATE TO ACCOMPLISH THE PURPOSES OF THIS ARTICLE.

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

**34-32-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "~~Affected land~~" means ~~the surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of such~~

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

~~operation. Affected lands shall include, but shall not be limited to, 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 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 office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. "ACID OR TOXIC PRODUCING MATERIALS" MEANS NATURAL OR REWORKED EARTH MATERIALS HAVING ACID OR TOXIC CHEMICAL AND PHYSICAL CHARACTERISTICS.~~

(1.5) "AFFECTED LAND" MEANS THE SURFACE OF AN AREA WITHIN THE STATE WHERE A MINING OPERATION IS BEING OR WILL BE CONDUCTED, WHICH SURFACE IS DISTURBED AS A RESULT OF SUCH OPERATION. AFFECTED LANDS INCLUDE BUT SHALL NOT BE LIMITED TO PRIVATE WAYS, ROADS, EXCEPT THOSE ROADS EXCLUDED PURSUANT TO THIS SUBSECTION (1.5), 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 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 OFFICE AND WHICH WERE CONSTRUCTED FOR PURPOSES UNRELATED TO THE PROPOSED MINING OPERATION AND WHICH WILL NOT BE SUBSTANTIALLY UPGRADED TO SUPPORT THE MINING OPERATION.

(3.5) (a) "DESIGNATED MINING OPERATION" MEANS A MINING OPERATION AT WHICH:

(I) TOXIC OR ACIDIC CHEMICALS USED IN EXTRACTIVE METALLURGICAL PROCESSING ARE PRESENT ON-SITE; OR

(II) ACID- OR TOXIC-FORMING MATERIALS WILL BE EXPOSED OR DISTURBED AS A RESULT OF MINING OPERATIONS.

(b) THE VARIOUS TYPES OF DESIGNATED MINING OPERATIONS ARE IDENTIFIED IN SECTION 34-32-112.5. SUCH MINING OPERATIONS EXCLUDE OPERATIONS WHICH DO NOT USE TOXIC OR ACIDIC CHEMICALS IN PROCESSING FOR PURPOSES OF EXTRACTIVE METALLURGY AND WHICH WILL NOT CAUSE ACID MINE DRAINAGE.

(4.9) "ENVIRONMENTAL PROTECTION PLAN" MEANS A PLAN SUBMITTED BY A

DESIGNATED MINING OPERATION FOR APPROVAL AS PART OF THE OPERATOR'S OR APPLICANT'S PERMIT FOR SUCH OPERATION PURSUANT TO RULES PROMULGATED BY THE BOARD FOR PROTECTION OF HUMAN HEALTH OR PROPERTY OR THE ENVIRONMENT IN CONFORMANCE WITH THE DUTIES OF OPERATORS AS PRESCRIBED BY THIS ARTICLE.

**SECTION 3.** 34-32-109 (5), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-32-109. Necessity of reclamation permit - application to existing permits.**

(5) (a) 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 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, EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (5). Nothing in this article shall be construed to abrogate the duty of the operator to comply with other applicable statutes and rules and regulations.

(b) (I) THIS PARAGRAPH (b) SHALL APPLY TO NEW STATUTORY OR REGULATORY REQUIREMENTS ONLY AND SHALL NOT SERVE TO REOPEN THE ENTIRE PERMIT FOR TECHNICAL REVIEW OR FOR MODIFICATION OF THE POST-MINING LAND USE.

(II) THE BOARD MAY, WHERE GOOD CAUSE IS SHOWN, DETERMINE THAT CERTAIN REGULATIONS NOT IN EFFECT AT THE TIME A PERMIT IS GIVEN SHOULD BE APPLICABLE TO SUCH EXISTING PERMITS OR TO ANY SPECIFIED CLASS OR CATEGORY OF EXISTING PERMITS, IF:

(A) THE BOARD OR OFFICE PROVIDES INDIVIDUAL NOTICE OF THE SUBJECT MATTER OF THE PROPOSED RULE IN SUCH MANNER AS THE BOARD MAY REQUIRE AND THE TIME, DATE, AND PLACE OF THE RULE-MAKING HEARING TO OPERATORS WITH EXISTING PERMITS WHO MAY BE AFFECTED BY SUCH RULE;

(B) THE BOARD FINDS DURING THE RULE-MAKING HEARING THAT A FAILURE TO APPLY SUCH PROPOSED RULE TO EXISTING PERMITS OR TO AN AFFECTED CLASS OR CATEGORY OF EXISTING PERMITS WOULD POSE A REASONABLE POTENTIAL FOR DANGER TO PERSONS OR PROPERTY OR THE ENVIRONMENT; AND

(C) THE BOARD SETS A SCHEDULE FOR EXISTING PERMIT-HOLDING OPERATORS TO COMPLY WHICH IS REASONABLE IN LIGHT OF THE GRAVITY OF THE RISK TO BE AVOIDED, ANY TECHNICAL CONSIDERATIONS, THE COST OF COMPLIANCE, AND ANY OTHER RELEVANT FACTORS.

(III) IF THE BOARD MAKES A GOOD FAITH EFFORT TO COMPLY WITH THE REQUIREMENTS OF SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) AND COMPLIES WITH THE APPLICABLE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S., THE ADOPTED RULE SHALL NOT BE DEEMED INVALID ON THE GROUND THAT NOTICE TO THE AFFECTED PARTIES WAS INADEQUATE.

**SECTION 4.** 34-32-110 (1) and the introductory portion to 34-32-110 (2) (a), Colorado Revised Statutes, 1984 Repl. Vol., as amended, are amended to read:

**34-32-110. Limited impact operations - expedited process.** (1) (a) Any person desiring to conduct mining operations PURSUANT TO AN APPLICATION SUBMITTED PRIOR TO JULY 1, 1993, 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 SUCH PERSON'S permit. ON AND AFTER JULY 1, 1993, ALL APPLICATIONS FOR PERMITS PURSUANT TO THIS SECTION SHALL BE SUBMITTED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION. ~~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 subsection (2) of this section. Any person applying for a permit pursuant to this subsection (1) shall file with the office, 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 office notifies the operator that it has approved the proposed operations; or~~

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

~~(III) The office 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 office 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) (I) 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 this subsection (1).

(II) THIS PARAGRAPH (d) SHALL BE APPLICABLE TO FINANCIAL WARRANTIES PROVIDED FOR PERMITS APPLIED FOR PURSUANT TO THIS SUBSECTION (1) BEFORE JULY 1, 1993.

~~(e) The board or office 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 office, on a form approved by the board, an application for a permit to conduct mining operations. This application shall contain the following:

**SECTION 5.** 34-32-111 (2) (d) and (6), Colorado Revised Statutes, 1984 Repl. Vol., are amended to read:

**34-32-111. Special permits - ten-day processing.** (2) The operator shall make written application to the board for a special permit on forms provided by the board. The approved special permit shall authorize the operator to engage in such mining operation until the governmental contractual reason for the operation is complete. Such application shall consist of the following:

(d) A financial warranty ~~in the amount of two thousand five hundred dollars per acre~~ AS SPECIFIED IN SUBSECTION (6) OF THIS SECTION UNLESS THE OFFICE SHOWS

GOOD CAUSE THAT THE BOARD SHOULD SET SUCH FINANCIAL WARRANTY AT A GREATER OR LESSER AMOUNT PURSUANT TO SECTION 34-32-117 (4).

