# Colorado Revised Statutes 2018

# TITLE 34

MINERAL RESOURCES

**Cross references:** For leases with option to purchase oil, gas, and minerals, see article 42 of title 38; for leases of future contingent interests in oil, gas, and minerals, see article 43 of title 38; for valuation of mines and of oil and gas leaseholds and lands, see articles 6 and 7 of title 39; for commissioner of mines as executive director of the department of natural resources, see §§ 24-1-124 (1) and 24-33-102 (1).

## GEOLOGICAL SURVEY

## ARTICLE 1

Geological Survey

PART 1

COLORADO GEOLOGICAL SURVEY

**34-1-100.5 to 34-1-106. (Repealed)**

**Editor's note:** (1) This part 1 was numbered as article 1 of chapter 64, C.R.S. 1963. For amendments to this part 1 prior to its repeal in 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 34-1-100.5 (3) provided for the repeal of this part 1, effective January 31, 2013. On January 24, 2013, the revisor of statutes received the notice referred to in section 34-1-100.5 (3) related to the repeal. For more information about the repeal and notice, see House Bill 12-1355, L. 2012, p. 1196.

**Cross references:** For current provisions relating to the Colorado geological survey, see part 2 of article 41 of title 23.

PART 2

GEOLOGY

**34-1-201 to 34-1-202. (Repealed)**

**Editor's note:** (1) This part 2 was numbered as article 3 of chapter 51, C.R.S. 1963, and was not amended prior to its repeal in 2013. For the text of this part 2 prior to 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 34-1-100.5 (3) provided for the repeal of this part 2, effective January 31, 2013. On January 24, 2013, the revisor of statutes received the notice referred to in section 34-1-100.5 (3) related to the repeal. For more information about the repeal and notice, see House Bill 12-1355, L. 2012, p. 1196.

## PART 3

## PRESERVATION OF COMMERCIAL MINERAL DEPOSITS

**34-1-301. Legislative declaration.** (1) The general assembly hereby declares that:

(a) The state's commercial mineral deposits are essential to the state's economy;

(b) The populous counties of the state face a critical shortage of such deposits;

(c) Such deposits should be extracted according to a rational plan, calculated to avoid waste of such deposits and cause the least practicable disruption of the ecology and quality of life of the citizens of the populous counties of the state.

(2) The general assembly further declares that, for the reasons stated in subsection (1) of this section, the regulation of commercial mineral deposits, the preservation of access to and extraction of such deposits, and the development of a rational plan for extraction of such deposits are matters of concern in the populous counties of the state. It is the intention of the general assembly that the provisions of this part 3 have full force and effect throughout such populous counties, including, but not limited to, the city and county of Denver and any other home rule city or town within each such populous county but shall have no application outside such populous counties.

**Source: L. 73:** p. 1046, § 1. **C.R.S. 1963:** § 92-36-1.

**34-1-302. Definitions.** As used in this part 3, unless the context otherwise requires:

(1) "Commercial mineral deposit" means a natural mineral deposit of limestone used for construction purposes, coal, sand, gravel, and quarry aggregate, for which extraction by an extractor is or will be commercially feasible and regarding which it can be demonstrated by geologic, mineralogic, or other scientific data that such deposit has significant economic or strategic value to the area, state, or nation.

(2) "Extractor" means any individual, partnership, association, or corporation which extracts commercial mineral deposits for use in the business of selling such deposits or for use in another business owned by the extractor or any department or division of federal, state, county, or municipal government which extracts such deposits.

(3) "Populous county or populous counties of the state" means any county or city and county having a population of sixty-five thousand inhabitants or more according to the latest federal decennial census.

**Source: L. 73:** p. 1047, § 1. **C.R.S. 1963:** § 92-36-2.

**34-1-303. Geological survey to make study.** After July 1, 1973, the Colorado geological survey shall contract for a study of the commercial mineral deposits in the populous counties of the state in order to identify and locate such deposits. Such study shall be of sand, gravel, and quarry aggregate, and shall be completed on or before July 1, 1974, and shall include a map or maps of the state showing such commercial mineral deposits, copies of which may be generally circulated. Any commercial mineral deposits discovered subsequent to July 1, 1974, may be, upon discovery, included in such study.

**Source: L. 73:** p. 1047, § 1. **C.R.S. 1963:** § 92-36-3.

**34-1-304. Master plan for extraction.** (1) The county planning commission for unincorporated areas and for cities and towns having no planning commission or the planning commission for each city and county, city, or town, within each populous county of the state, shall, with the aid of the maps from the study conducted pursuant to section 34-1-303, conduct a study of the commercial mineral deposits located within its jurisdiction and develop a master plan for the extraction of such deposits, which plan shall consist of text and maps. In developing the master plan, the planning commission shall consider, among others, the following factors:

(a) Any system adopted by the Colorado geological survey grading commercial mineral deposits according to such factors as magnitude of the deposit and time of availability for and feasibility of extraction of a deposit;

(b) The potential for effective multiple sequential use which would result in the optimum benefit to the landowner, neighboring residents, and the community as a whole;

(c) The development or preservation of land to enhance development of physically attractive surroundings compatible with the surrounding area;

(d) The quality of life of the residents in and around areas which contain commercial mineral deposits;

(e) Other master plans of the county, city and county, city, or town;

(f) Maximization of extraction of commercial mineral deposits;

(g) The ability to reclaim an area pursuant to the provisions of article 32 of this title; and

(h) The ability to reclaim an area owned by any county, city and county, city, town, or other governmental authority or proposed, pursuant to an adopted plan, to be used for public purposes by such a governmental authority consistent with such proposed use.

(2) A planning commission shall cooperate with the planning commissions of contiguous areas and the mined land reclamation board created by section 34-32-105 in conducting the study and developing the master plan for extraction.

(3) (a) A county planning commission shall certify its master plan for extraction to the board of county commissioners or the governing body of the city or town where the county planning commission is acting in lieu of a city or town planning commission. A planning commission in any city and county, city, or town shall certify its master plan for extraction to the governing body of such city and county, city, or town.

(b) After receiving the certification of such master plan and before adoption of such plan, the board of county commissioners or governing body of a city and county, city, or town shall hold a public hearing thereon, and at least thirty days' notice of the time and place of such hearing shall be given by one publication in a newspaper of general circulation in the county,

city and county, city, or town. Such notice shall state the place at which the text and maps so certified may be examined.

(4) The board of county commissioners or governing body of a city and county, city, or town may, after such public hearing, adopt the plan, revise the plan with the advice of the planning commission and adopt it, or return the plan to the planning commission for further study and rehearing before adoption, but, in any case, a master plan for extraction of commercial mineral deposits shall be adopted for the unincorporated territory and any city and county, city, or town in each populous county of the state on or before July 1, 1975.

**Source: L. 73:** p. 1047, § 1. **C.R.S. 1963:** § 92-36-4. **L. 75:** (1)(h) added, p. 1336, § 1, effective June 29. **L. 77:** (2) amended, p. 289, § 67, effective June 29.

**Cross references:** For establishment and functions of a county planning commission, see § 30-28-133.

**34-1-305. Preservation of commercial mineral deposits for extraction.** (1) After July 1, 1973, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area known to contain a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(2) After adoption of a master plan for extraction for an area under its jurisdiction, no board of county commissioners, governing body of any city and county, city, or town, or other governmental authority which has control over zoning shall, by zoning, rezoning, granting a variance, or other official action or inaction, permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.

(3) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority which has control over zoning from zoning or rezoning land to permit a certain use, if said use does not permit erection of permanent structures upon, or otherwise permanently preclude the extraction of commercial mineral deposits by an extractor from, land subject to said use.

(4) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or other governmental authority which has control over zoning from zoning for agricultural use, only, land not otherwise zoned on July 1, 1973.

(5) Nothing in this section shall be construed to prohibit a use of zoned land permissible under the zoning governing such land on July 1, 1973.

(6) Nothing in this section shall be construed to prohibit a board of county commissioners, a governing body of any city and county, city, or town, or any other governmental authority from acquiring property known to contain a commercial mineral deposit and using said property for a public purpose; except that such use shall not permit erection of permanent structures which would preclude permanently the extraction of commercial mineral deposits.

**Source: L. 73:** p. 1048, § 1. **C.R.S. 1963:** § 92-36-5. **L. 75:** (6) added, p. 1336, § 2, effective June 29.

## JOINT REVIEW PROCESS

## ARTICLE 10

Colorado Joint Review Process

**34-10-101 to 34-10-104. (Repealed)**

**Editor's note:** (1) This article was added in 1983. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 34-10-104 provided for the repeal of this article, effective July 1, 1996. (See L. 91, p. 689.)

## MINES AND MINERALS

## Health and Safety

## ARTICLE 20

Mining - Legislative Declaration and Definitions

**Editor's note:** This article was numbered as article 1 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**34-20-101. Legislative declaration.** The general assembly hereby finds and declares that the extraction of mineral resources is a necessary and proper activity and that the achievement of safe and healthful conditions and practices in mines in this state can only be accomplished with the cooperation and coordination of the operators of such mines, the miners who work in the mines, and the state and federal government. The general assembly recognizes that the mining industry is vital to the economy of this state and that the state's mineral and energy resources are of commercial and strategic value to the entire country. The general assembly also recognizes that the efficient development of such resources provides jobs and generates revenues for state and local economies and that such development should be conducted in a manner which protects the health and safety of the miners and of the general public. The general assembly further finds and declares that all mines as defined under federal law are

subject to federal regulation. It is the intent of the general assembly to recognize the existence of the federal mine safety laws and to provide a means whereby the state can assist, upon request, mine operators and miners in their attempts to comply with those laws. The general assembly also recognizes that nonproducing mines and mines that are open to the public are not regulated by the federal government. It is the intent of the general assembly to provide an inspection program for such mines to assist in protecting the health and safety of the general public touring such operations. The general assembly hereby recognizes that the "Federal Mine Safety and Health Act of 1977", as amended, Pub.L. 95-164, provides for the proper ventilation of mines and the construction of escapement shafts. The general assembly declares that it is the intent of the general assembly that all mines in the state of Colorado that are subject to said federal law shall comply with said requirements for ventilation and escapement shafts.

**Source: L. 88:** Entire article R&RE, p. 1184, § 1, effective July 1. **L. 92:** Entire section amended, p. 1922, § 9, effective July 1.

**Editor's note:** This section is similar to former § 34-20-102 as it existed prior to 1988.

**34-20-102. Definitions.** As used in articles 20 to 25 of this title, unless the context otherwise requires:

(1) "Approved" means confirmed by the commissioner of mines or his designee.

(2) "Authorized representative" means a person employed by the division and authorized by the director to conduct safety and health studies, equipment surveys, tests, and technical assistance visits and to perform other duties assigned by the director.

(3) "Board" means the coal mine board of examiners.

(4) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person and used in, to be used in, or resulting from the work of extracting in such bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, including the work of preparing the coal so extracted, and such term includes custom coal preparation facilities.

(5) "Commissioner" means the commissioner of mines.

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

(7) "Director" means the director of the division of reclamation, mining, and safety in the department of natural resources.

(8) "Division" means the division of reclamation, mining, and safety in the department of natural resources.

(9) (a) "Mine" means:

(I) Any area of land from which minerals are extracted in nonliquid form or are extracted in a liquid form while workers are underground;

(II) Private ways and roads appurtenant to such area; and

(III) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailing ponds, on the surface or underground, used in, or to be used in, or resulting from the work of extracting such minerals from their natural deposits in

nonliquid form or, if in liquid form, used by workers underground or used or to be used in the milling of such minerals or the work of preparing coal or other minerals.

(b) "Mine" does not include the facilities defined in section 12-23-101 (3.5), C.R.S., nor does it include earthen dams, sand and gravel pits, clay pits, or rock and stone quarries, including surface limestone and dolomite quarries.

(10) "Miner" means any individual working in a mine.

(11) "Operator" means any owner, lessee, or other person who operates, controls, or supervises a mine or an independent contractor performing services or construction at such mine.

(12) "Tourist mine" means a nonproducing mine not regulated by the federal government that is open to the general public for tours.

(13) "Work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite and such other work of preparing such coal as is usually done by the operator of the coal mine.

**Source: L. 88:** Entire article R&RE, p. 1185, § 1, effective July 1. **L. 92:** (2), (7), and (8) amended, p. 1923, § 10, effective July 1. **L. 2006:** (2), (7), and (8) amended, p. 214, § 7, effective August 7.

**Editor's note:** This section is similar to former § 34-20-101 as it existed prior to 1988.

**34-20-103. Division of reclamation, mining, and safety - creation - powers and duties - transfer of functions and property - change of statutory references.** (1) There is hereby created the division of reclamation, mining, and safety in the department of natural resources. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint the director of the division of reclamation, mining, and safety, and the director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the division and the director. Appointing authority for such employees may be delegated by the director to the heads of the offices in the division as appropriate.

(2) The division shall consist of the office of active and inactive mines, created in article 21 of this title, the coal mine board of examiners, created in article 22 of this title, and the office of mined land reclamation and the mined land reclamation board, created in article 32 of this title.

(3) The division of reclamation, mining, and safety shall be responsible for the administration of articles 20 to 25, 32, and 33 of this title through the office of active and inactive mines and the office of mined land reclamation.

(4) to (6) (Deleted by amendment, L. 2006, p. 214, § 8, effective August 7, 2006.)

(7) The director of the division of reclamation, mining, and safety shall prepare and submit to the executive director of the department of natural resources a plan for encouraging the development of minerals in the state. The plan must be formulated based upon the recommendations of the other divisions in the department.