(6) The board and staff shall take action on ~~these~~ THE special permits PROVIDED FOR IN THIS SECTION so that they shall be issued within ten working days of the date the application is submitted. Approval shall depend on the application, map, fee, performance warranty, and financial warranty all being in proper order and in compliance with this section. IF ACTION UPON THE APPLICATION IS NOT COMPLETED WITHIN TEN WORKING DAYS, THE PERMIT SHALL BE APPROVED AND SHALL BE PROMPTLY ISSUED UPON PRESENTATION BY THE APPLICANT OF A FINANCIAL WARRANTY IN AN AMOUNT OF TWO THOUSAND FIVE HUNDRED DOLLARS PER AFFECTED ACRE OR SUCH OTHER AMOUNT AS MAY BE SPECIFIED BY THE BOARD BY RULE.

**SECTION 6.** Article 32 of title 34, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION A NEW SECTION to read:

**34-32-112.5. Designated mining operation.** (1) THIS SECTION SHALL APPLY ONLY TO DESIGNATED MINING OPERATIONS AS DEFINED IN SECTION 34-32-103 (3.5). ALL NONDESIGNATED MINING OPERATIONS ARE EXEMPT FROM THIS SECTION. THE BOARD MAY PROPOSE THAT THE GENERAL ASSEMBLY ENACT SPECIFIC REQUIREMENTS FOR EXEMPTED OPERATIONS AS SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(2) IF AN OPERATOR DEMONSTRATES TO THE BOARD AT THE TIME OF APPLYING FOR A PERMIT OR AT A SUBSEQUENT HEARING THAT TOXIC OR ACIDIC CHEMICALS ARE NOT STORED OR USED ON-SITE AND THAT ACID- OR TOXIC-PRODUCING MATERIALS WILL NOT BE USED, STORED, OR DISTURBED IN QUANTITIES SUFFICIENT TO ADVERSELY AFFECT ANY PERSON, ANY PROPERTY, OR THE ENVIRONMENT, THE BOARD SHALL EXEMPT SUCH OPERATIONS WHETHER CONDUCTED PURSUANT TO SECTION 34-32-110 OR OTHERWISE. THE BOARD MAY PROMULGATE RULES GOVERNING THE CONDUCT OF MINING OPERATIONS WHICH ARE EXEMPTED PURSUANT TO THIS SUBSECTION (2).

(3) WHEN PROMULGATING RULES GOVERNING DESIGNATED MINING OPERATIONS, THE BOARD SHALL CONSIDER THE ECONOMIC REASONABLENESS, THE TECHNICAL FEASIBILITY, AND THE LEVEL OR DEGREE OF ANY ENVIRONMENTAL CONCERNS WHICH MAY RESULT FROM:

(a) DESIGNATED MINING OPERATIONS WHICH QUALIFY FOR PERMITS UNDER SECTION 34-32-110 WHICH SHALL BE REFERRED TO AS "110d" PERMITS;

(b) DESIGNATED MINING OPERATIONS WHICH QUALIFY FOR PERMITS UNDER SECTION 34-32-112, BUT WHICH AFFECT LESS THAN FIFTY ACRES AND EXTRACT LESS THAN ONE MILLION TONS PER YEAR WHICH SHALL BE REFERRED TO AS "112d-1" PERMITS;

(c) DESIGNATED MINING OPERATIONS WHICH QUALIFY FOR PERMITS UNDER SECTION 34-32-112 WHICH DO NOT QUALIFY AS 112d-1 PERMITS BUT WHICH AFFECT LESS THAN ONE HUNDRED ACRES AND WHICH EXTRACT LESS THAN FIVE MILLION TONS PER YEAR WHICH SHALL BE REFERRED TO AS "112d-2" PERMITS; OR

(d) ANY OTHER DESIGNATED MINING OPERATION WHICH SHALL BE REFERRED TO "112d-3" PERMITS.

(4) (a) BY RULE OR AS A CONDITION OF ISSUING A PERMIT, THE BOARD OR OFFICE MAY REQUIRE AN OPERATOR TO HAVE AN INSPECTION AND CERTIFICATION OF ANY NEW ENVIRONMENTAL PROTECTION FACILITY DURING ITS CONSTRUCTION AT A DESIGNATED MINING OPERATION. ANY SUCH RULE OR CONDITION MAY INCLUDE A PROHIBITION ON SUBSEQUENT PHASES OF CONSTRUCTION OR OPERATION UNTIL ANY REQUIRED INSPECTIONS HAVE BEEN PERFORMED AND THE REQUISITE CERTIFICATION HAS BEEN OBTAINED.

(b) (I) AN INSPECTION AND CERTIFICATION SHALL BE CONDUCTED BY A PROPERLY QUALIFIED PROFESSIONAL.

(II) THE OFFICE MAY BE PRESENT DURING ANY INSPECTION AND CERTIFICATION CONDUCTED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AND MAY REQUIRE THE OPERATOR TO TAKE ANY CORRECTIVE ACTIONS NECESSARY TO OBTAIN AND VERIFY CERTIFICATION.

(III) ANY INSPECTION AND CERTIFICATION CONDUCTED BY OR UNDER THE SUPERVISION OF THE OFFICE SHALL BE CONDUCTED PROMPTLY AFTER THE OFFICE IS NOTIFIED THAT THE FACILITY IS READY TO BE INSPECTED AND SHALL NOT UNDULY DELAY THE CONSTRUCTION OR OPERATION SCHEDULE.

**SECTION 7.** 34-32-113 (4), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**34-32-113. Prospecting notice - reclamation requirements.** (4) (a) Upon filing the notice of intent to conduct prospecting, the person shall provide financial warranty in ~~an~~ THE amount ~~determined by the board not to exceed~~ OF two thousand dollars per acre of the land to be disturbed ~~or shall provide financial warranty of twenty-five thousand dollars for statewide prospecting. If statewide warranties for prospecting are provided, the person providing the warranties must~~ OR SUCH OTHER AMOUNT AS DETERMINED BY THE BOARD.

(b) A PERSON MAY SUBMIT STATEWIDE WARRANTIES FOR PROSPECTING IF SUCH WARRANTIES ARE IN AN AMOUNT FIXED BY THE BOARD BY RULE AND SUCH PERSON otherwise ~~comply~~ COMPLIES with the provisions of this section for every area to be prospected.

**SECTION 8.** 34-32-115, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-32-115. Action by board - appeals.** (1) Upon receipt of an application for a permit and all fees due from the operator, the board or the office shall set a date for the consideration of such application not more than ninety days after the date of filing. At that time, the board or the office shall approve or deny the application or, for good cause shown, refer the application for a hearing on the question of whether the permit should be granted.

(2) Prior to the holding of any such hearing, the board or the office shall provide notice to any person previously filing a protest or petition for a hearing or statement in support of an application pursuant to section 34-32-114 and shall publish notice of the time, date, and location of the hearing in a newspaper of general circulation in

the locality of the proposed mining operation once a week for two consecutive weeks immediately prior to the hearing. The hearing shall be conducted as a proceeding pursuant to article 4 of title 24, C.R.S. A final decision on the application shall be made within one hundred twenty days of the receipt of the application. In the event of COMPLEX APPLICATIONS, serious unforeseen circumstances, or significant snow cover on the affected land that prevents a necessary on-site inspection, the board or the office may reasonably extend the maximum time sixty days.

(3) If action upon the application is not completed within the ~~one hundred twenty day~~ period specified in subsection (2) of this section, the permit shall be considered to be approved and shall be promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand dollars per acre affected OR SUCH OTHER AMOUNT AS DETERMINED BY THE BOARD.

(4) The board or the office shall grant a permit to an operator if the application complies with the requirements of this article. The board or the office shall not deny a permit ~~except for one or more of the following reasons~~ IF THE OPERATOR DEMONSTRATES COMPLIANCE WITH THE FOLLOWING:

(a) The application is ~~incomplete or~~ COMPLETE AND the performance and financial warranties have ~~not~~ been provided.

(b) The applicant has ~~not~~ paid the required fee.

(c) (I) ~~Any~~ NO part of the proposed mining operation, the reclamation program, or the proposed future use is OR MAY BE contrary to the laws or regulations of this state or the United States, INCLUDING BUT NOT LIMITED TO ALL FEDERAL, STATE, AND LOCAL PERMITS, LICENSES, AND APPROVALS, AS APPLICABLE TO THE SPECIFIC OPERATION.

(II) THE BOARD MAY REQUIRE A STATEMENT BY THE APPLICANT IDENTIFYING WHICH PERMITS, LICENSES, AND APPROVALS THE APPLICANT HOLDS OR WILL BE SEEKING FOR THE PROPOSED MINING AND RECLAMATION ACTIVITIES.

(d) The mining operation will NOT adversely affect the stability of any significant, valuable, and permanent man-made structures located within two hundred feet of the affected land, except where there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator.

(e) Repealed, L. 88, p. 1215, § 16, effective July 1, 1988.

(f) The mining operation is NOT located upon lands:

(I) Where mining operations are prohibited by law or regulation within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, or national recreation areas;

(II) Which are within or without the boundaries of, and are owned, leased, or have been developed by, any recreational facility established pursuant to article 7 of title

29, C.R.S., unless otherwise authorized by the appropriate governing body or unless the operation will not create any surface disturbance therein;

(III) Which are within the boundaries of, and are owned, leased, or have been developed by, any park and recreation district established pursuant to article 1 of title 32, C.R.S., unless otherwise authorized by the board of directors of the district or unless the operation will not create any surface disturbance therein; and

(IV) Which are within the boundaries of any unit of the state park system or any state recreational area in which the entire fee estate is owned by the state of Colorado, unless the mining operation is approved jointly by the board, by the governor, and by the board of parks and outdoor recreation, or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan ~~does not conform~~ CONFORMS to the requirements of section 34-32-116.

(h) FOR DESIGNATED MINING OPERATIONS, AN ENVIRONMENTAL PROTECTION PLAN HAS BEEN SUBMITTED AND CONFORMS TO THE REQUIREMENTS OF SECTIONS 34-32-116 AND 34-32-116.5.

**SECTION 9.** Article 32 of title 34, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**34-32-116.5. Environmental protection plan - designated mining operation.**

(1) (a) AN ENVIRONMENTAL PROTECTION PLAN SHALL BE REQUIRED FOR ALL DESIGNATED MINING OPERATIONS.

(b) ALL NONDESIGNATED MINING OPERATIONS ARE EXEMPT FROM THIS SECTION.

(2) ONCE ADOPTED, THE PROVISIONS OF AN ENVIRONMENTAL PROTECTION PLAN SHALL BE ENFORCEABLE BY THE BOARD AND BY THE OFFICE TO THE SAME EXTENT AS ANY OTHER PERMIT PROVISION OR CONDITION.

(3) (a) THE BOARD SHALL PROMULGATE RULES PURSUANT TO SECTION 34-32-109 (5) TO REQUIRE A HOLDER OF AN EXISTING PERMIT FOR A DESIGNATED MINING OPERATION TO SUBMIT A PROPOSED ENVIRONMENTAL PROTECTION PLAN FOR APPROVAL BY THE OFFICE OR BOARD.

(b) THE PLAN AND FEES DUE PURSUANT TO THIS SUBSECTION (3) SHALL BE DUE BY THE DATE ESTABLISHED BY THE BOARD BY RULE; EXCEPT THAT NO PLAN OR FEE SHALL BE DUE BEFORE JULY 1, 1994.

(4) (a) IF AN EXISTING PERMIT CONTAINS THE NECESSARY ELEMENTS OF AN ENVIRONMENTAL PROTECTION PLAN, THE OFFICE OR BOARD MAY DEEM THE EXISTING PERMIT TO BE ADEQUATE TO COMPLY WITH THE ENVIRONMENTAL PROTECTION PLAN.

(b) FOR ANY ENVIRONMENTAL PROTECTION PLAN SUBMITTED FOR AN EXISTING OPERATION, THE OFFICE SHALL DETERMINE WHETHER THE PROPOSED ENVIRONMENTAL PROTECTION PLAN SHALL BE CONSIDERED A TECHNICAL REVISION OR AN AMENDMENT, AS DEFINED BY RULE, OR THAT NO MODIFICATION TO THE

EXISTING PERMIT IS NECESSARY.

(5) THE BOARD SHALL PROMULGATE RULES GOVERNING THE FORM, CONTENT, AND REQUIREMENTS OF AN ENVIRONMENTAL PROTECTION PLAN FOR ANY DESIGNATED MINING OPERATION. IN PROMULGATING SUCH RULES, THE BOARD SHALL CONSIDER THE ECONOMIC REASONABLENESS, THE TECHNICAL FEASIBILITY, AND THE LEVEL OR DEGREE OF ENVIRONMENTAL CONCERNS, AS APPLICABLE.

(6) ALL APPLICANTS FOR NEW PERMITS SHALL CONTACT THE DIVISION OF WILDLIFE FOR APPROPRIATE WILDLIFE PROTECTION RECOMMENDATIONS WHICH SHALL BE REVIEWED AS PART OF THE APPLICATION PROCESS. IF PROTECTING WILDLIFE IS DETERMINED TO BE NECESSARY BY THE BOARD, THE OFFICE MAY INCORPORATE SUCH WILDLIFE PROTECTION RECOMMENDATIONS INTO THE NEW PERMIT AS A CONDITION FOR SUCH PERMIT.

**SECTION 10.** 34-32-117, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-32-117. Warranties of performance - warranties of financial responsibility - release of warranties.** (1) No permit may be issued under this article until the board receives performance and financial warranties as described in subsections (2), (3), and (4) of this section.

(2) A "performance warranty" shall consist of a written promise to the board, by the operator, to comply with all requirements of this article. Performance warranties shall be in such form as the board may prescribe. Whenever two or more persons or entities are named as operators in a single permit, the operators may limit the scope of their individual performance warranties so long as their warranties, in the aggregate, warrant performance of all requirements of this article.