(8) The director of the division of reclamation, mining, and safety shall:

(a) Conceive and develop long range and strategic plans and policies;

(b) Compile and disseminate information on Colorado's mineral opportunities, analyze and identify constraints which may affect development, resolve problems, and promote resource utilization;

(c) Work with other state economic development planners to help establish a consistent state minerals and energy development policy and long range plans for economic mineral development;

(d) Coordinate with federal agencies on proposed land uses, policies, legislation, and regulation;

(e) Provide or support Colorado government liaison with federal agencies and alert the department to developments or opportunities; and

(f) Consult with local governments, public interest groups, environmental groups, and constituency groups where necessary to promote a sound and balanced approach to minerals development.

(9) Repealed.

**Source: L. 92:** Entire section added, p. 1923, § 11, effective July 1. **L. 96:** (9)(a), (9)(c), and (9)(d) amended, p. 1219, § 14, effective August 7. **L. 97:** (2) to (5) amended, p. 1028, § 61, effective August 6. **L. 2002:** (7) and (9)(b)(II) amended, p. 878, § 6, effective August 7. **L. 2003:** (2) amended, p. 1962, § 7, effective May 22. **L. 2005:** (9) repealed, p. 1463, § 3, effective July 1. **L. 2006:** (1), (3), (4), (5), (6), (7), and IP(8) amended, p. 214, § 8, effective August 7. **L. 2013:** (7) amended, (HB 13-1139), ch. 120, p. 409, § 9, effective August 7.

**Cross references:** For the legislative declaration contained in the 1996 act amending subsections (9)(a), (9)(c), and (9)(d), see section 1 of chapter 237, Session Laws of Colorado 1996.

**34-20-104. Minerals, energy, and geology policy advisory board - creation. (Repealed)**

**Source: L. 92:** Entire section added, p. 1923, § 11, effective July 1. **L. 96:** (3)(j) added, p. 999, § 2, effective May 23; (3)(i) repealed, p. 1218, § 13, effective August 7. **L. 98:** (4) repealed, p. 72, § 1, effective March 23. **L. 2002:** (3)(c) amended, p. 878, § 7, effective August 7. **L. 2006:** (1) amended, p. 216, § 9, effective August 7. **L. 2008:** (3)(j) amended, p. 1872, § 9, effective June 2. **L. 2013:** (3)(j) amended, (SB 13-181), ch. 209, p. 872, § 21, effective May 13; entire section repealed, (HB 13-1139), ch. 120, p. 407, § 1, effective August 7.

## ARTICLE 21

Office of Active and Inactive Mines

**Editor's note:** This article was numbered as article 2 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on

page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**Cross references:** For definitions applicable to this article, see § 34-20-102.

**34-21-101. Office of active and inactive mines - creation - duties.** (1) There is hereby created in the division of reclamation, mining, and safety 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:

(a) To assist, upon request, operators and miners in meeting the requirements of the "Federal Mine Safety and Health Act of 1977", Pub.L. 95-164, as amended;

(b) To assist, upon request, operators in establishing, training, equipping, and coordinating mine rescue teams;

(c) To maintain state miner training and accident reduction programs as deemed necessary by the commissioner and to provide such programs to operators and miners when requested;

(d) To secure funding for state and local training, technical assistance, and technology improvement programs;

(e) Through the board, to examine applicants for positions for which certification is required by federal law and to issue certificates of competence to those applicants who qualify;

(f) To provide for permitting of underground diesel-powered equipment and for permitting the storage and use of explosives until a federal permit is required by law;

(g) To be a repository for mine information and maps, to collect mine data and records, and to preserve information regarding the history and progress of the mining industry in the state from the earliest date to the present time;

(h) To respond to operators' or coroners' requests for assistance in investigating injuries and accidents;

(i) To provide administration and clerical support for the commissioners, the director, and the board;

(j) To prepare an annual report on the mining industry in Colorado providing information on production, employment, safety, ownership, processing and distribution, location, type, and any other information necessary to guide and promote mining in the state;

(k) To cooperate with and utilize the Colorado geological survey, consistent with its duties in sections 23-41-203 and 23-41-205, C.R.S.;

(l) To cooperate with other state agencies and institutions in the implementation of articles 1, 21, 22, 23, 24, 32, and 33 of this title;

(l.1) To develop and administer the abandoned mine reclamation program consistent with the provisions of section 34-33-133; and

(m) To perform such other duties as specified in articles 22 to 24 and article 32 of this title.

**Source: L. 88:** Entire article R&RE, p. 1186, § 2, effective July 1. **L. 92:** IP(1), (1)(e), and (1)(l) amended and (1)(l.1) added, p. 1931, § 12, effective July 1. **L. 93:** (1)(m) amended, p. 1198, § 17, effective July 1. **L. 2006:** IP(1) amended, p. 216, § 10, effective August 7. **L. 2012:** (1)(k) amended, (HB 12-1355), ch. 247, p. 1197, § 6, effective January 31, 2013.

**Editor's note:** This section is similar to former § 34-40-101 as it existed prior to 1988.

**34-21-102. Commissioner of mines.** (1) In accordance with the provisions of section 1 of article XVI of the Colorado constitution, it is the duty of the governor, with the consent of the senate, to appoint a person known to be competent to the office of commissioner, who may also be the executive director of the department of natural resources. The office of commissioner of mines shall be located in the office of the executive director of the department of natural resources. The governor has the power to remove said commissioner from office for incompetency, neglect of duty, or abuse of the privileges of such commissioner's office.

(2) (Deleted by amendment, L. 92, p. 1931, § 13, effective July 1, 1992.)

**Source: L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1931, § 13, effective July 1.

**Editor's note:** This section is similar to former § 34-40-103 as it existed prior to 1988.

**34-21-103. Head of office of active and inactive mines - appointment - staff.** (1) The director shall, subject to the provisions of section 13 of article XII of the state constitution, appoint the head of the office of active and inactive mines, subject to the supervision and control of the director. The head of the office of active and inactive mines shall have knowledge of mine health and safety practices, an understanding of mining technologies, and reclamation practices.

(2) The director may hire such competent persons, including authorized representatives, as the director deems necessary and proper for carrying out the purposes of articles 20 to 24, 32, and 33 of this title, and such persons shall comprise the office staff.

**Source: L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1931, § 14, effective July 1.

**Editor's note:** This section is similar to former § 34-40-103 as it existed prior to 1988.

**34-21-104. Rules and regulations.** The director may, subject to the supervision and control of the commissioner, promulgate rules and regulations which shall be in accordance with the provisions of article 4 of title 24, C.R.S., to carry out the provisions of articles 20 to 24 of this title and shall enforce the rules and regulations promulgated thereunder in the same manner as he enforces the provisions of such articles. In the promulgation of such rules and regulations, the director shall consult with representatives of operators and miners.

**Source: L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1.

**Editor's note:** This section is similar to former § 34-40-103 as it existed prior to 1988.

**34-21-105. Conflicts of interest.** The commissioner, director, division staff, and office staff shall devote their entire time and attention to the duties of their offices. Neither the commissioner, the director, nor any member of the office staff, shall be an owner, operator, employee, controlling stockholder, or director of any producing mine, nor shall any such person

act as manager, agent, or lessee for any mining corporation or act as an active member, officer, or employee of any labor union or organization representing miners during the term of such person's office.

**Source: L. 88:** Entire article R&RE, p. 1187, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 15, effective July 1.

**Editor's note:** This section is similar to former § 34-40-110 as it existed prior to 1988.

**34-21-106. Officers not to reveal information - penalty.** (1) Information obtained by the commissioner, director, and office staff, including authorized representatives, which pertains to mine and metallurgical processes, ore bodies, or deposits or to the location, course, or character of underground workings and which is stamped confidential shall remain confidential, except in the way of official reports filed for record in accordance with the requirements of articles 20 to 25 of this title, and no information shall be furnished with the intent to aid in or prevent the sale or other conveyance of any mine or mining property.

(2) Any person who violates the requirements of this section is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars. In addition, the person so convicted shall be removed from his position.

**Source: L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 16, effective July 1.

**Editor's note:** This section is similar to former § 34-40-114 as it existed prior to 1988.

**34-21-107. Salaries of commissioner and division employees.** The commissioner shall receive a salary as provided by law. Employees of the division shall receive for their services salaries to be paid as other officers and employees of the state are paid, pursuant to section 13 of article XII of the state constitution.

**Source: L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1.

**Editor's note:** This section is similar to former § 34-40-116 as it existed prior to 1988.

**34-21-108. Report of director.** (1) The director shall report to the executive director of the department of natural resources at such times and on such matters as the executive director requires.

(2) The director is authorized to make researches and studies as appropriations may be made therefor and as he deems necessary to the mining industry in the state, but the researches and studies shall not duplicate the work of other state and federal agencies.

(3) Materials prepared under the authority of this section or any other materials of the office of active and inactive mines of the state of Colorado circulated in quantity outside the department shall be issued subject to the approval and control of the executive director of the department of natural resources.

**Source: L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1. **L. 93:** (3) amended, p. 1791, § 83, effective June 6.

**Editor's note:** This section is similar to former § 34-40-111 as it existed prior to 1988.

**34-21-109. Code of signals.** There shall be established by the commissioner a uniform code of signals, embracing those most generally in use in metalliferous mines, which shall be adopted in all mines using hoisting machinery. The code of signals shall be securely posted, in clear and legible form, in the engine room, at the collar of the shaft, and at each level or station. In all shafts equipped with cages, such shafts and cages shall be fully equipped with a system of electric signals from such cages and stations to the engineer wherever possible.

**Source: L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1.

**Editor's note:** This section is similar to former § 34-47-109 as it existed prior to 1988.

**34-21-110. Tourist mines.** The office shall have the authority to inspect tourist mines in the state. In those cases where the public health and safety may be in danger, the office may close such mine until modification recommendations made by the office have been made. Where appropriate, such actions shall be made in consultation with the passenger tramway safety board.

**Source: L. 88:** Entire article R&RE, p. 1188, § 2, effective July 1. **L. 92:** Entire section amended, p. 1932, § 17, effective July 1.

## ARTICLE 22

Coal Mine Board of Examiners

**Editor's note:** This article was numbered as article 3 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**Cross references:** For definitions applicable to this article, see § 34-20-102.

**34-22-101. Scope of article.** The provisions of this article pertain only to coal mines.

**Source: L. 88:** Entire article R&RE, p. 1189, § 3, effective July 1.

**34-22-102. Board of examiners - created - duties - members.** (1) There is hereby created a coal mine board of examiners, which shall have the following duties:

(a) To establish criteria, including education and training, past and current work experience, and annual electrical retraining requirements, and to examine all applicants for positions in coal mines for which certification is required by federal law;

(b) To issue certificates of competency to those applicants who qualify therefor;

(c) To take disciplinary action against the holder of a certificate of competency for violation of any provision of this article, where such discipline is deemed proper based upon sufficient investigation and in accordance with this article. Disciplinary action may include, without limitation:

(I) Denying the issuance or renewal of, suspending for a specified period, or revoking a certificate;

(II) Issuing a letter of admonition to, or placing on probation, the holder of a certificate; or

(III) Imposing other conditions or limitations upon a certificate or the holder thereof.

(d) To provide assistance to the division in developing curricula for coal miner training programs;

(e) To establish criteria for granting state certification of belt examiners, cable splicers, lamp and gas attendants, and shot-firers;

(f) To issue cease-and-desist orders.

(1.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the holder of a certificate of competency that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the holder of a certificate of competency.

(2) The board shall be composed of four voting members and one nonvoting ex officio member as follows:

(a) One member shall be a coal miner of known experience and practice in underground coal mining residing in the state of Colorado and actively engaged in the coal mining industry during the term of his office;

(b) One member shall be a Colorado coal mine owner, operator, manager, or other mine official actively engaged in the surface coal mining industry during the term of his office;

(c) One member shall be a Colorado mine owner, operator, manager, or other mine official actively engaged in the underground coal mining industry during the term of his office;

(d) One member shall be an engineer experienced in coal mining; and

(e) The commissioner, or his designee, shall serve as a nonvoting, ex officio member of the board.

(3) The members of the board shall be appointed by the governor with the consent of the senate. The term of office for each member of the board shall be four years. Any vacancies on the board shall be filled by the governor by appointment for the remainder of an unexpired term. The governor may remove any board member for misconduct, incompetence, or neglect of duty.

(4) Members of the board who are serving their terms of office on July 1, 1988, shall complete their terms prior to the implementation of the provisions of this section.

**Source: L. 88:** Entire article R&RE, p. 1189, § 3, effective July 1. **L. 92:** (1)(a) amended, p. 1932, § 18, effective July 1. **L. 96:** (3) amended, p. 377, § 1, effective July 1. **L. 2006:** (1)(c) amended and (1)(f) and (1.5) added, pp. 281, 282, §§ 1, 2, effective March 31.

**Editor's note:** This section is similar to former § 34-21-101 as it existed prior to 1988.

**34-22-103. Salaries and expenses of board.** The members of the board who are not state employees shall be compensated at a rate of fifty dollars per day for each day of actual service on the board and shall receive actual traveling and other expenses incurred by them in attendance at the meetings of the board and in the performance of their duties. The expenses in connection with the board shall be paid out of the general fund, or from any appropriation therefor, in accordance with the rules set forth by the state personnel board upon filing of the certificates of time and expenses of the board of examiners in the office of the controller, which certificates shall show the actual time in which each member of said board is so engaged and shall be signed by the chairman of said board and accompanied by vouchers showing the said expenses and shall be approved by the director.

**Source: L. 88:** Entire article R&RE, p. 1190, § 3, effective July 1.

**Editor's note:** This section is similar to former § 34-21-103 as it existed prior to 1988.

**34-22-104. Board of examiners - meetings - examinations.** (1) The board shall, by majority vote of all members, elect its chairman from among its members. The executive director of the department of natural resources, or a designee of the executive director, shall serve as administrator to the board. The office of active and inactive mines shall provide such assistance as may be necessary to the board in the performance of its duties. The board of examiners shall meet every year or more frequently, if necessary, at times and places designated by the chairman.

(2) Examinations for certifications shall be given at such times as determined by the board to applicants for certificates of competency and at places to be determined by the division. Determination of the date and location of an examination shall be announced at least thirty days preceding the examination.

**Source: L. 88:** Entire article R&RE, p. 1190, § 3, effective July 1. **L. 92:** (1) amended, p. 1933, § 19, effective July 1.

**Editor's note:** This section is similar to former § 34-21-105 as it existed prior to 1988.

**34-22-105. Certificate of competency.** (1) Certificates of competency shall be required as a condition of employment for any person working in or about any coal mine in this state in positions designated by federal law.

(2) Positions for which certification is required in underground coal mines include mine foreman, fire boss, mine electrician, shot-firer, and hoistman.

(3) Positions for which certification is required in surface coal mines include blaster and electrician.

(4) The board may designate such other position as may be required by federal law.

**Source: L. 88:** Entire article R&RE, p. 1190, § 3, effective July 1.

**Editor's note:** This section is similar to former § 34-21-109 as it existed prior to 1988.

**34-22-106. Reciprocity.** The board may recognize certification by another state if such certification requirements are substantially similar to the certification requirements of this article. The holder of certification recognized as equivalent may be employed in coal mines of this state for a period to be determined by the board upon presentation of an equivalent certification from another state. The board, following review of such equivalent certification, may certify the applicant for the same position.

**Source: L. 88:** Entire article R&RE, p. 1190, § 3, effective July 1.

**Editor's note:** This section is similar to former §§ 34-24-101 and 34-21-109 as they existed prior to 1988.

**34-22-107. Disciplinary action - procedures - grounds.** (1) In any case in which consideration is given to taking disciplinary action against the holder of a certificate of competency issued pursuant to this article, such proceedings shall be conducted in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S., and no certificate shall be revoked except according to the criteria stated in this article.

(2) A proceeding for the taking of disciplinary action against the holder of a certificate of competency may be commenced by the office of active and inactive mines upon its own motion for good cause shown or by the filing with the office of active and inactive mines of a written complaint, signed and attested to by the complainant, stating the name of the certificate holder against whom the complaint is made, the grounds on which the complaint is made, and a description of the facts and circumstances that gave rise to the complaint. The office of active and inactive mines shall have the authority to investigate any complaint to establish good cause prior to the initiation of disciplinary proceedings.

(3) No disciplinary action shall be lawful unless the office of active and inactive mines has first given the certificate holder notice, in writing, of the facts or conduct that may warrant such action, afforded the certificate holder an opportunity to submit written data, views, and arguments with respect to such facts or conduct and, except in cases of reckless actions or conduct that demonstrates a serious disregard for health and safety, given the certificate holder a reasonable opportunity to comply with all lawful requirements.

(4) (Deleted by amendment, L. 2006, p. 282, § 6, effective March 31, 2006.)

(5) The board shall hold a hearing within thirty days of the filing of written charges, and such hearing shall be held in accordance with the provisions of section 24-4-105, C.R.S.

(6) No certificate of competency shall be revoked except where the majority of the board finds, in writing, based on the evidence of a hearing record, that the holder of the certificate is guilty of:

(a) Reckless disregard of applicable mining law; or

(b) Reckless disregard for compliance with health and safety standards; or

(c) Demonstrated incompetence in the mine which endangers life or property; or

(d) Intentional withholding or altering of mine examination information or reports where life and property is endangered.

(7) A written decision by the board made pursuant to section 24-4-105, C.R.S., which includes findings of fact and conclusions of law, shall be delivered to the certificate holder within ten days after the conclusion of the hearing. The written decision will accompany a written notice of disciplinary action. Such notice shall be delivered to the certificate holder by certified mail, and the disciplinary action shall be effective upon receipt of the notice. A copy of a notice of suspension or revocation shall be mailed to any coal mine operator who employs the person whose certification has been suspended or revoked.

(8) Final board actions and orders appropriate for judicial review may be reviewed in the court of appeals pursuant to section 24-4-106 (11), C.R.S. Judicial proceedings to enforce an order or action of the board may be instituted in accordance with section 24-4-106 (11), C.R.S.

(9) The board shall decide on a case-by-case basis whether a person whose certificate has been revoked may subsequently be issued a certificate and the duration of the revocation period, and such decision shall be written in the notice of revocation.

**Source: L. 88:** Entire article R&RE, p. 1190, § 3, effective July 1. **L. 92:** (2) to (4) amended, p. 1933, § 20, effective July 1. **L. 96:** (3) and (6) amended, p. 377, § 2, effective July 1. **L. 2006:** (1), (2), (3), (4), and (7) amended, p. 282, § 6, effective March 31.

**Editor's note:** This section is similar to former § 34-21-117 as it existed prior to 1988.

**34-22-108. Expiration of certificates.** Any certificate of competency issued pursuant to the provisions of this article shall become null and void if the certificate holder fails to be actively employed in the coal mining industry for a period of five years. This section shall not apply to federal coal mine inspectors.

**Source: L. 88:** Entire article R&RE, p. 1192, § 3, effective July 1.

**Editor's note:** This section is similar to former § 34-21-118 as it existed prior to 1988.

**34-22-109. Examinations - content.** (1) Applicants shall pass such reasonable and practical examinations as may be prescribed by the board for certification. Examinations shall be designed to demonstrate whether the applicant possesses sufficient practical and theoretical knowledge for competent performance of the position for which certification is sought and whether the applicant has knowledge of the state and federal mine health and safety laws.

(2) An applicant for certification as a mine foreman or fire boss in underground coal mines shall be sufficiently knowledgeable as to coal mining, mechanical equipment, the different systems of working and ventilating coal mines, the nature and properties of noxious, explosive, poisonous gases of mines, and the nature and properties of coal dust.

(3) An applicant for certification as a shot-firer shall be sufficiently knowledgeable as to explosives, breaking agents, and blasting accessories used in coal mines, the proper placement of drill holes made for the purpose of breaking or dislodging coal and rock, the flame safety lamp and its use in detecting inflammables and noxious gases, and the proper ventilation in the working places of coal mines.

**Source: L. 88:** Entire article R&RE, p. 1192, § 3, effective July 1.

**Editor's note:** This section is similar to former § 34-21-110 as it existed prior to 1988.

**34-22-110. Examinations - notice - grading - filing.** (1) Notice of examination shall be given by legible notices for a period of six months prior to the examination. The date and location of the examination shall be announced at least thirty days preceding the examination, and the conditions of eligibility shall be fully stated on the notices. Notices shall be furnished by the office of active and inactive mines and posted in a conspicuous place at each coal mine by the operator of such mine.

(2) The office of active and inactive mines shall provide all candidates who take the examination with mathematical formulas to be used in the answering of questions given.

(3) The examination papers of all applicants who earn certificates of competency shall be kept, with the complete list of questions and their correct solutions, by the office of active and inactive mines for a period of two years.

(4) Application forms shall be provided by the office of active and inactive mines. Completed applications shall be returned at least fifteen days prior to the date of the examination.

**Source: L. 88:** Entire article R&RE, p. 1192, § 3, effective July 1. **L. 92:** Entire section amended, p. 1933, § 21, effective July 1.

**Editor's note:** This section is similar to former § 34-21-109 as it existed prior to 1988.

**34-22-111. Certification fee.** (1) Each individual taking an examination for certification as required in section 34-22-105 shall pay to the office of active and inactive mines a fee of twenty-five dollars for any initial examination or subsequent examinations required because of the failure to receive a passing grade. Renewals of certificates of competency where required shall be at no cost to the individual holding a valid certificate.

(2) Notwithstanding the amount specified for the fee in subsection (1) of this section, the executive director of the department of natural resources by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department of natural resources by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

**Source: L. 88:** Entire article R&RE, p. 1192, § 3, effective July 1. **L. 92:** Entire section amended, p. 1934, § 22, effective July 1. **L. 98:** Entire section amended, p. 1340, § 60, effective June 1.

**Editor's note:** This section is similar to former § 34-21-109 as it existed prior to 1988.

**34-22-112. Examinations - applicant qualifications.** (1) All candidates for examination for certification shall demonstrate at the time of the examination satisfactory eyesight and hearing consistent with the practice and needs of the coal mining industry.

(2) Every applicant for certification as a mine foreman or assistant mine foreman shall produce evidence satisfactory to the board of not less than three years' experience in mines or in operations determined by the board to be equivalent to coal mines. The experience of an applicant intending to work in underground mines must be in underground mining. The experience of an applicant intending to work in surface mining must be in surface mining.

(3) The holder of a college degree in engineering, which degree is determined by the board to be acceptable and suited to the intent and purpose of this article, who satisfies the board that he has at least one year of actual and satisfactory experience in the operation of underground coal mines, including experience in mining, timbering, haulage, drainage, and ventilation and including experience in the capacity of mining engineer, shall be eligible for examination as mine foreman or assistant mine foreman in underground coal mines.

(4) Every applicant for a fire boss certification shall provide evidence satisfactory to the board that he has at least three years' experience in gassy underground mines, one year of which will be in an underground coal mine.

(5) (a) Every applicant for a certificate of competency as a mine electrician shall have at least one year's experience in coal mines or noncoal mines or other electrical experience and:

(I) Shall have been qualified as a coal mine electrician by another state that has a coal mine electrical qualification program equivalent to that of this state or a state program approved by the United States secretary of labor or his authorized representative; or

(II) Shall be determined to be a person qualified to perform electrical work in underground or surface coal mines by the United States secretary of labor or his authorized representative; or

(III) Shall be qualified by training, education, and experience to perform electrical work, maintain electrical equipment, and conduct examinations and tests of electrical equipment.

(b) In the case of an applicant for a certificate of competency as an underground coal mine electrician, the requisite one year's experience shall be in underground mines.

(c) All certified coal mine electricians shall attend annually an approved electrical retraining class to retain said certification.

(6) Every applicant for certification as a shot-firer must have experience as defined by the board.

(7) All hoistmen working in coal mines must be certified as follows:

(a) Applicants must have experience and training as approved by the board or the United States mine safety and health administration.

(b) (Deleted by amendment, L. 96, p. 378, § 3, effective July 1, 1996.)

**Source: L. 88:** Entire article R&RE, p. 1193, § 3, effective July 1. **L. 96:** (6) and (7) amended, p. 378, § 3, effective July 1.

**Editor's note:** This section is similar to former §§ 34-21-109 and 34-21-114 as they existed prior to 1988.

**34-22-113. Board of examiners - repeal - review of functions.** Unless continued by the general assembly, this article is repealed, effective July 1, 2020, and the coal mine board of examiners is abolished. The provisions of section 24-34-104 (2) to (8), C.R.S., concerning a

wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency apply to the powers, duties, and functions of the board specified in this article.

**Source: L. 88:** Entire article R&RE, p. 1194, § 3, effective July 1. **L. 95:** Entire section amended, p. 93, § 4, effective March 30. **L. 96:** Entire section amended, p. 378, § 3, effective July 1. **L. 2006:** Entire section amended, p. 282, § 3, effective March 31. **L. 2016:** Entire section amended, (HB 16-1192), ch. 83, p. 235, § 24, effective April 14.

## ARTICLE 23

Training and Retraining Programs

**Editor's note:** This article was numbered as article 11 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**Cross references:** For definitions applicable to this article, see § 34-20-102.

**34-23-101. Training and retraining.** (1) The office of active and inactive mines may establish miner training and retraining programs and make such programs available to those operators and miners who request the assistance of the office of active and inactive mines in meeting the miner training and retraining requirements of the federal law.

(2) Such programs shall be available throughout the state of Colorado and shall be offered at sites which are accessible by operators and miners.

(3) The office of active and inactive mines may request the advice and assistance of the board in developing training and retraining programs for coal mines with respect to coal mine certification requirements.

**Source: L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** Entire section amended, p. 1934, § 23, effective July 1.

**Editor's note:** This section is similar to former § 34-40-122 as it existed prior to 1988.

**34-23-102. Technical assistance.** The office of active and inactive mines shall advise and assist operators in this state as may be necessary for mine safety on request of the operator. Such assistance shall include compliance with the federal law.

**Source: L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** Entire section amended, p. 1934, § 24, effective July 1.

**Editor's note:** This section is similar to former § 34-40-122 as it existed prior to 1988.

**34-23-103. Mine rescue teams.** (1) The office of active and inactive mines shall assist operators in complying with the mine rescue team requirements of the "Federal Mine Safety and Health Act of 1977", Pub.L. 95-164, as amended. Such assistance may include, but need not be limited to:

(a) The establishing, equipping, and, where funds are available, training and maintaining of mine rescue teams;

(b) The acquisition of funds for sustaining mine rescue centers;

(c) Any assistance with rescue costs, where funds are available, at abandoned mines;

(d) Making application for funds in cooperation with the division of emergency management to pay rescue costs; and

(e) Technical assistance and training in mining rescue procedures for local officials.