(3) (a) A "financial warranty" shall consist of a written promise, to the board, to be responsible for reclamation costs up to the amount specified by the board pursuant to subsection (4) of this section, together with proof of financial responsibility. Financial warranties may be provided by the operator, by any third party, or by any combination of persons or entities and shall be in such form as the board may prescribe. ~~except that proof of financial responsibility may consist of any one or more of the following:~~

~~(I) A surety bond issued by a corporate surety authorized to do business in this state;~~

~~(II) A letter of credit issued by a bank authorized to do business in the United States;~~

~~(III) A certificate of deposit;~~

~~(IV) A deed of trust or security agreement encumbering real or personal property and creating a first lien in favor of the state;~~

~~(V) Assurance, in such form as the board may require, that:~~

~~(A) Upon commencement of production, the operator will establish an individual reclamation fund, to be held by an independent trustee for the board, upon such terms and conditions as the board may prescribe, which trust fund shall be funded by periodic cash payments representing such fraction of receipts as will, in the opinion of the board, provide assurance that funds will be available for reclamation;~~

~~(B) Prior to issuance of a permit, the operator will provide another form of financial warranty as described in this paragraph (a). As the reclamation fund increases in value, the other form of financial warranty may be decreased in value so long as the sum of financial warranties is that amount specified by subsection (4) of this section;~~

~~(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 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;~~

~~(VIII) Assurance, in such form as the board may require, that:~~

~~(A) Project-related fixtures and equipment (excluding rolling stock) owned or to be owned by the financial warrantor within the permit area will have a salvage value at least equal to the amount of the financial warranty, or the appropriate portion thereof;~~

~~(B) Existing liens and encumbrances applicable to said fixtures and equipment, other than liens in favor of the United States, the state, and political subdivisions thereof, will be subordinated to the lien described in section 34-32-118 (4) (b); and~~

~~(C) Said fixtures and equipment will be maintained in good operating condition and will not be removed from the permit area without the prior consent of the board;~~

~~(IX) Proof that the operator is a department or division of state government or a unit of county or municipal government.~~

~~(b) Proof of financial responsibility may consist of any combination of proofs described in paragraph (a) of this subsection (3) as a financial warrantor may elect at his sole discretion. If the board has reason to believe that any proposed financial warranty does not fully and accurately reflect the current financial condition of the financial warrantor, the board may decline to accept the financial warranty as submitted. Financial warrantors who provide proof of financial responsibility in any form or forms described in subparagraphs (V) to (IX) of paragraph (a) of this subsection (3) shall not be required to secure the same by the posting of third-party sureties or otherwise pledging or encumbering property for the benefit of the state. Whenever two or more persons or entities act as financial warrantors, they may limit the scope of their individual warranties so long as all financial warranties, in the aggregate, equal the amount required by the board in accordance with subsection (4) of this section. THE BOARD MAY ACCEPT INTERESTS IN REAL AND PERSONAL PROPERTY AS FINANCIAL WARRANTIES TO THE EXTENT OF A SPECIFIED PERCENTAGE OF THE ESTIMATED VALUE OF ANY SUCH PROPERTY. ANY PERSON OFFERING SUCH FINANCIAL WARRANTY SHALL SUBMIT INFORMATION NECESSARY TO SHOW CLEAR TITLE TO AND THE VALUE OF SUCH PROPERTY.~~

(c) THE BOARD MAY REFUSE TO ACCEPT ANY FORM OF FINANCIAL WARRANTY IF:

(I) THE VALUE OF THE FINANCIAL WARRANTY OFFERED IS DEPENDENT UPON THE SUCCESS, PROFITABILITY, OR CONTINUED OPERATION OF THE MINE; OR

(II) THE BOARD DETERMINES THAT THE FINANCIAL WARRANTY OFFERED CANNOT REASONABLY BE CONVERTED TO CASH WITHIN ONE HUNDRED EIGHTY DAYS OF FORFEITURE.

(d) FOR NONDESIGNATED MINING OPERATIONS:

(I) THIS SUBSECTION (3) SHALL BE APPLICABLE JULY 1, 1993, TO DEEDS OF TRUST WHICH ARE USED AS COLLATERAL FOR NEW FINANCIAL WARRANTIES COMPLETED ON OR AFTER SUCH DATE;

(II) THIS SUBSECTION (3) SHALL BE APPLICABLE ON JANUARY 1, 1996, TO:

(A) DEEDS OF TRUST EXISTING AS OF JULY 1, 1993, AND SUBSEQUENT UPDATES OF THESE SAME DEEDS OF TRUST USED AS COLLATERAL FOR FINANCIAL WARRANTIES; AND

(B) ANY FINANCIAL WARRANTY COMPLETED BEFORE JULY 1, 1993, IF THE VALUE OF ANY SUCH FINANCIAL WARRANTY INCLUDES ANY MINERAL VALUE OR IF MINERAL VALUE IS USED TO UPDATE ANY SUCH FINANCIAL WARRANTY. THE VALUE OF ANY FINANCIAL WARRANTY DESCRIBED IN THIS SUB-SUBPARAGRAPH (B) SHALL INCLUDE MINERAL VALUE FOR THE LIFE OF THE WARRANTY.

(e) ANY INSTRUMENT OFFERED AS A FINANCIAL WARRANTY PURSUANT TO THIS

SUBSECTION (3) SHALL PROVIDE THAT THE BOARD MAY RECOVER ANY NECESSARY COSTS, INCLUDING ATTORNEY FEES, IT INCURS IN FORECLOSING ON OR REALIZING ANY COLLATERAL USED TO SECURE SUCH FINANCIAL WARRANTY IF SUCH FINANCIAL WARRANTY IS FORFEITED.

(f) PROOF OF FINANCIAL RESPONSIBILITY MAY CONSIST OF ANY ONE OR MORE OF THE FOLLOWING SUBJECT TO APPROVAL BY THE BOARD:

(I) A SURETY BOND ISSUED BY A CORPORATE SURETY AUTHORIZED TO DO BUSINESS IN THIS STATE;

(II) A LETTER OF CREDIT ISSUED BY A BANK AUTHORIZED TO DO BUSINESS IN THE UNITED STATES;

(III) A CERTIFICATE OF DEPOSIT;

(IV) A DEED OF TRUST OR SECURITY AGREEMENT ENCUMBERING REAL OR PERSONAL PROPERTY AND CREATING A FIRST LIEN IN FAVOR OF THE STATE;

(V) ASSURANCE, IN SUCH FORM AS THE BOARD MAY REQUIRE, THAT:

(A) UPON COMMENCEMENT OF PRODUCTION, THE OPERATOR WILL ESTABLISH AN INDIVIDUAL RECLAMATION FUND, TO BE HELD BY AN INDEPENDENT TRUSTEE FOR THE BOARD, UPON SUCH TERMS AND CONDITIONS AS THE BOARD MAY PRESCRIBE, WHICH TRUST FUND SHALL BE FUNDED BY PERIODIC CASH PAYMENTS REPRESENTING SUCH FRACTION OF RECEIPTS AS WILL, IN THE OPINION OF THE BOARD, PROVIDE ASSURANCE THAT FUNDS WILL BE AVAILABLE FOR RECLAMATION;

(B) PRIOR TO ISSUANCE OF A PERMIT, THE OPERATOR WILL PROVIDE ANOTHER FORM OF FINANCIAL WARRANTY AS DESCRIBED IN THIS PARAGRAPH (f). AS THE RECLAMATION FUND INCREASES IN VALUE, THE OTHER FORM OF FINANCIAL WARRANTY MAY BE DECREASED IN VALUE SO LONG AS THE SUM OF FINANCIAL WARRANTIES IS THAT AMOUNT SPECIFIED BY SUBSECTION (4) OF THIS SECTION.