**Source: L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** IP(1), (1)(c), and (1)(d) amended and (1)(e) added, p. 1935, § 25, effective July 1. **L. 2004:** (1)(d) amended, p. 1183, § 19, effective August 4.

**Editor's note:** This section is similar to former § 34-40-122 as it existed prior to 1988.

**34-23-104. Grant authorization.** The office of active and inactive mines may apply for and accept federal, state, or private grants to further the purposes and objectives of this article.

**Source: L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1. **L. 92:** Entire section amended, p. 1935, § 26, effective July 1.

**34-23-105. Conflict with "Colorado Mined Land Reclamation Act" and "Colorado Surface Coal Mining Reclamation Act".** Nothing in this article shall apply to any mining operation regarding reclamation of mined land which is regulated by the mined land reclamation board or division pursuant to article 32 or 33 of this title.

**Source: L. 88:** Entire article R&RE, p. 1194, § 4, effective July 1.

**Editor's note:** This section is similar to former § 34-40-121 as it existed prior 1988.

## ARTICLE 24

Duties and Responsibilities of Operator

**Editor's note:** This article was numbered as article 4 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**Cross references:** For definitions applicable to this article, see § 34-20-102.

**34-24-101. Annual report.** On or before January 31 of each year, every owner or operator shall make a report covering the twelve months preceding the previous January 1. Such report shall contain the name and address of the operator, the location of the mine, the capacity of the mine, the mineral resource being produced, the total tons mined, the mining methods employed, the number of employees, the safety statistics, the location of the processing facility, and the percentage distribution of the mine product in-state and out-of-state.

**Source: L. 88:** Entire article R&RE, p. 1195, § 5, effective July 1.

**Editor's note:** This section is similar to former § 34-29-134 as it existed prior to 1988.

**34-24-102. Coal or other mine maps.** (1) Every operator shall make a map of the surface of the property and a map of the underground workings. Such map shall be updated and submitted annually to the division.

(2) Each map shall be retained by the division in its permanent records. Such records shall be available for inspection, on request, by the public. Maps filed with the division prior to July 1, 1980, shall be made available to the public if the property is abandoned, and such maps shall be made available to the public with permission of the operator if the map depicts a mine which is still in production.

(3) Whenever surface features of a mine property can be shown upon such map without obscuring its details or impairing its usefulness, a separate map need not be made.

(4) Each map shall be made on a scale of not less than one hundred feet nor more than five hundred feet to the inch unless a different scale is approved by the office of active and inactive mines, and such map shall bear the name or number of the mine, its location as to county, township, and section, the name of the company or operator, the north point, the scale to which the map is drawn and an explanatory legend, and the certificate of the engineer or surveyor as to the accuracy of the map.

(5) The underground map shall be made on the same scale as the surface map unless a different scale is approved by the office of active and inactive mines and shall show the mine openings or excavations; the shafts, slopes, and drifts of the mine, the connections with other mines or workings, or any other seams in the same mine; the entries, rooms, pillars, and abandoned workings of the mine; and the barrier pillars between adjoining properties. Each map shall show the elevation of the mine haulageways and cross entries every five hundred feet.

**Source: L. 88:** Entire article R&RE, p. 1195, § 5, effective July 1. **L. 92:** Entire section amended, p. 1935, § 27, effective July 1.

**Editor's note:** This section is similar to former §§ 34-30-102 through 34-30-106 as they existed prior to 1988.

**34-24-103. Explosives and diesel permits - fees - active and inactive mines operation - fund.** (1) To protect the public health and safety from the improper storage, transportation, and use of explosives at mine sites, the office of active and inactive mines is authorized to enter into

agreements with the United States bureau of alcohol, tobacco, firearms, and explosives and other authorized federal agencies, consistent with their statutory authorities, to provide explosives inspection and other explosives assistance to such federal agencies regarding mine site explosives storage, transportation, and use.

(2) and (3) (Deleted by amendment, L. 2003, p. 2490, § 2, effective June 5, 2003.)

(4) No diesel-powered machinery or equipment shall be used in any underground mine until it has been approved by the United States mine safety and health administration and approved or permitted by the office of active and inactive mines. The office of active and inactive mines has the authority to conduct any investigations which may be necessary to grant or renew such permits.

(5) (a) The fee for the issuance of each diesel permit relating to mining operations shall be a fee specified in paragraph (b) of this subsection (5). Moneys received from such fees shall be credited to the office of active and inactive mines operation fund, which fund is hereby created. All moneys credited to said fund, and all interest earned on such moneys, are subject to appropriation by the general assembly for paying the expenses of the office of active and inactive mines, and said moneys shall remain in such fund for such purposes and shall not revert to the general fund.

(b) The fee specified in paragraph (a) of this subsection (5) shall be in accordance with the following table:

| **Employees** | **Permit Fee** |
|---|---|
| 1-5 | $10.00 |
| 6-25 | $30.00 |
| 26-50 | $50.00 |
| 51-75 | $70.00 |
| 76 or more | $90.00 |

(5.5) (Deleted by amendment, L. 2003, p. 2490, § 2, effective June 5, 2003.)

(6) If, following a hearing held in accordance with the provisions of article 4 of title 24, C.R.S., the head of the office of active and inactive mines finds that the applicant for a permit under this section or the holder of a permit issued under this section has committed any violation of this article relating to the use of diesel equipment in mining operations, the head of the office of active and inactive mines may refuse to issue, revoke, or suspend such permit.

(7) A permit issued pursuant to this section may be withheld or suspended if the permittee fails to pay any permit fees.

**Source: L. 88:** Entire article R&RE, p. 1195, § 5, effective July 1. **L. 92:** (1), (4), (5)(a), and (6) amended, p. 1936, § 28, effective July 1. **L. 2000:** (1) and (5)(a) amended and (5.5) added, p. 166, § 7, effective March 17. **L. 2003:** (1), (2), (3), (5.5), and (6) amended, p. 2490, § 2, effective June 5.

**Editor's note:** This section is similar to former §§ 34-27-101 and 34-47-131 as they existed prior to 1988.

**Cross references:** For the legislative declaration contained in the 2003 act amending subsections (1), (2), (3), (5.5), and (6), see section 1 of chapter 377, Session Laws of Colorado 2003.

**34-24-104. Employees - age.** No person under eighteen years of age shall be employed in or about a mine except in office, janitorial, or food service capacities or other nonextraction, preparation, or production activities on the surface of such mine.

**Source: L. 88:** Entire article R&RE, p. 1196, § 5, effective July 1.

**34-24-105. Opening or abandonment of mine - maps.** (1) It is the duty of the operator of every mine to notify the director prior to the opening of any mine or the abandonment of any mine.

(2) Before a mine is abandoned or closed, the owner shall make a complete survey of all workings not represented on the maps and plans of such mine, and he shall enter the results on the maps to show the most advanced workings in the mine in relation to the boundary of the property. The owner shall file a copy of the updated map with the division.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1.

**Editor's note:** This section is similar to former §§ 34-29-129 and 34-30-107 as they existed prior to 1988.

**34-24-106. Old workings.** (1) The entrance to inactive or abandoned workings shall be posted to warn unauthorized persons against entering the territory.

(2) Abandoned workings shall be sealed or ventilated.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1.

**Editor's note:** This section is similar to former § 34-25-108 as it existed prior to 1988.

**34-24-107. Danger signals - operator's duty.** When operations are temporarily suspended in a mine, the operator shall see that danger signals are placed across the mine entrances, which signals shall be a warning for persons not to enter said mine. If the circulation of air through the mine is stopped, each entrance to said mine shall be closed off in such a manner as will ordinarily prevent persons from entering said mine, and a danger signal shall be displayed upon each entrance until such time as the ventilation is restored and the mine has been examined by a properly authorized representative. The mine foreman shall see that all danger signals used in said mine are in good condition.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1.

**Editor's note:** This section is similar to former § 34-26-102 as it existed prior to 1988.

**34-24-108. Scales - weights certified.** (1) It is required that every corporation, company, or person engaged in the business of mining and selling by weight, and where workmen are paid on a tonnage basis, to produce and constantly keep on hand, at the proper place, the necessary scales and whatever else may be necessary to correctly weigh the coal or other minerals mined and taken out by the workmen or miners of such corporation, company, or person. It is the duty of the inspector of weights and measures of each county in which the coal or other minerals are mined and sold to visit each mine operated therein once each year, unless oftener requested by the operator or the miners, to test the correctness of the scale. If in any county there is no inspector of weights and measures, then the district inspector of the district in which the mine is located shall be required to test the correctness of such scales within a reasonable time after application is made by either the operator or the miners.

(2) All weights necessary for testing and adjusting scales shall be duly certified and provided by the operator.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1.

**34-24-109. Barrier pillar at property line.** In all underground workings approaching property lines, a barrier pillar shall be left at least fifty feet on each side of the property line; but said barrier pillars may be removed upon mutual agreement of the operators in writing.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1.

**Editor's note:** This section is similar to former § 34-29-128 as it existed prior to 1988.

**34-24-110. Abandoned mine to be covered - penalty.** (1) Every abandoned or inactive mine endangering the life of man or beast shall be securely covered or fenced. It is the duty of the operator of such mine, upon the abandonment or cessation of operations therein or thereon, to securely cover or fence the same and post a "No Trespassing" sign bearing the name and address of the owner or operator. Anyone failing to securely cover or fence such mine or any person removing such fence or covering without permission of the operator, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed three hundred dollars. Such fine when assessed and paid shall be distributed as follows: Seventy-five percent to the office of active and inactive mines to be used to cover or fence mines which are dangerous to man or beast; twenty-five percent to the general fund of the state.

(2) In the case of any abandoned mine or any inactive mine where the owner or operator is unknown or cannot be found, the office of active and inactive mines has the right to erect a sign across or near the entrance of any such mine prohibiting the trespassing by any person, except as provided in section 34-24-112, into the mine and warning any trespasser that any such trespasser will be prosecuted and subject to the penalty provided for in subsection (3) of this section.

(3) It is unlawful for any person to trespass into any mine. Any person so trespassing is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.

(4) This provision shall not conflict with the requirements placed on those mines regulated by the mined land reclamation board or office of mined land reclamation pursuant to the provisions of articles 32 and 33 of this title.

**Source: L. 88:** Entire article R&RE, p. 1197, § 5, effective July 1. **L. 92:** Entire section amended, p. 1936, § 29, effective July 1.

**Editor's note:** This section is similar to former § 34-47-121 as it existed prior to 1988.

**34-24-111. Penalty for removing covering or fencing.** Any person removing or destroying any covering or fencing placed around or over any mine as provided for in section 34-24-110, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

**Source: L. 88:** Entire article R&RE, p. 1198, § 5, effective July 1.

**Editor's note:** This section is similar to former § 34-47-122 as it existed prior to 1988.

**34-24-112. When visitors allowed underground.** (1) It is unlawful for any person to enter any active or inactive mine unless accompanied by, or with prior written permission from, the operator of said mine.

(2) Persons desiring entry into abandoned mines, where the operator cannot be found, shall first secure written authorization from the office of the commissioner or the office of active and inactive mines.

(3) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment.

(4) Each violation of this section shall be a separate offense.

**Source: L. 88:** Entire article R&RE, p. 1198, § 5, effective July 1. **L. 92:** (2) amended, p. 1937, § 30, effective July 1.

**Editor's note:** This section is similar to former § 34-47-125 as it existed prior to 1988.

## ARTICLE 25

Jurisdiction of the Courts

**Editor's note:** This article was numbered as article 5 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on

page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**Cross references:** For definitions applicable to this article, see § 34-20-102.

**34-25-101. Jurisdiction of the courts.** County courts in their respective counties have original jurisdiction in prosecution for the violation of section 34-24-103 (1), (2), or (3). In all trials in the county courts, the defendants shall be entitled to a trial by jury as in other misdemeanor cases. District courts in their respective districts have original jurisdiction upon information or indictment in all prosecutions for violations of this title.

**Source: L. 88:** Entire article R&RE, p. 1198, § 6, effective July 1.

**Editor's note:** This section is similar to former §§ 34-40-119 and 34-47-130 as they existed prior to 1988.

## ARTICLE 26

Roof Control

**34-26-101 to 34-26-122. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 6 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 27

Explosives - Coal Mines

**34-27-101 to 34-27-108. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 8 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 28

Electricity

**34-28-101 to 34-28-111. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 9 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 29

Safety Regulations

**34-29-101 to 34-29-136. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 10 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For present provisions relating to health and safety, see articles 20 to 25 and 31 of this title.

## ARTICLE 30

Maps

**34-30-101 to 34-30-108. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 7 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For present provisions relating to coal or other mine maps, see § 34-24-102.

## ARTICLE 31

Tunnels - Rights-of-way

**34-31-101. Tunnels - rights-of-way - condemnation.** (1) The owner or his agent of any coal lands lying on two or more sides of the property of another shall have the right to enter and cross such adjoining or intermediate claims or property with such drifts, tunnels, and crosscuts as may be necessary for the practical or economical mining and development of his own property and for the purpose of extracting and removing coal therefrom. Such drifts, tunnels, crosscuts, and entries for the mining and development of coal shall not exceed six hundred sixty feet in length and shall not enter or cross any adjoining or intermediate claims or property which are operated at the time of entry or may reasonably be expected to be operated in the future either as a coal mine or as a part of an operating coal mine.

(2) Neither shall such drifts, tunnels, crosscuts, or entries for coal mining enter a seam of coal which it may reasonably be expected will be operated or mined in the future. Any such drifts, tunnels, crosscuts, or entries driven for the development of coal lands or which cross coal lands must conform to all pertinent laws relating to coal mines, and in no event shall such tunnels, drifts, crosscuts, or entries for coal mining be driven or maintained across any intermediate property if they interfere with the operation of said intermediate claim or property, nor if such drifts, tunnels, crosscuts, or entries for coal mining will interfere with the ventilation of any operations then or thereafter to be conducted in said intermediate property, nor if said drifts, tunnels, crosscuts, or entries for coal mining will damage the surface of said intermediate property or any seams of coal lying above said drifts, tunnels, crosscuts, or entries. In the construction of such drifts, tunnels, crosscuts, or entries for coal mining, no barrier pillars may be removed or destroyed without the consent of the owners of such barrier pillars.

(3) In the event such drifts, tunnels, crosscuts, or entries pertain to the development of coal lands or cross intermediate coal lands, they shall be subject to all pertinent laws and regulations relating to coal mines. When any such owner and the owners of such adjoining property through which such owner desires to pass under the terms of this article shall be unable to agree upon the terms and conditions and purchase price of rights-of-way for such necessary drifts, tunnels, and crosscuts, then the owner seeking to exercise the rights granted in this section may exercise the rights of eminent domain and condemn a right-of-way into, across, and through such intermediate or adjacent lands such as may be necessary for the practical and economical working of his own property, and such rights-of-way shall be deemed and are hereby declared to be private ways of necessity.

(4) The value of the property taken in condemnation proceedings shall include, among other things, the value in place of the coal which will be mined or removed in the construction of any drift, tunnel, crosscut, or entry, and also the value of any coal which the owners thereof have a right to mine or remove and which by reason of the construction and operation of such drifts, tunnels, crosscuts, or entries cannot be removed with due regard to the safety or convenience of the operations of such mine or part of such mine. Customary charges for use through said private way of necessity for haulage purposes shall be assessed on each ton of coal received through said private way of necessity.

**Source: L. 27:** p. 483, § 1. **CSA:** C. 110, § 190. **L. 43:** p. 432, § 1. **CRS 53:** § 92-12-1. **C.R.S. 1963:** § 92-12-1.

**Cross references:** For proceedings in eminent domain under this section, see articles 1 to 7 of title 38.

**34-31-102. Accounting.** Any owner exercising the rights and privileges granted in this article shall do so in such manner as not to interfere with the mining operations of the owner into or through whose property he seeks to go, and shall extract only such ore as is necessary in the reasonable exercise of the rights granted by this article, and all ore extracted shall be accounted for by the person exercising such rights to the owner of the property from which such ore is taken, at its gross value on the surface.

**Source: L. 27:** p. 474, § 2. **CSA:** C. 110, § 191. **CRS 53:** § 92-12-2. **C.R.S. 1963:** § 92-12-2.

**34-31-103. Surveys.** The owner of such land through which it is proposed to construct such tunnel shall have the right at any reasonable time and from time to time, upon application to the superintendent or other managing officer of such condemning owner, to enter his works with their surveyors and inspectors for the purpose of inspection and making a survey of any such works and shall have the right of ingress and egress through said works at all reasonable times.

**Source: L. 27:** p. 484, § 3. **CSA:** C. 110, § 192. **CRS 53:** § 92-12-3. **C.R.S. 1963:** § 92-12-3.

## Mined Land Reclamation

## ARTICLE 32

Colorado Mined Land Reclamation Act

**Editor's note:** This article was numbered as article 13 of chapter 92, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1976, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. sections are shown in editors' notes following those sections that were relocated.

**34-32-101. Short title.** This article shall be known and may be cited as the "Colorado Mined Land Reclamation Act".

**Source: L. 76:** Entire article R&RE, p. 724, § 1, effective July 1.

**Editor's note:** This section is similar to former § 34-32-101 as it existed prior to 1976.

**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 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 office, 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 office. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

(3) The general assembly further finds, determines, and declares that:

(a) It is the policy of this state to recognize that mining operations are conducted by government and private entities;

(b) All people of the state benefit from the reclamation of mined land;

(c) The funding to ensure that reclamation is achieved should be borne equitably by both the public and private sectors;

(d) The funding for enforcement and other activity that is conducted for the benefit of the general public should be supported by the general fund;

(e) It is the policy of this state to allocate resources adequate to accomplish the purposes of this article.

**Source: L. 76:** Entire article R&RE, p. 724, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 1200, § 1, effective July 1. **L. 91:** Entire section amended, p. 1431, § 2, effective July 1. **L. 92:** (2) amended, p. 1937, § 31, effective July 1. **L. 93:** (3)(e) added, p. 1175, § 1, effective July 1.

**Editor's note:** This section is similar to former § 34-32-102 as it existed prior to 1976.

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

(1) "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 or off-site groundwater monitoring wells.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Department" means the department of natural resources or such department, commission, or agency as may lawfully succeed to the powers and duties of such department.

(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;

(II) Acid- or toxic-forming materials will be exposed or disturbed as a result of mining operations; or

(III) Uranium is developed or extracted, either by in situ leach mining or by conventional underground or open mining techniques. A uranium mining operation may seek an exemption from designated mining operation status in accordance with section 34-32-112.5 (2).

(b) The various types of designated mining operations are identified in section 34-32-112.5. Except as provided in subparagraph (III) of paragraph (a) of this subsection (3.5), such mining operations exclude operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and that will not cause acid mine drainage.

(4) "Development" means the work performed in relation to a deposit, following the prospecting required to prove minerals are in existence in commercial quantities but prior to production activities, aimed at, but not limited to, preparing the site for mining, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

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

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

(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.

(5) "Executive director" means the executive director of the department of natural resources or such officer as may lawfully succeed to the powers and duties of such executive director.

(5.5) "Financial warranty" means a warranty of the type described in section 34-32-117 (3) and (4).

(5.7) "In situ leach mining" means in situ mining for uranium through the in-place dissolution of mineral components of an ore deposit by causing a chemical leaching solution, usually aqueous, to penetrate or to be pumped down wells through the ore body and then removing the mineral-containing solution for development or extraction of the mineral values.

(5.8) "In situ mining" means the in-place development or extraction of a mineral by means other than open mining or underground mining.

(6) (a) "Life of the mine" means that a permit granted pursuant to section 34-32-110 or 34-32-115 may continue in effect as long as:

(I) An operator continues to engage in the extraction of minerals and complies with the provisions of this article;

(II) Mineral reserves are shown by the operator to remain in the mining operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if he files a notice thereof with the board stating the reasons for nonproduction, a plan for the resumption thereof, and the measures taken to comply with reclamation and other necessary activities as established by the board to maintain the mine in a nonproducing state. The requirement of a notice of temporary cessation shall not apply to operators who resume operating within one year and have included, in their permit applications, a statement that the affected lands are to be used for less than one hundred eighty days per year.

(III) Production is resumed within five years of the date production ended, or the operator files a report requesting an extension of the period of temporary cessation of production with the board stating the reasons for the continuation of nonproduction and those factors necessary to, and his plans for, resumption of production. In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.

(IV) The board does not take action to declare termination of the life of the mine, which action shall require a sixty-day notice to the operator alleging a violation of, or that inadequate reasons are provided in an operator's report under subparagraph (I), (II), or (III) of this paragraph (a). In such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present the full case and further provide reasonable time for the operator to bring violations into compliance.

(b) "Life of the mine" includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the board and this article, until such time as the board releases, in writing, the operator from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

(7) "Mineral" means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purposes of this article, this definition does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.

(8) "Mining operation" means the development or extraction of a mineral from its natural occurrences on affected land. The term "mining operation" includes, but is not limited to, open mining, in situ mining, in situ leach mining, surface operations, and the disposal of refuse from underground mining, in situ mining, and in situ leach mining. The term "mining operation" also includes the following operations on affected lands: Transportation; concentrating; milling; evaporation; and other processing. The term "mining operation" does not include: The exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on

affected land; or the extraction of construction material where there is no development or extraction of any mineral.

(8.5) "Office" means the office of mined land reclamation, created in section 34-32-105.

(9) "Open mining" means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. The term includes mining directly from such deposits where there is no overburden. The term includes, but is not limited to, such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

(10) "Operator" means any person, firm, partnership, association, or corporation, or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

(11) "Overburden" means all of the earth and other materials which lie above natural minerals and also means such earth and other materials disturbed from their natural state in the process of mining.

(11.5) "Performance warranty" means a warranty of the type described in section 34-32-117 (2).

(12) "Prospecting" means the act of searching for or investigating a mineral deposit. "Prospecting" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not prospecting. The term also does not include any single activity which results in the disturbance of a single block of land totaling one thousand six hundred square feet or less of the land's surface, not to exceed two such disturbances per acre; except that the cumulative total of such disturbances will not exceed five acres statewide in any prospecting operation extending over twenty-four consecutive months.

(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 establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands. Reclamation shall be conducted in accordance with the performance standards of this article.

(14) "Refuse" means all waste material directly connected with the cleaning and preparation of substances mined by a mining operation.

**Source: L. 76:** Entire article R&RE, p. 724, § 1, effective July 1. **L. 79:** (7) and (8) amended, p. 1305, § 6, effective July 1. **L. 81:** (3.5), (6)(b), and (11.5) amended, p. 1667, §§ 1, 2, effective June 19. **L. 88:** (1) and (13) amended and (4.5) and (4.7) added, p. 1201, § 2, effective July 1. **L. 92:** (1), (4.5), and (4.7) amended and (8.5) added, p. 1937, § 32, effective July 1. **L. 93:** (1) amended and (1.5), (3.5), and (4.9) added, p. 1175, § 2, effective July 1. **L. 96:** (4) amended, p. 178, § 1, effective April 18. **L. 2006:** (1.5) amended, p. 1285, § 1, effective May

26; (4.5) and (4.7) amended, p. 217, § 11, effective August 7. **L. 2008:** (3.5) and (8) amended and (5.7) and (5.8) added, p. 935, § 1, effective May 20.

**Editor's note:** This section is similar to former § 34-32-103 as it existed prior to 1976.

**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 office has the full power and authority to carry out and administer the provisions of this article and article 32.5 of this title.

**Source: L. 76:** Entire article R&RE, p. 727, § 1, effective July 1. **L. 88:** Entire section amended, p. 1201, § 3, effective July 1. **L. 92:** Entire section amended, p. 1938, § 33, effective July 1. **L. 95:** Entire section amended, p. 1188, § 2, effective July 1.

**Editor's note:** This section is similar to former § 34-32-104 as it existed prior to 1976.

**34-32-105. Office of mined land reclamation - mined land reclamation board - created.** (1) There is hereby created, in the division of reclamation, mining, and safety in the department of natural resources, the office of mined land reclamation and, in the department of natural resources, the mined land reclamation board. The head of the office of mined land reclamation shall be appointed by the director. The head of the office of mined land reclamation shall have professional and supervisory experience in mined land reclamation, mining, or natural resource planning and management.

(2) The board shall consist of seven members: The executive director, who shall serve as secretary to the board; a member of the state 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. All members of the board except for the executive director shall receive compensation for their service on the board at the rate of fifty dollars per diem and 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 chairperson from among the appointed members at its first meeting in July, 1976, and the board shall elect its chairperson from among the appointed members biannually thereafter.

(3) The board shall exercise its powers and perform its duties and functions specified in this article under the department as if the same were transferred to the department by a **type 1** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(4) The board shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this article.

**Source: L. 76:** Entire article R&RE, p. 727, § 1, effective July 1. **L. 88:** (1) and (2) amended, p. 1202, § 4, effective July 1. **L. 91:** (2) amended, p. 1432, § 3, effective July 1. **L. 92:** (1) amended, p. 1938, § 34, effective July 1. **L. 2002:** (2) amended, p. 514, § 5, effective July 1. **L. 2006:** (1) amended, p. 217, § 12, effective August 7.

**Editor's note:** This section is similar to former § 34-32-105 as it existed prior to 1976.

**34-32-106. Duties of board.** (1) The board shall:

(a) Meet at least once each month;

(b) Carry on a continuing review of the problems of mining and land reclamation in the state of Colorado;

(c) Develop and promulgate standards for land reclamation plans and substitution of affected lands as provided in section 34-32-116;

(d) Cause to be published its monthly agenda with a brief description of affected land and name of the applicant. These publications shall be in a newspaper of general circulation in the locality of the proposed mining operations listed in that month's agenda.

(e) Perform such other duties as are required pursuant to article 33 of this title.

(2) It is the duty of the department of agriculture, the department of higher education, the state conservation board, the Colorado geological survey, the division of parks and wildlife, the division of water resources, the university of Colorado, Colorado state university, Colorado school of mines, and the state forester to furnish the board and its designees, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of total reclamation and enforcement duties.

**Source: L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 79:** (1)(e) added, p. 1306, § 7, effective July 1. **L. 80:** (2) amended, p. 687, § 1, effective July 1. **L. 2002:** (2) amended, p. 515, § 6, effective July 1.

**Editor's note:** This section is similar to former § 34-32-106 as it existed prior to 1976.

**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 office as necessary to efficiently carry out and administer the provisions of this article and article 32.5 of this title. Any person aggrieved by any final action of the office 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.

**Source: L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 88:** Entire section amended, p. 1202, § 5, effective July 1. **L. 92:** (2) amended, p. 1938, § 35, effective July 1. **L. 95:** (2) amended, p. 1188, § 3, effective July 1.