(C) PROJECT-RELATED FIXTURES AND EQUIPMENT (EXCLUDING ROLLING STOCK) OWNED OR TO BE OWNED BY THE FINANCIAL WARRANTOR WITHIN THE PERMIT AREA WILL HAVE A SALVAGE VALUE AT LEAST EQUAL TO THE AMOUNT OF THE FINANCIAL WARRANTY, OR THE APPROPRIATE PORTION THEREOF;

(D) EXISTING LIENS AND ENCUMBRANCES APPLICABLE TO SAID FIXTURES AND EQUIPMENT, OTHER THAN LIENS IN FAVOR OF THE UNITED STATES OR THIS STATE, ANY OTHER STATE, AND ANY POLITICAL SUBDIVISIONS, WILL BE SUBORDINATED TO THE LIEN DESCRIBED IN SECTION 34-32-118 (4) (b); AND

(E) SAID FIXTURES AND EQUIPMENT WILL BE MAINTAINED IN GOOD OPERATING CONDITION AND WILL NOT BE REMOVED FROM THE PERMIT AREA WITHOUT THE PRIOR CONSENT OF 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.

(VIII) PROOF THAT THE OPERATOR IS A DEPARTMENT OR DIVISION OF STATE GOVERNMENT OR A UNIT OF COUNTY OR MUNICIPAL GOVERNMENT.

(g) ANY PROOF OF FINANCIAL RESPONSIBILITY SUBMITTED OR REVISED ON OR AFTER JULY 1, 1993, SHALL BE IN COMPLIANCE WITH PARAGRAPHS (a), (b), AND (c) OF SUBSECTION (4) OF THIS SECTION.

(4) (a) The board shall prescribe the amount and duration of financial warranties, taking into account the nature, extent, and duration of the proposed mining operation and the magnitude, type, and estimated cost of planned reclamation.

(b) (I) In any single year during the life of a permit, the amount of required financial warranties shall 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), reclamation costs shall be computed with reference to current reclamation costs. THE AMOUNT OF THE FINANCIAL WARRANTY SHALL BE SUFFICIENT TO ASSURE THE COMPLETION OF RECLAMATION OF AFFECTED LANDS IF THE OFFICE HAS TO COMPLETE SUCH RECLAMATION DUE TO FORFEITURE. SUCH FINANCIAL WARRANTY SHALL 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.

(II) THE OFFICE AND THE BOARD SHALL TAKE REASONABLE MEASURES TO ASSURE THE CONTINUED ADEQUACY OF ANY FINANCIAL WARRANTY.

(c) (I) The board may:

(A) From time to time for good cause shown, increase or decrease the amount and duration of required financial warranties;

(B) BY RULE OR PERMIT CONDITION REQUIRE PROOF OF VALUE ON A PERIODIC BASIS OF ALL OR ANY GROUP OF WARRANTIES HELD BY THE BOARD; AND

(C) BY RULE OR PERMIT CONDITION LIMIT CERTAIN TYPES OF WARRANTIES TO SPECIFIC PURPOSES ONLY OR REQUIRE A DESIGNATED PERCENTAGE OF THE TOTAL BOND BE HELD IN EASILY VALUED AND CONVERTIBLE INSTRUMENTS.

(II) A financial warrantor shall have sixty days after the date of notice of any such adjustment to fulfill all new requirements.

(5) (a) An operator may file a written notice of completion with the ~~board~~ OFFICE whenever ~~he~~ SUCH OPERATOR believes ~~he~~ SUCH OPERATOR has completed any or all requirements of this article with respect to any or all of ~~his~~ SUCH OPERATOR'S affected lands EXCEPT FOR ANY SUCH LANDS IN DESIGNATED MINING OPERATIONS. The ~~board~~ OFFICE shall, within sixty days after receiving said notice, or as soon thereafter as weather conditions permit, inspect lands and reclamation described in the notice to determine if the operator has complied with all applicable requirements.

(b) If the board OR OFFICE finds that the operator has successfully complied with any or all requirements of this article, it shall release all performance and financial warranties applicable to said requirements. Releases shall be in writing and shall be delivered to the owner or operator promptly after the date of such finding.

(c) If the board OR OFFICE finds that the operator has not complied with applicable requirements of this article, it shall so advise the operator not more than sixty days after the date of the inspection.

(d) If the ~~board~~ OFFICE fails to conduct an inspection within the time specified in paragraph (a) of this subsection (5) or fails to advise the operator of deficiencies within the time specified in paragraph (c) of this subsection (5), then all financial warranties applicable to reclamation described in the notice shall be deemed released as a matter of law.

(5.5) (a) (I) AN OPERATOR MAY FILE A WRITTEN NOTICE OF COMPLETION WITH THE OFFICE UPON COMPLETION OF ALL REQUIREMENTS OF THIS ARTICLE WITH RESPECT TO ANY OR ALL OF SUCH OPERATOR'S AFFECTED LANDS AT A DESIGNATED MINING OPERATION.

(II) THE OFFICE SHALL INSPECT LANDS AND RECLAMATION DESCRIBED IN ANY SUCH WRITTEN NOTICE TO DETERMINE IF THE OPERATOR HAS COMPLIED WITH ALL APPLICABLE REQUIREMENTS WITHIN SIXTY DAYS AFTER RECEIVING SUCH NOTICE OR AS SOON THEREAFTER AS WEATHER CONDITIONS PERMIT.

(b) IF THE BOARD OR OFFICE FINDS THAT THE OPERATOR HAS COMPLIED WITH ALL REQUIREMENTS OF THIS ARTICLE, IT SHALL PROMPTLY DELIVER A WRITTEN RELEASE OF ANY PERFORMANCE AND FINANCIAL WARRANTIES, OR PORTION THEREOF, TO THE OWNER OR OPERATOR ACCORDING TO THE FOLLOWING SCHEDULE:

(I) AN APPROPRIATE AMOUNT OF THE FINANCIAL WARRANTY FOR THE APPLICABLE PERMIT AREA SHALL BE RELEASED WHEN THE OPERATOR COMPLETES THE REQUIREMENTS OF THE APPROVED RECLAMATION PLAN; AND

(II) THE PERFORMANCE WARRANTY AND THE REMAINING PORTION OF THE FINANCIAL WARRANTY SHALL BE RELEASED ON SUCH SCHEDULE AS THE BOARD MAY PRESCRIBE; EXCEPT THAT ALL REMAINING PORTIONS OF THE WARRANTY SHALL BE RELEASED AT THE END OF THE PERIOD DESCRIBED IN PARAGRAPH (e) OF THIS SUBSECTION (5.5) IF, AT THAT TIME, THE AFFECTED LAND HAS BEEN RECLAIMED FOR A BENEFICIAL USE AND IS IN COMPLIANCE WITH ALL APPLICABLE PERFORMANCE STANDARDS.

(c) (I) IF THE BOARD OR OFFICE FINDS THAT THE OPERATOR HAS NOT COMPLIED WITH APPLICABLE REQUIREMENTS OF THIS ARTICLE, IT SHALL SO ADVISE THE OPERATOR NOT MORE THAN SIXTY DAYS AFTER THE DATE OF AN INSPECTION CONDUCTED PURSUANT TO PARAGRAPH (a) OR (e) OF THIS SUBSECTION (5.5).

(II) IF THE OPERATOR IS NOT ENTITLED TO A RELEASE OF THE FINANCIAL WARRANTY, OR PORTION THEREOF, PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (5.5), THE BOARD OR OFFICE MAY SPECIFY A RECLAMATION SCHEDULE AND ADJUST THE AMOUNT OF THE FINANCIAL WARRANTY PURSUANT TO PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION.