**Editor's note:** This section is similar to former § 34-32-107 as it existed prior to 1976.

**34-32-108. Rules and regulations.** (1) The board may adopt and promulgate reasonable rules and regulations respecting the administration of this article and article 32.5 of this title and in conformity therewith.

(2) All rules and regulations shall be subject to the provisions of section 24-4-103, C.R.S.

**Source: L. 76:** Entire article R&RE, p. 728, § 1, effective July 1. **L. 77:** (2) R&RE, p. 1556, § 1, effective July 1, 1978. **L. 95:** (1) amended, p. 1189, § 4, effective July 1.

**Editor's note:** This section is similar to former § 34-32-108 as it existed prior to 1976.

**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 office 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 two hundred dollars if the conversion is made during the first year of the reclamation permit.

(II) Thereafter, the provisions of section 34-32-127 (2) shall apply.

(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) (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 postmining 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.

(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, 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. The operator shall be responsible for assuring that the mining operation and the postmining land use comply with city, town, county, or city and county land use 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 political subdivisions. Any mining operator subject to this article shall also be subject to zoning and land use authority and regulation by political subdivisions as provided by law.

(7) An operator shall obtain a reclamation permit from the board for each mining operation with the exception of those specified in section 34-32-110 (1) and (2).

(8) 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.

(9) All mining operations for construction materials, as defined in section 34-32.5-103 (3), shall be subject to the provisions of article 32.5 of this title and not this article. Construction materials mining operations operating under permits issued prior to July 1, 1995, under the provisions of this article, shall continue to operate under such permits and such permits shall be deemed to be permits issued under the provisions of article 32.5 of this title.

**Source: L. 76:** Entire article R&RE, p. 729, § 1, effective July 1. **L. 77:** (6) amended, p. 1562, § 1, effective June 2. **L. 81:** (4) and (6) amended, p. 1667, § 3, effective June 19. **L. 83:** (6) amended, p. 1309, § 1, effective May 25. **L. 88:** Entire section amended, p. 1202, § 6, effective July 1. **L. 91:** (3)(b) amended, p. 1432, § 4, effective July 1. **L. 92:** (2) amended, p. 1939, § 36, effective July 1. **L. 93:** (5) amended, p. 1177, § 3, effective July 1. **L. 96:** (9) added, p. 178, § 2, effective April 8.

**Editor's note:** This section is similar to former § 34-32-109 as it existed prior to 1976.

**34-32-110. Limited impact operations - expedited process.** (1) (a) (I) Any person desiring to conduct mining operations pursuant to an application submitted prior to July 1, 1993, on less than two acres that will result in the extraction of less than seventy thousand tons per year of mineral or overburden may apply for the expedited processing of the person's permit. By July 1, 2015, a person with a permit issued pursuant to this subparagraph (I) shall file with the office:

(A) Evidence of the source of the person's legal right to enter and initiate a mining operation on the affected land; and

(B) A financial warranty that complies with subsection (3) of this section.

(II) Repealed.

(III) Effective July 1, 2014, a person desiring to conduct mining operations on five acres or less may file with the office an application for a permit to conduct limited-impact mining operations; except that a person desiring to conduct in situ leach mining or a designated mining operation must file an application pursuant to section 34-32-112.5. A person shall not commence mining operations subject to this subparagraph (III) unless the person has filed an application pursuant to this section. The application for a permit must be on a form approved by the board and must contain the following:

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

(B) The name, address, and telephone number of the owner of the surface of the affected land and the source of the applicant's legal right to enter and initiate a mining operation on the affected land;

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

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

(E) 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;

(F) The approximate size of the affected land;

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

(H) A statement that the operator has applied for necessary local government approvals; and

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

(b) and (c) (Deleted by amendment, L. 93, p. 1178, § 4, effective July 1, 1993.)

(d) Repealed.

(e) (Deleted by amendment, L. 93, p. 1178, § 4, effective July 1, 1993.)

(f) Except as specified in paragraph (d) of this subsection (1), fees and financial warranties for permit applications submitted pursuant to this subsection (1) are governed by subsection (3) of this section.

(2) (a) A person desiring to conduct mining operations not covered by subsection (1) of this section on less than ten acres, which will result in the extraction of less than seventy thousand tons of mineral or overburden per calendar year, prior to commencement of mining, may file with the office, on a form approved by the board, an application for a permit to conduct mining operations; except that applications for in situ leach mining or a designated mining operation must be filed pursuant to section 34-32-112.5. This application must 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 and the source of the applicant's legal right to enter and initiate a mining operation on 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 office. If the office denies the application, the applicant may appeal to the board for final determination.

(3) A fee as specified in section 34-32-127 (2), and a financial warranty in an amount the board shall determine pursuant to section 34-32-117 (4), shall accompany the application and shall be paid by the applicant.

(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) The office shall process and take final action on applications for permits made pursuant to subsection (1) or (2) of this section within thirty days after the filing of the application. If action upon the application is not completed within thirty days, the permit is 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. 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 rule, provide simplified and reduced procedures and requirements that 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 subsection (1) or (2) of this section may request the conversion of his permit by filing an application for a permit pursuant to subsection (2) of this section or section 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) The office shall process and take final action on applications for conversion of a permit under this subsection (7) in accordance with subsection (2) of this section or section 34-32-115, as appropriate. If the office does not take action upon the conversion of the permit in accordance with the time limits of this subsection (7) or section 34-32-115, the conversion is 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 subsection (3) of this section or section 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 office shall not deny the conversion of a permit for any reason other than those set forth in section 34-32-115 (4).

(8) Repealed.

**Source: L. 76:** Entire article R&RE, p. 730, § 1, effective July 1. **L. 79:** (9) added, p. 1251, § 1, effective May 25. **L. 81:** (9) amended, p. 1677, § 1, effective April 30; (3), (5), (7), and (8)(b) amended, p. 1668, § 4, effective June 19. **L. 82:** (9) amended, p. 628, § 38, effective April 2. **L. 85:** (3) amended, p. 1127, § 1, effective April 24. **L. 88:** Entire section R&RE, p. 1204, § 7, effective July 1. **L. 91:** (8) amended, p. 756, § 31, effective April 4; (3) amended, p. 1419, § 2, effective May 6; (3) and (8) amended, p. 1433, § 5, effective July 1; (8) amended, p. 1072, § 51, effective July 1. **L. 92:** (8) amended, p. 2181, § 49, effective June 2; IP(1)(a), (1)(b), (1)(c), (1)(e), IP(2)(a), (2)(b), and (7)(d) amended, p. 1939, § 37, effective July 1. **L. 93:** (1) and IP(2)(a) amended, p. 1178, § 4, effective July 1. **L. 96:** (8) repealed, p. 179, § 3, effective April 18. **L. 2008:** IP(2)(a) amended, p. 936, § 2, effective May 20. **L. 2014:** (1)(a), (1)(d), IP(2)(a), (2)(a)(II), (6), and (7)(b) amended and (1)(f) added, (SB14-076), ch. 42, p. 210, § 1, effective March 20.

**Editor's note:** (1) This section is similar to former § 34-32-109 as it existed prior to 1976.

(2) Amendments to subsection (3) by Senate Bill 91-177 and House Bill 91-1115 were harmonized. Amendments to subsection (8) by House Bill 91-1115 and House Bill 91-1198 were harmonized.

(3) Subsection (1)(d)(III) provided for the repeal of subsection (1)(d), effective July 1, 2015. (See L. 2014, p. 210.)

**34-32-111. Special permits - ten-day processing. (Repealed)**

**Source: L. 76:** Entire article R&RE, p. 732, § 1, effective July 1. **L. 81:** (2)(d), (3)(h), (5), and (6) amended, p. 1669, § 5, effective June 19. **L. 84:** (2)(b) amended, p. 1122, § 31, effective June 7. **L. 88:** (3)(f) and (3)(i) amended, p. 1208, § 8, effective July 1. **L. 91:** (2)(c) amended, p. 1433, § 6, effective July 1; (7) amended, p. 1072, § 52, effective July 1. **L. 93:** (1) amended, p. 1752, § 1, effective June 6; (2)(d) and (6) amended, p. 1179, § 5, effective July 1. **L. 96:** Entire section repealed, p. 180, § 9, effective April 18.

**34-32-112. Application for reclamation permit - changes in permits - fees - notice.** (1) Any operator desiring to obtain a reclamation permit shall make written application to the board or to the office 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 such application for the life of the mine. Such application shall consist of the following:

(a) Five copies of the application;

(b) A reclamation plan submitted with each of the applications;

(c) An accurate map of the affected land submitted with each of the applications;

(d) The application fee as specified in section 34-32-127 (2).

(2) The application forms shall state:

(a) The legal description and area of affected land;

(b) The owner of the surface of the area of affected land;

(c) The owner of the substance to be mined;

(d) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;

(e) The address and telephone number of the general office and the local address and telephone number of the applicant;

(f) Information sufficient to describe or identify the type of mining operation proposed and how the operator, in his sole discretion, intends to conduct it;

(g) The size of the area to be worked at any one time;

(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 or the office.

(i) For in situ leach mining operations, a certification by the applicant that no violations exist as described in section 34-32-115 (5)(d). If the applicant is not able to so certify, the applicant shall describe the circumstances as may be relevant to section 34-32-115 (5)(d) and provide the board or office any additional information reasonably requested regarding any such circumstances.

(j) For in situ leach mining operations, a description of at least five in situ leach mining operations that demonstrates the ability of the applicant to conduct the proposed mining operation without any leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater-containing minerals, radionuclides, or other constituents mobilized, liberated, or introduced by the in situ leach mining process into any groundwater outside of the permitted in situ leach mining area. The fact that the applicant was not involved in any of the five operations shall not preclude the applicant from making the demonstration required by this paragraph (j).

(3) The reclamation plan shall 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:

(a) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;

(b) A description of how the reclamation plan will be implemented to meet the requirements of section 34-32-116;

(c) A proposed plan or schedule indicating when and how reclamation 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.

(d) Repealed.

(e) A map of all of the proposed affected land by all phases of the total scope of the mining operation. It shall indicate the following:

(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

(II) Portrayal of the proposed final land use for each portion of the affected lands.

(4) The accurate map of the affected lands shall:

(a) Be made by a professional land surveyor, professional engineer, or other qualified person;

(b) Identify the area which corresponds with the application;

(c) Show adjoining surface owners of record;

(d) Be made to a scale of not less than one hundred feet to the inch and not more than six hundred sixty feet to the inch;

(e) Show the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred feet of all boundaries of such area;

(f) Show the total area to be involved in the operation, including the area to be mined and the area of affected land;

(g) Show the topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land in question;

(h) Indicate on a map or by a statement the general type, thickness, and distribution of soil over the area in question, including the affected land;

(i) Show the type of present vegetation covering the affected land.

(5) The reclamation plan shall also show by statement or map the depth and thickness of the ore body or deposit to be mined and the thickness and type of the overburden to be removed.

(6) An application fee as specified in section 34-32-127 (2) shall be paid.

(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 (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 or to the office for a reclamation permit amendment increasing the acreage to be affected or otherwise revising 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 amended application shall be accompanied by a fee as specified in section 34-32-127 (2). Where an operator files a notice of temporary cessation pursuant to section 34-32-103 (6)(a)(II), such notice shall be accompanied by a fee as specified in section 34-32-127 (2). In addition, supplemental performance and financial warranties, as determined by the board or office, 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 or office, 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 or the office in the same manner as applications for new reclamation permits.

(9) Information provided the board or the office 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 the office 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 18-1.3-501, C.R.S.

(10) (a) Upon the filing of an application for a reclamation permit with the board or the office, 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 or the office 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.

(b) The applicant shall cause notice of the filing of such applicant's application to be published in a newspaper of general circulation in the locality of the proposed mining operation once a week for four consecutive weeks, commencing not more than ten days after the filing of said application with the board or the office. Such notice shall contain information regarding the identity of the applicant, the location of the proposed mining operation if such information does not violate the provisions of subsection (9) of this section, the proposed dates of commencement and completion of the operation, the proposed future use of the affected land, the location where additional information about the operation may be obtained, and the location and final date for filing objections with the board or the office.

(c) In addition, the applicant shall mail a copy of such notice immediately after first publication to all owners of record of the surface rights of the affected land, to the owners of record of immediately adjacent lands, to the owners of record of lands within three miles of affected land for in situ leach mining operations, and to any other persons who are owners of record that may be designated by the board that might be affected by the proposed mining operation. Proof of such notice and mailing, such as certified mail with return receipt requested where possible, shall be provided to the board or the office and become part of the application.

**Source: L. 76:** Entire article R&RE, p. 733, § 1, effective July 1. **L. 79:** (6) amended, p. 1251, § 2, effective May 25; (10)(a) amended, p. 1253, § 1, effective July 1. **L. 81:** (6) amended, p. 1677, § 2, effective April 30; (8) amended, p. 1679, § 1, effective May 21; (8) amended, p. 1669, § 6, effective June 19. **L. 83:** (9) amended, p. 2051, § 22, effective October 14. **L. 84:** (4)(a) amended, p. 1122, § 32, effective June 7. **L. 88:** IP(1), (2)(f), (2)(h), IP(3), (3)(c), (3)(e)(I), (6) to (9), and (10)(a) amended and (3)(d) repealed, pp. 1208, 1215, §§ 9, 16, effective July 1. **L. 91:** (6) amended, p. 757, § 32, effective April 4; IP(1), (2)(h), (8), (9), and (10) amended, p. 1420, § 3, effective May 6; (1)(d), (6), and (8) amended, p. 1434, § 7, effective July 1; (6) amended, p. 1072, § 53, effective July 1. **L. 92:** IP(1), (2)(h), (8), (9), and (10) amended, p. 1940, § 38, effective July 1. **L. 2002:** (9) amended, p. 1546, § 300, effective October 1. **L. 2004:** (10)(c) amended, p. 1784, § 1, effective June 4. **L. 2008:** (2)(i) and (2)(j) added and (10)(c) amended, pp. 936, 937, §§ 3, 4, effective May 20.