(d) IF THE OFFICE FAILS TO CONDUCT AN INSPECTION WITHIN THE TIME SPECIFIED IN PARAGRAPH (a) OR (e) OF THIS SUBSECTION (5.5) OR FAILS TO ADVISE THE OPERATOR OF ANY DEFICIENCIES WITHIN THE TIME SPECIFIED IN PARAGRAPH (c) OF THIS SUBSECTION (5.5), THEN THAT PORTION OF THE FINANCIAL WARRANTIES APPLICABLE TO RECLAMATION DESCRIBED IN THE NOTICE OR REQUEST FOR RELEASE SHALL BE DEEMED RELEASED AS A MATTER OF LAW.

(e) AT SUCH TIME AS THE BOARD OR OFFICE MAY PRESCRIBE, BUT NO MORE THAN FIVE YEARS AFTER THE RELEASE OF A PORTION OF THE FINANCIAL WARRANTY AS DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION (5.5), THE OPERATOR MAY FILE A WRITTEN REQUEST FOR RELEASE OF THE PERFORMANCE WARRANTY AND THE REMAINING PORTION OF THE FINANCIAL WARRANTY. THE OFFICE SHALL INSPECT ANY LANDS AND RECLAMATION DESCRIBED IN THE REQUEST WITHIN SIXTY DAYS AFTER RECEIVING SUCH REQUEST OR AS SOON THEREAFTER AS WEATHER CONDITIONS PERMIT TO DETERMINE WHETHER THE AFFECTED LAND HAS BEEN RECLAIMED FOR A BENEFICIAL USE AND IS IN COMPLIANCE WITH ALL APPLICABLE PERFORMANCE STANDARDS.

(6) (a) Financial warranties shall be maintained in good standing for the entire life of any permit issued under this article. Financial warrantors shall immediately notify the board of any event which may impair their warranties.

(b) Each financial warrantor providing proof of financial responsibility in a form

described in ~~subparagraphs (V) through (VIII) of paragraph (a)~~ SUBPARAGRAPHS (IV) TO (VII) OF PARAGRAPH (f) of subsection (3) 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. Financial warrantors who no longer meet said requirements shall instead cause to be filed an alternate form of financial warranty.

(c) Each financial warrantor providing proof of financial responsibility in a form described in ~~subparagraphs (V) through (VIII) of paragraph (a)~~ SUBPARAGRAPHS (IV) TO (VII) OF PARAGRAPH (f) of subsection (3) OR IN SUBSECTION (8) of this section shall notify the board within sixty days of any net loss incurred in any quarterly period.

(d) Whenever the board receives a notice under paragraph (a) or (c) of this subsection (6), fails to receive a certification or substitute warranty as required by paragraph (b) of this subsection (6), or otherwise has reason to believe that a financial warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

(e) Whenever the board elects to convene a hearing pursuant to this subsection (6), it may hire an independent consultant to provide expert advice at the hearing. The fees of any such consultant shall be paid by the financial warrantor, and no consultant shall be hired until the financial warrantor signs a written fee agreement in such form as the board may prescribe. In the event that a financial warrantor refuses to sign such an agreement, the board may, without hearing, order the financial warrantor to provide an alternate form of financial warranty.

(f) At any hearing held pursuant to this subsection (6), if the board finds that a financial warranty has been materially impaired, it may order the financial warrantor to provide an alternate form of financial warranty.

(g) A financial warrantor shall have ninety days to provide any alternate warranty required under this subsection (6).

(h) All hearings held under this subsection (6) shall comply with all requirements of article 4 of title 24, C.R.S.

~~(i) Any order issued pursuant to this subsection (6) shall remain in effect for a period of one year. Thereafter, the financial warrantor may file any form of financial warranty if all requirements of subsections (3) and (4) of this section are met.~~

(7) For the purposes of this section:

(a) "Rating of "A" or better" means that the rating organization has determined that the obligations are at least of an upper-medium grade, meaning that factors giving security to the principal and interest are considered adequate but that elements may be present which suggest the possibility of adverse effects if economic and trade conditions change.

~~(b) "Salvage value" means fifteen percent of the original invoice price of~~

~~project-related fixtures:~~

(8) (a) THE BOARD OR OFFICE MAY, IN ITS DISCRETION, ACCEPT A FIRST PRIORITY LIEN IN THE AMOUNT OF THE FINANCIAL WARRANTY PRESCRIBED PURSUANT TO SUBSECTION (4) OF THIS SECTION ON ANY PROJECT-RELATED FIXTURES AND EQUIPMENT THAT MUST REMAIN ON-SITE IN ORDER FOR THE RECLAMATION PLAN TO BE PERFORMED IN LIEU OF INCLUDING THE COST OF ACQUIRING AND INSTALLING SUCH FIXTURES AND EQUIPMENT.

(b) THE BOARD OR OFFICE MAY ACCEPT A FIRST PRIORITY LIEN ON ANY PROJECT-RELATED FIXTURES AND EQUIPMENT THAT MUST BE DEMOLISHED OR REMOVED FROM THE SITE UNDER THE RECLAMATION PLAN. THE BOARD OR OFFICE MAY, IN ITS DISCRETION, ACCEPT SUCH A LIEN AS A PORTION OF THE PROOF OF FINANCIAL RESPONSIBILITY IF THE AMOUNT CREDITED FOR SUCH LIEN DOES NOT EXCEED THE COST OF DEMOLISHING AND REMOVING THE SUBJECT FIXTURES AND EQUIPMENT OR THE MARKET VALUE OF SUCH FIXTURES AND EQUIPMENT, WHICHEVER IS LESS.

(c) ANY FIXTURES AND EQUIPMENT ACCEPTED PURSUANT TO THIS SUBSECTION (8) SHALL BE INSURED AND MAINTAINED IN GOOD OPERATING CONDITION AND SHALL NOT BE REMOVED FROM THE PERMIT AREA WITHOUT THE PRIOR CONSENT OF THE BOARD. EACH FINANCIAL WARRANTOR PROVIDING A LIEN ON SUCH EQUIPMENT AND FIXTURES SHALL FILE AN ANNUAL REPORT WITH THE OFFICE IN SUFFICIENT DETAIL TO FULLY DESCRIBE THE CONDITION, VALUE, AND LOCATION OF ALL PLEDGED FIXTURES AND EQUIPMENT. SUCH FINANCIAL WARRANTOR SHALL NOT PLEDGE SUCH EQUIPMENT AND FIXTURES TO SECURE ANY OTHER OBLIGATION AND SHALL IMMEDIATELY NOTIFY THE OFFICE OF ANY OTHER INTEREST THAT ARISES IN THE PLEDGED PROPERTY.

**SECTION 11.** 34-32-118 (5), Colorado Revised Statutes, 1984 Repl. Vol., is amended to read:

**34-32-118. Forfeiture of financial warranties.** (5) Funds recovered by the attorney general in proceedings brought pursuant to subsection (4) of this section shall be held in the account described in section 34-32-122 and shall be used to reclaim lands covered by the forfeited warranties; EXCEPT THAT FIVE PERCENT OF THE AMOUNT OF THE FINANCIAL WARRANTY SHALL BE DEPOSITED IN THE MINED LAND RECLAMATION FUND, CREATED IN SECTION 34-32-127, TO COVER THE ADMINISTRATIVE COSTS INCURRED BY THE OFFICE IN PERFORMING RECLAMATION. The board shall have a right of entry to reclaim said lands. Upon completion of such reclamation, the board shall present to the financial warrantor a full accounting and shall refund all unspent moneys.