**Editor's note:** (1) This section is similar to former § 34-32-110 as it existed prior to 1976.

(2) Amendments to subsection (8) by House Bill 81-1097 and House Bill 81-1518 were harmonized.

(3) Amendments to subsection (6) by House Bill 91-1115 and House Bill 91-1198 were harmonized. Amendments to subsection (8) by Senate Bill 91-177 and House Bill 91-1115 were harmonized.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**34-32-112.5. Designated mining operation - rules.** (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 as "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.

(5) (a) An application for an in situ leach mining operation shall include a baseline site characterization and a plan for ongoing monitoring of the affected land and affected surface and groundwater. Prior to submitting an application, the prospective applicant shall confer with the office concerning the baseline characterization and plan for ongoing monitoring of the affected land and affected surface and groundwater. The board or the office may retain an independent third-party professional expert to oversee baseline site characterization, monitor field operations, or review any portion of the information collected, developed, or submitted by an applicant or prospective applicant pursuant to this subsection (5). The prospective applicant shall pay the reasonable costs incurred by the board or office and the expert selected by the board or office; except that the board or office shall define the scope of work to be accomplished by the expert and shall review and approve all invoices to be paid by the prospective applicant. The prospective applicant may object to the selection of any such expert if the prospective applicant has knowledge or information that the expert lacks the professional qualifications to accomplish the scope of work, has a conflict of interest with the prospective applicant or the project that will be the subject of the application, or has a bias that could influence the objectivity of the work to be accomplished. If the board or office concurs with the prospective applicant, a new expert shall be selected by the board or office.

(b) Prior to submitting an application, a prospective applicant for in situ leach mining shall design and conduct a scientifically defensible groundwater, surface water, and environmental baseline characterization and monitoring plan for the proposed mining operation. This plan shall be designed in such a manner as to:

(I) Thoroughly characterize premining site conditions;

(II) Detect any subsurface excursions of groundwater containing chemicals used in or mobilized by in situ leach mining during the mining operations; and

(III) Evaluate the effectiveness of postmining reclamation and groundwater reclamation plans.

(c) The design and operation of the baseline characterization and monitoring plan for in situ leach mining, together with all information collected in accordance with the plan, shall be a matter of public record regardless of whether such activities are conducted pursuant to a notice of intent to conduct prospecting operations under section 34-32-113.

(d) (I) Notwithstanding section 34-32-103 (6), in the case of in situ leach mining, reclamation of groundwater shall begin in accordance with the reclamation plan approved by the board immediately when either of the following occur:

(A) Detection pursuant to the baseline characterization and monitoring plan approved by the board of any subsurface excursion of groundwater outside of the affected land containing chemicals used in or mobilized by in situ leach mining during the mining operations or groundwater outside of the affected land that otherwise fails to meet the standards established in section 34-32-116 (8);

(B) Cessation of production operations.

(II) If the operator plans to cease operation on a temporary basis, the operator shall notify the board at least thirty days prior to such temporary cessation setting forth both the reasons for the temporary cessation and the expected duration of the temporary cessation. The operator shall maintain a groundwater monitoring and pumping regime satisfactory to the board during any period of temporary cessation of operations. If, in the judgment of the board, the

expected duration of any temporary cessation will be of such length that the board believes that groundwater reclamation should commence, it shall so order.

**Source: L. 93:** Entire section added, p. 1180, § 6, effective July 1. **L. 2008:** (5) added, p. 937, § 5, effective May 20.

**34-32-113. Prospecting notice - reclamation requirements - rules.** (1) Any person desiring to conduct prospecting shall, prior to entry upon the lands, file with the board a notice of intent to conduct prospecting operations on a form approved by the board. Such notice shall be accompanied by a fee as specified in section 34-32-127 (2).

(2) The notice form shall contain the following:

(a) The name of the person or organization doing the prospecting;

(b) A statement that prospecting will be conducted pursuant to the terms and conditions listed on the approved form;

(c) A brief description of the type of operations which will be undertaken;

(d) A description of the lands to be prospected by township and range;

(e) An approximate date of commencement of operations; and

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

(3) All information provided to the board in a notice of intent to conduct prospecting or a modification of such a notice is a matter of public record subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S., including, in the case of a modification, the original notice of intent; except that information relating to the mineral deposit location, size, or nature and, as determined by the board, other information designated by the operator as proprietary or trade secrets or that would cause substantial harm to the competitive position of the operator shall be protected as confidential information by the board and shall not be a matter of public record in the absence of a written release from the operator or until a finding by the board that reclamation is satisfactory. Such information designated as exempt shall remain confidential until a final determination by the board. The board shall promulgate rules implementing this subsection (3) and shall consider information including the timing of the disclosure of the operator's identity.

(4) (a) Upon filing the notice of intent to conduct prospecting, the person shall provide financial warranty in the amount of two thousand dollars per acre of the land to be disturbed 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 complies with the provisions of this section for every area to be prospected.

(5) Upon completion of the prospecting, there shall be filed with the board a notice of completion of prospecting operations. Within ninety days after the filing of the notice of completion, the board shall notify the person who had conducted the prospecting operations of the steps necessary to reclaim the land.

(5.5) (a) Without regard to the one thousand six hundred square foot limitation of section 34-32-103 (12), all drill holes sunk for the purpose of prospecting for locatable or leasable minerals on any land within the state of Colorado shall be plugged, sealed, or capped pursuant to this subsection (5.5) by the person conducting the prospecting. This subsection (5.5) shall not

apply to holes drilled in conjunction with a mining operation for which the board has issued a permit nor to wells or holes regulated pursuant to section 34-33-117 and to article 60 of this title or article 80, 90, 91, or 92 of title 37, C.R.S.

(b) Drill holes sunk for the purpose of prospecting shall be abandoned in the following manner:

(I) Any artesian flow of groundwater to the surface shall be eliminated by a plug made of cement or similar material or by a procedure sufficient to prevent such artesian flow.

(II) Drill holes which have encountered any aquifer in volcanic or sedimentary rock, as aquifer is defined in section 37-90-103 (2), C.R.S., shall be sealed utilizing a sealing procedure which is adequate to prevent fluid communication between aquifers.

(III) Each drill hole shall be securely capped at a minimum depth compatible with local cultivation practices or at a minimum of two feet below either the original land surface or the collar of the hole, whichever is the lower elevation. The cap is to be made of concrete or other material which is satisfactory for such capping. The site shall be backfilled above the cap to the original land surface.

(IV) If any drill hole is to be ultimately used as or converted to a water well, the user shall comply with the applicable provisions of title 37, C.R.S.

(V) Each drill site shall be reclaimed pursuant to section 34-32-116, including, if necessary, reseeding if grass or any other crop was destroyed.

(c) Abandonment in the manner provided in paragraph (b) of this subsection (5.5) shall occur immediately following the drilling of the hole and the probing for minerals in the prospecting process. However, a drill hole may be maintained as temporarily abandoned without being plugged, sealed, or capped. However, no drill hole which is to be temporarily abandoned without being plugged, sealed, or capped shall be left in such a condition as to allow fluid communication between aquifers. Such temporarily abandoned drill holes shall be securely covered in a manner which will prevent injury to persons and animals.

(d) No later than sixty days after the completion of the abandonment pursuant to paragraph (b) of this subsection (5.5) of any drill hole that has artesian flow at the surface, the person conducting the prospecting shall submit to the head of the office a report containing the location of such hole to within two hundred feet of its actual location, the estimated rate of flow of such artesian flow, if such is known, and the facts of the technique used to plug such hole.

(e) No later than twelve months after the completion of the abandonment of any drill hole pursuant to paragraph (b) of this subsection (5.5), there shall be filed by the person conducting the prospecting with the head of the office a report containing the location of the hole to the nearest forty-acre legal subdivision and the facts of the technique used to plug, seal, or cap the hole.

(f) The head of the office may not waive any of the administrative provisions of this subsection (5.5).

(6) The board shall inspect the lands prospected within thirty days after the person prospecting the lands completes the reclamation and notifies the board that the reclamation is finished. If the board finds the reclamation satisfactory, the board shall release applicable performance and financial warranties.

(7) The financial warranty shall not be held for more than thirty days after the completion of the reclamation.

(8) The board is authorized to inspect any ongoing prospecting operation or any prospecting operation prior to the request for release of performance and financial warranties, in order to determine compliance with the terms of this article.

(9) Upon the submittal of a notice of intent to conduct prospecting operations or a modification of such a notice, the person submitting such notice or modification shall give an electronic version of the notice or modification, except for that information exempted from public disclosure under subsection (3) of this section and that information designated by the person as exempt from disclosure under subsection (3) of this section, to the board in a format determined by the board. The division shall post such version of the notice or modification on its website.

**Source: L. 76:** Entire article R&RE, p. 736, § 1, effective July 1. **L. 80:** (5.5) and (8) added, p. 687, § 2, effective July 1. **L. 81:** (4), (6), (7), and (8) amended, p. 1670, § 7, effective June 19. **L. 83:** (3) amended, p. 2051, § 23, effective October 14. **L. 91:** (1) amended, p. 1435, § 8, effective July 1. **L. 92:** (5.5)(d), (5.5)(e), and (5.5)(f) amended, p. 1941, § 39, effective July 1. **L. 93:** (4) amended, p. 1181, § 7, effective July 1. **L. 2008:** (3), (5.5)(d), (5.5)(e), and (5.5)(f) amended and (9) added, p. 1705, § 1, effective June 2. **L. 2009:** (3) amended, (SB 09-292), ch. 369, p. 1979, § 111, effective August 5.

**Editor's note:** This section is similar to former § 34-32-111 as it existed prior to 1976.

**34-32-114. Protests and petitions for hearing.** Any person has the right to file written objections to or statements in support of an application for a permit with the board. Such protests or petitions for a hearing shall be timely filed with the board not more than twenty days after the date of last publication of notice pursuant to section 34-32-112 (10). For good cause shown in the protest or petition documents, the board, in its discretion, may hold a hearing pursuant to section 34-32-115 on the question of whether the permit should be granted. The applicant shall be notified within ten days of any objections to his application and be supplied with a copy of the written objections.

**Source: L. 76:** Entire article R&RE, p. 737, § 1, effective July 1.

**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 after 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. In the event of in situ leach mining operations, a final decision on the application will be made within two hundred forty days.

(3) If action upon the application is not completed within the 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 if the operator demonstrates compliance with the following:

(a) The application is complete and the performance and financial warranties have been provided.

(b) The applicant has paid the required fee.

(c) (I) 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 manmade 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.

(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) That 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 parks and wildlife commission, or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan 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.

(5) (a) The board or the office may deny a permit for in situ leach mining operations based on scientific or technical uncertainty about the feasibility of reclamation and shall deny such a permit if the applicant fails to demonstrate that reclamation can and will be accomplished in compliance with this article, including the protection of groundwater and other environmental resources and human health.

(b) The board or the office shall deny a permit for in situ leach mining if the applicant fails to demonstrate by substantial evidence that it will reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization, or in the statewide radioactive materials standards or tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission, to either of the following:

(I) Premining baseline water quality or better, as established by the baseline site characterization conducted pursuant to section 34-32-112.5 (5); or

(II) That quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission.

(c) The board or the office may deny a permit for in situ leach mining if the existing or reasonably foreseeable potential future uses for any potentially affected groundwater, whether classified or unclassified pursuant to section 25-8-203, C.R.S., include domestic or agricultural uses and the board determines the in situ leach mining will adversely affect the suitability of the groundwater for such uses.

(d) The board or the office may deny or revoke a permit for in situ leach mining if:

(I) The applicant, an affiliate, officer, or director of the applicant, the operator, or the claim holder has demonstrated a pattern of willful violations of the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to this article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application pursuant to section 34-32-112 (2)(i);

(II) (A) Except as specified in sub-subparagraph (B) of this subparagraph (II), the applicant or any affiliate, officer, or director of the applicant has in the ten years prior to submission of the application violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to this article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application pursuant to section 34-32-112 (2)(i).

(B) The board or office may issue or reinstate a permit if the applicant submits proof that the violation referred to in sub-subparagraph (A) of this subparagraph (II) has been corrected or may conditionally issue or reinstate a permit if the violation is in the process of being corrected to the satisfaction of the board or if the applicant submits proof that the applicant has filed and is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. For purposes of this sub-subparagraph (B), a direct administrative or judicial appeal to contest the validity of the alleged violation shall not include an appeal of an applicant's relationship to an affiliate. If the violation is not successfully abated or if the violation is upheld on appeal, the board or office shall revoke or deny the conditional permit issued or reinstated pursuant to this sub-subparagraph (B).