**SECTION 12.** Article 32 of title 34, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**34-32-121.5. Reporting certain conditions.** ANY PERSON ENGAGED IN ANY MINING OPERATION SHALL NOTIFY THE OFFICE OF ANY FAILURE OR IMMINENT FAILURE, AS SOON AS REASONABLY PRACTICABLE AFTER SUCH PERSON HAS KNOWLEDGE OF SUCH CONDITION, OF: ANY IMPOUNDMENT, EMBANKMENT, OR SLOPE THAT POSES A REASONABLE POTENTIAL FOR DANGER TO ANY PERSONS OR PROPERTY OR TO THE ENVIRONMENT; OR ANY ENVIRONMENTAL PROTECTION FACILITY DESIGNED TO

CONTAIN OR CONTROL CHEMICALS OR WASTE WHICH ARE ACID- OR TOXIC-FORMING, AS IDENTIFIED IN THE PERMIT.

**SECTION 13.** 34-32-122, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-32-122. Fees, civil penalties, and forfeitures - deposit - emergency response cash fund - created.** (1) (a) All fees AND ASSESSMENTS collected pursuant to this article AND FIVE PERCENT OF THE PROCEEDS OF ANY FINANCIAL WARRANTY FORFEITED PURSUANT TO SECTION 34-32-118 shall be deposited in the mined land reclamation fund FOR ADMINISTRATIVE COSTS ASSOCIATED WITH RECLAIMING SITES FOR WHICH THE FINANCIAL WARRANTY HAS BEEN REVOKED. All civil penalties collected under the provisions of this article shall be deposited in the general fund. NINETY-FIVE PERCENT OF the proceeds of all financial warranties forfeited under the provisions of section 34-32-118 shall be deposited in a special account in the general fund 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.

(b) Repealed, L. 88, p. 1215, § 16, effective July 1, 1988.

(2) Any applicant that desires to utilize the self-insurance provisions listed in section ~~34-32-117 (3) (a) (V) to (3) (a) (VIII)~~ 34-32-117 (3) (f) (IV) TO (3) (f) (VII) 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.

(3) (a) (I) THE BOARD IS HEREBY AUTHORIZED TO ACCEPT GRANTS AND DONATIONS FOR THE PURPOSES OF RESPONDING TO EMERGENCIES AS SET FORTH IN THIS SUBSECTION (3). ALL GRANTS AND DONATIONS ACCEPTED PURSUANT TO THIS SUBSECTION (3) SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE EMERGENCY RESPONSE CASH FUND, WHICH FUND IS HEREBY CREATED.

(II) THE EMERGENCY RESPONSE CASH FUND SHALL BE AVAILABLE FOR USE BY THE EXECUTIVE DIRECTOR TO CONDUCT EMERGENCY RESPONSES OR TO PERFORM EMERGENCY RECLAMATION ACTIVITIES AT MINING OPERATIONS SUBJECT TO THIS ARTICLE.

(III) AN AMOUNT EQUAL TO THE CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 34-32-123 SHALL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR PURPOSES OF RESPONDING TO EMERGENCIES AS SET FORTH IN THIS SUBSECTION (3), IF THE GENERAL ASSEMBLY DETERMINES THAT FUNDS IN THE EMERGENCY RESPONSE CASH FUND ARE INADEQUATE TO ADEQUATELY RESPOND TO AN EMERGENCY.

(b) "EMERGENCY" MEANS ANY EVENT TO WHICH THE BOARD IS AUTHORIZED TO RESPOND PURSUANT TO SECTION 34-32-124.5.

(c) (I) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO BRING AN ACTION IN THE

DISTRICT COURT AGAINST ANY OWNER, OPERATOR, OR PERMIT HOLDER WHOSE ACTIONS THE EXECUTIVE DIRECTOR REASONABLY BELIEVES NECESSITATED THE EMERGENCY RESPONSE OR CAUSED THE EMERGENCY. THE PURPOSE OF ANY SUCH ACTION SHALL BE TO RECOVER THE FUNDS EXPENDED FROM THE EMERGENCY RESPONSE CASH FUND FROM SUCH OWNER, OPERATOR, OR PERMIT HOLDER.

(II) THE BURDEN OF PROOF IN ANY ACTION BROUGHT PURSUANT TO THIS PARAGRAPH (c) SHALL BE ON THE STATE WHICH SHALL DEMONSTRATE WITH COMPETENT EVIDENCE THAT:

(A) AN EMERGENCY EXISTED;

(B) THE PARTIES NAMED NECESSITATED THE EMERGENCY RESPONSE OR CAUSED THE EMERGENCY; AND

(C) THE RESPONSE WAS REASONABLE UNDER THE CIRCUMSTANCES KNOWN OR REASONABLY THOUGHT TO EXIST BY THE STATE.

(III) NOTHING IN THIS PARAGRAPH (c) SHALL BE CONSTRUED TO PREVENT A NAMED PARTY FROM CHALLENGING THE ADEQUACY OF THE EVIDENCE OR FROM PRESENTING CONTRARY EVIDENCE.

(IV) IF THERE IS A CONFLICT REGARDING COSTS INCURRED BY THE OFFICE PURSUANT TO THIS SUBSECTION (3), THE STATE SHALL BEAR THE BURDEN OF PROOF.

(d) THE COURT MAY APPORTION RESPONSIBILITY FOR ANY AWARD OF REASONABLE EMERGENCY RESPONSE COSTS TO ANY PARTY OR PARTIES IN ANY PROPORTION AS MAY BE EQUITABLE UNDER THE CIRCUMSTANCES; EXCEPT THAT LIABILITY SHALL BE SEVERAL AND INDIVIDUAL AND NOT JOINT AND COLLECTIVE.

(4) IF THE BOARD MAKES FINDINGS PURSUANT TO SECTION 34-32-124.5 (1) WHICH JUSTIFY AN EMERGENCY RESPONSE, IT MAY:

(a) ESTABLISH AN EMERGENCY RESPONSE TEAM;

(b) ENTER THE PROPERTY AND TAKE REMEDIAL ACTION NECESSARY TO BRING THE OPERATION INTO COMPLIANCE WITH THE PERMIT OR REMOVE AN IMMINENT THREAT TO THE PUBLIC HEALTH AND SAFETY;

(c) ISSUE A WRITTEN CEASE AND DESIST ORDER REQUIRING ANY PARTY TO IMMEDIATELY DISCONTINUE AN ACTIVITY; AND

(d) APPLY TO THE DISTRICT COURT FOR THE DISTRICT IN WHICH THE ACTIVITY IS OCCURRING FOR A TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, OR PERMANENT INJUNCTION.

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO QUALIFY THE AUTHORITY OF THE EXECUTIVE DIRECTOR OR TO PREVENT THE EXECUTIVE DIRECTOR FROM TAKING ACTION PURSUANT TO SUBSECTION (3) OF THIS SECTION.

**SECTION 14.** 34-32-124 (2), Colorado Revised Statutes, 1984 Repl. Vol., is

amended to read:

**34-32-124. Failure to comply with the conditions of an order, permit, or regulation.** (2) (a) If the board determines that there exists any violation of any provisions of this article or of any notice, permit, or regulation issued or promulgated under authority of this article, the board may issue a cease and desist order. Such order shall set forth the provisions alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated and may include the nature of any corrective action proposed to be required. Such order shall be served personally or by certified mail, return receipt requested, upon the alleged violator or ~~his~~ THE VIOLATOR'S agent for service of process.

(b) ANY COSTS INCURRED BY THE BOARD OR OFFICE IN CARRYING OUT CORRECTIVE ACTION PURSUANT TO THIS SECTION MAY BE ASSESSED AGAINST THE VIOLATOR. THE BOARD MAY ALSO ASSESS ADDITIONAL COSTS AGAINST THE VIOLATOR FOR ANY INORDINATE EXPENDITURE OF BOARD OR OFFICE RESOURCES NECESSITATED BY THE ADMINISTRATION OF SUCH CORRECTIVE ACTION.

**SECTION 15.** Article 32 of title 34, Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**34-32-124.5. Emergencies endangering public health or the environment.** (1) FOLLOWING AN INVESTIGATION, AN EMERGENCY RESPONSE SHALL BE JUSTIFIED PURSUANT TO SECTION 34-32-122 (3), IF THE BOARD OR OFFICE DETERMINES THAT ANY PERSON IS:

(a) ENGAGING IN ANY ACTIVITY NOT SANCTIONED BY, OR WHICH CONSTITUTES A MATERIAL VIOLATION OF, A PERMIT FOR A MINING OPERATION, IF SUCH ACTIVITY CONSTITUTES AN IMMEDIATE, UNDUE, AND UNWARRANTED RISK OF SERIOUS HARM TO PERSONS OR PROPERTY OR TO THE ENVIRONMENT; OR

(b) AN OPERATOR WITH A PERMIT WHO IS FAILING OR REFUSING TO RESPOND TO A BOARD ORDER REQUIRING CORRECTIVE ACTIONS FOR:

(I) ANY FAILURE OR IMMINENT FAILURE OF ANY IMPOUNDMENT, EMBANKMENT, OR SLOPE IDENTIFIED IN SUCH PERMIT; OR

(II) ANY ENVIRONMENTAL PROTECTION FACILITY OR MEASURE IDENTIFIED IN THE PERMIT WHICH IS DESIGNED FOR CONTROL OR CONTAINMENT OF CHEMICALS OR WASTE WHICH ARE TOXIC, TOXIC-FORMING, OR ACID; OR

(III) ANY OTHER MEASURE IDENTIFIED IN SUCH PERMIT OR AS PROVIDED FOR IN THIS ARTICLE OR ANY RULE PROMULGATED PURSUANT TO THIS ARTICLE, WHICH IS INTENDED TO PROTECT HUMAN HEALTH OR PROPERTY OR THE ENVIRONMENT.

**SECTION 16.** 34-32-127 (2), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-32-127. Mined land reclamation fund - created - fees - fee adjustments.** (2) (a) Fees shall be collected by the office according to the following schedule:

(I) Applications pursuant to:

(A) Section 34-32-110 (1)	\$ 250
(B) Section 34-32-110 (2)	875
(C) Section 34-32-110 (7)	1500
(D) Section 34-32-111	625
(E) Section 34-32-112, except for applications relating to the mining operations specified in sub-subparagraphs <del>(F) to (J)</del> (F) AND (G) of this subparagraph (I)	1875
(F) Section 34-32-112 relating to quarries	2325
(G) Section 34-32-112 relating to mining operations, OTHER THAN DESIGNATED MINING OPERATIONS, where chemical or thermal processing is used for milling of an ore	3100
(H) Section 34-32-112 (8) relating to reclamation permit amendments	1550
(I) Section 34-32-112 (8) relating to revisions to permits other than amendments	150
(J) Section 34-32-112 (8) relating to temporary cessations of operations	100
(K) Section 34-32-113	75
(L) Section 34-32-119	100

(M) SECTION 34-32-112 RELATING TO DESIGNATED MINING OPERATIONS: THE BOARD MAY DESIGNATE AN APPLICATION FEE BY RULE BASED UPON THE ESTIMATED COST TO THE OFFICE FOR PROCESSING CERTIFICATION AND ADMINISTRATIVE REVIEW OF SUCH PERMITS WHICH SHALL NOT BE LESS THAN \$875 OR MORE THAN \$9,000, FOR SUCH OPERATION.

(II) Annual fees for fiscal year 1991-92 for operations pursuant to:

(A) Section 34-32-110 (1)	\$ 45
(B) Section 34-32-110 (2)	120
(C) Section 34-32-111	350
(D) Section 34-32-112	430

(III) Annual fees for fiscal year 1992-1993 for operations pursuant to:

(A) Section 34-32-110 (1)	\$ 60
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(B) Section 34-32-110 (2)	175
(C) Section 34-32-111	350
(D) Section 34-32-112	490

(IV) Annual fees for fiscal year 1993-94 and all subsequent years for operations pursuant to:

(A) Section 34-32-110 (1) (EXCLUDING DESIGNATED MINING OPERATIONS)	\$ 75
(B) Section 34-32-110 (2) (EXCLUDING DESIGNATED MINING OPERATIONS)	225
(C) Section 34-32-111 (EXCLUDING DESIGNATED MINING OPERATIONS)	350
(D) Section 34-32-112 (EXCLUDING DESIGNATED MINING OPERATIONS)	550
(E) SECTION 34-32-112 (FOR DESIGNATED MINING OPERATIONS)	1000
(F) SECTION 34-32-110 (FOR DESIGNATED MINING OPERATIONS)	450

(V) Fees to the public for services such as copying, computer printouts, compilation reports, or other services shall be the same as the cost to the office for providing such services.

(b) After July 1, 1993, the state auditor shall perform a financial and performance audit of the mined land reclamation office and the mined land reclamation board and such audit shall be completed and presented to the legislative audit committee by December 1, 1993.

(c) If an operator is a department, division, or agency of federal, state, county, or municipal government and submits a composite application and annual report, such operator may submit a composite fee therewith if such composite fee includes the requisite fee pursuant to this subsection (2) for each operation referenced in such operator's composite application and annual report.

**SECTION 17.** 34-21-101 (1) (m), Colorado Revised Statutes, 1984 Repl. Vol., as amended, is amended to read:

**34-21-101. Office of active and inactive mines - creation - duties.** (1) There is hereby created in the division of minerals and geology in the department of natural resources the office of active and inactive mines, the head of which shall be appointed by the director of the division. The office shall have the following duties:

- (m) To perform such other duties as specified in articles 22 to 24 AND ARTICLE 32

of this title.

**SECTION 18.** 30-15-401 (1) (q), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**30-15-401. General regulations.** (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article, the board of county commissioners has the power to adopt ordinances for control or licensing of those matters of purely local concern which are described in the following enumerated powers:

(q) To provide for and compel the removal of any building or structure, except for a building or structure on affected land subject to the "Colorado Mined Land Reclamation Act", as the term "affected land" is defined in section ~~34-32-103 (1)~~ 34-32-103 (1.5), C.R.S., or on lands subject to the "Colorado Surface Coal Mining Reclamation Act", pursuant to article 33 of title 34, C.R.S., the condition of which presents a substantial danger or hazard to public health, safety, or welfare, or any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard, or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter, at such time, upon such notice, and in such manner as the board of county commissioners may prescribe by ordinance, including the removal performed by the county upon notice to and failure of the property owner to remove such building or structure, and to assess the whole cost of such removal, including incidental costs and a reasonable fee for inspection which fee shall not exceed five percent of the total amount due in connection therewith, upon the property from which such building or structure has been removed. Any assessment pursuant to this paragraph (q) shall be a lien against such property until paid. If such assessment is not paid within a reasonable time as specified by ordinance, it may be certified by the clerk and recorder to the county treasurer, who shall collect the assessment, together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected.

**SECTION 19. Effective date.** This act shall take effect July 1, 1993.

**SECTION 20. 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.

Approved: June 3, 1993