**Source: L. 76:** Entire article R&RE, p. 737, § 1, effective July 1. **L. 81:** (3) and (4)(a) amended, p. 1670, § 8, effective June 19; (4)(f)(III) amended, p. 1627, § 39, effective July 1. **L. 88:** IP(4) and (4)(g) amended and (4)(e) repealed, pp. 1210, 1215, §§ 10, 16, effective July 1. **L. 91:** (1), (2), and IP(4) amended, p. 1421, § 4, effective May 6. **L. 92:** (1), (2), and IP(4) amended, p. 1942, § 40, effective July 1. **L. 93:** Entire section amended, p. 1182, § 8, effective July 1. **L. 2008:** (2) amended and (5) added, p. 939, § 6, effective May 20. **L. 2012:** (4)(f)(IV) amended, (HB 12-1317), ch. 248, p. 1234, § 87, effective June 4.

**Editor's note:** This section is similar to former § 34-32-117 as it existed prior to 1976.

**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) All operators shall submit, in addition to the plan and map, an annual fee as specified in section 34-32-127 (2).

(5) (Deleted by amendment, L. 91, p. 1435, § 9, effective July 1, 1991.)

(6) For operators who have filed an application pursuant to section 34-32-110 (1), the operator shall submit an annual fee as specified in section 34-32-127 (2) 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 groundwater systems both during and after the mining operation and during reclamation shall be minimized. Nothing in this paragraph (g) shall be construed to allow the operator to avoid compliance with other statutory provisions governing well permits and augmentation requirements and replacement plans when applicable.

(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 conservation district if the mining operation is within the boundaries of a conservation district. Reclamation shall be required on all the affected land.

(k) If the operator's choice of reclamation is forest planting, the operator may, with the approval of the office, 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, the operator may defer planting until planting stock is available to plant such land as originally planned, or 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 part 6 of article 31 of title 23 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 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 shall be conducted concurrently with mining operations to the extent practicable, taking into consideration the mine plan, mine safety, economics, the availability of equipment and material, and other site-specific conditions relevant and unique to the affected land and to the postmining land use. Upon termination of the entire mining operation and in accordance with the reclamation plan, each phase of final reclamation shall be completed within 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) (A) 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.

(B) Sub-subparagraph (A) of this subparagraph (III) shall not apply to uranium or in situ leach mining.

(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 paragraph (j) of this subsection (7) may remain on the affected land at the option of the operator and landowner.

(8) All uranium extraction operations using in situ leach mining or recovery methods, including any injection of any chemicals designed to mobilize uranium resources, shall reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization, or in the statewide radioactive materials standards or tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission, to either of the following:

(a) Premining baseline water quality or better as established by the baseline site characterization conducted pursuant to section 34-32-112.5 (5); or

(b) That quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado water quality control commission. In establishing, designing, and implementing a groundwater reclamation plan, the mine operator shall use best available technology.

(9) Operators of in situ leach mining operations shall take all necessary steps to prevent and remediate any degradation of preexisting groundwater uses during the prospecting, development, extraction, and reclamation phases of the operation.

**Source: L. 76:** Entire article R&RE, p. 739, § 1, effective July 1. **L. 79:** (1)(a) amended, p. 1252, § 3, effective May 25. **L. 81:** (1)(a) amended, p. 1678, § 3, effective April 30. **L. 88:** Entire section R&RE, p. 1210, § 11, effective July 1. **L. 89:** (7)(g) amended, p. 1426, § 7, effective July 15. **L. 91:** IP(7)(q) amended, p. 1419, § 1, effective May 6; (4) amended, p. 1073, § 54, effective July 1; (4) to (6) amended, p. 1435, § 9, effective July 1. **L. 92:** (7)(k) amended, p. 1942, § 41, effective July 1. **L. 2002:** (7)(j) and (7)(n) amended, p. 518, § 15, effective July 1. **L. 2008:** IP(7)(q) and (7)(q)(III) amended and (8) and (9) added, p. 940, § 7, effective May 20. **L. 2018:** (7)(n) amended, (HB 18-1375), ch. 274, p. 1717, § 70, effective May 29.

**Editor's note:** This section is similar to former § 34-32-111 as it existed prior to 1976.

**Cross references:** For the legislative declaration contained in the 1989 act amending subsection (7)(g), see section 1 of chapter 314, Session Laws of Colorado 1989.

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

(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 parks and 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.

**Source: L. 93:** Entire section added, p. 1183, § 9, effective July 1. **L. 2007:** (3)(b) amended, p. 2047, § 89, effective June 1.

**34-32-117. Warranties of performance - warranties of financial responsibility - release of warranties - applicability.** (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.

(b) 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 office whenever such operator believes such operator has completed any or all requirements of this article with respect to any or all of such operator's affected lands except for any such lands in designated mining operations. The 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 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 (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 (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) (Deleted by amendment, L. 93, p. 1184, § 10, effective July 1, 1993.)

(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) (Deleted by amendment, L. 93, p. 1184, § 10, effective July 1, 1993.)

(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.

**Source: L. 76:** Entire article R&RE, p. 742, § 1, effective July 1. **L. 77:** (1)(a), (1)(b), (2), (3), and (6) amended, p. 1562, § 2, effective June 2. **L. 79:** (1)(e) added, p. 1252, § 4, effective May 25. **L. 81:** (1)(e) amended, p. 1678, § 4, effective April 30; entire section R&RE, p. 1670, § 9, effective June 19. **L. 91:** (3)(a)(IX) amended, p. 757, § 33, effective April 4. **L. 93:** Entire section amended, p. 1184, § 10, effective July 1.

**Editor's note:** This section is similar to former § 34-32-112 as it existed prior to 1976.

**34-32-118. Forfeiture of financial warranties.** (1) A financial warranty shall be subject to forfeiture whenever the board shall determine that any one or more of the following circumstances exist:

(a) The operator has violated a cease-and-desist order entered pursuant to section 34-32-124 and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to have done so has elapsed; or

(b) The operator is in default under his performance warranty and has failed to cure such default although he has been given written notice thereof and has had ample time to cure such default; or

(c) The financial warrantor has failed to maintain his financial warranty in good standing as required by section 34-32-117; or

(d) The financial warrantor no longer has the financial ability to carry out his obligations under this article.

(2) Whenever the board, based on information and belief, has reason to believe that a financial warranty is subject to forfeiture, the board shall so notify the operator and all financial warrantors. The board shall afford the operator and all financial warrantors the right to appear before the board at a hearing to be held not less than thirty days after the parties' receipt of said notice. Any such hearing shall be held in accordance with the provisions of article 4 of title 24, C.R.S.

(3) (a) At any such hearing, the board shall be empowered to:

(I) Withdraw or modify any determination that the financial warranty is subject to forfeiture;

(II) Settle or compromise the determination; or

(III) Confirm its determination that the financial warranty should be forfeited.

(b) Upon finding that a financial warranty should be forfeited, the board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected financial warrantors to immediately deliver to the board all amounts warranted by applicable financial warranties.

(4) (a) The board, upon issuing any order pursuant to subsection (3) of this section, may request the attorney general to institute proceedings to secure or recover amounts warranted by forfeited financial warranties. The attorney general shall have the power, inter alia, to:

(I) Foreclose upon any real and personal property encumbered for the benefit of the state;

(II) Collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the board;

(III) Dispose of pledged property.

(b) The amount of any forfeited financial warranty shall be a lien in favor of this state upon any project-related fixtures or equipment offered as proof of financial responsibility pursuant to section 34-32-117 (3)(f)(V).

(c) Said lien shall have priority over all other liens and encumbrances irrespective of the date of recordation, except liens of record on June 19, 1981, and liens of the United States, the state, and political subdivisions thereof for unpaid taxes, and shall attach and be deemed perfected as of the date the board approves issuance of the operator's permit.

(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.

(6) Defaulting operators shall remain liable for the actual cost of reclaiming affected lands, less any amounts expended by the board pursuant to subsection (5) of this section, notwithstanding any discharge of applicable financial warranties.

(7) Notwithstanding any provision of this section to the contrary, a corporate surety may elect to reclaim affected lands in accordance with an approved plan in lieu of forfeiting a bond penalty.

**Source: L. 76:** Entire article R&RE, p. 743, § 1, effective July 1. **L. 77:** Entire section amended, p. 1564, § 3, effective June 2. **L. 81:** Entire section R&RE, p. 1674, § 10, effective June 19. **L. 93:** (5) amended, p. 1193, § 11, effective July 1.

**Editor's note:** This section is similar to former § 34-32-113 as it existed prior to 1976.

**34-32-119. Operators - succession.** Where one operator succeeds another at any uncompleted operation, the board shall release the first operator from all liability as to that particular reclamation operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes, as part of his obligation under this article, all liability for the reclamation of the affected land, and his obligation is covered by appropriate performance and financial warranties as to such affected land. Where one operator succeeds another, a fee as specified in section 34-32-127 (2) shall be paid to the board before the first operator is released from liability and before any financial warranties are released.

**Source: L. 76:** Entire article R&RE, p. 743, § 1, effective July 1. **L. 81:** Entire section amended, p. 1676, § 11, effective June 19. **L. 91:** Entire section amended, p. 1435, § 10, effective July 1.

**Editor's note:** This section is similar to former § 34-32-114 as it existed prior to 1976.

**34-32-120. Permit refused defaulting operator.** No permit for new mining operations shall be granted to any operator who is currently found to be in violation of the provisions of this article with respect to any operation in this state.

**Source: L. 76:** Entire article R&RE, p. 744, § 1, effective July 1.

**Editor's note:** This section is similar to former § 34-32-115 as it existed prior to 1976.

**34-32-121. Entry upon lands for inspection.** The board, the office, or their authorized representatives may enter upon the lands of the operator at all reasonable times for the purpose of inspection to determine whether the provisions of this article have been complied with.

**Source: L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 92:** Entire section amended, p. 1943, § 42, effective July 1.

**Editor's note:** This section is similar to former § 34-32-116 as it existed prior to 1976.

**34-32-121.5. Reporting certain conditions.** Any person engaged in a 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, but for in situ leach mining operations in no event more than twenty-four hours after the discovery of such failure or an imminent failure, of: Any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; any structure for in situ leach mining operations designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater; any structure used in connection with in situ leach mining designed to detect, prevent, minimize, or mitigate adverse impacts on human health, wildlife, or the environment; or any environmental protection facility designed to contain or control chemicals or waste that are acid- or toxic-forming, as identified in the permit.

**Source: L. 93:** Entire section added, p. 1193, § 12, effective July 1. **L. 2008:** Entire section amended, p. 941, § 8, effective May 20.

**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) and (c) Repealed.

(1.5) Repealed.

(2) Any applicant that desires to utilize the self-insurance provisions listed in section 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 may be used by the executive director to conduct emergency responses or to perform emergency reclamation activities at mining operations subject to this article and as specified in section 34-32-124.5 (1)(b).

(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.

(IV) Notwithstanding any provision of this subsection (3) to the contrary, on July 1, 2003, the state treasurer shall deduct four hundred eighty-six thousand six hundred thirteen dollars from the emergency response cash fund and transfer such sum to the general fund.

(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 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.

**Source: L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 80:** Entire section amended, p. 690, § 1, effective April 1. **L. 81:** Entire section amended, p. 1676, § 12, effective June 19. **L. 87:** (1) amended, p. 1841, § 2, effective August 27. **L. 88:** (1)(a) amended and (1)(b) repealed, pp. 1214, 1215, §§ 12, 16, effective July 1. **L. 91:** (1)(a) amended, p. 1435, § 11, effective July 1. **L. 92:** (2) amended, p. 1943, § 43, effective July 1. **L. 93:** Entire section amended, p. 1193, § 13, effective July 1. **L. 2003:** (3)(a)(IV) added, p. 1544, § 6, effective May 1. **L. 2016:** (3)(a)(II) amended, (HB 16-1276), ch. 165, p. 526, § 1, effective May 17. **L. 2018:** (1)(c) and (1.5) added, (HB 18-1338), ch. 201, pp. 1310, 1309, §§ 10, 6, effective May 4.

**Editor's note:** (1) This section is similar to former § 34-32-118 as it existed prior to 1976.

(2) (a) For the text of subsection (1)(c), enacted by HB 18-1338, in effect from May 4, 2018, to July 1, 2018, see chapter 201, Session Laws of Colorado 2018. (L. 2018, p. 1308.)

(b) Subsection (1)(c)(II) provided for the repeal of subsection (1)(c), effective July 1, 2018. (See L. 2018, p. 1308.)

(3) (a) For the text of subsection (1.5), enacted by HB 18-1338, in effect from May 4, 2018, to August 1, 2018, see chapter 201, Session Laws of Colorado 2018. (L. 2018, p. 1308.)

(b) Subsection (1.5)(b) provided for the repeal of subsection (1.5), effective August 1, 2018. (See L. 2018, p. 1308.)

**34-32-123. Operating without a permit - penalty.** (1) Whenever an operator or prospector fails to obtain a valid permit or file a notice of intent under the provisions of this article, the board or the office may issue an immediate cease-and-desist order. Concurrently with the issuance of such an order, the board or the office may seek a restraining order or injunction pursuant to section 34-32-124 (3).

(2) Any operator who operates without a permit shall be subject to a civil penalty of not less than one thousand dollars per day 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.

(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.

**Source: L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 88:** (2) amended and (3) added, p. 1214, § 13, effective July 1. **L. 91:** (1) amended, p. 1422, § 5, effective May 6. **L. 92:** (1) amended, p. 1943, § 44, effective July 1.

**Editor's note:** This section is similar to former §§ 34-32-113 and 34-32-117 as they existed prior to 1976.

**34-32-124. Failure to comply with conditions of order, permit, or regulation.** (1) Whenever the board or the office has reason to believe that there has occurred a violation of an order, permit, notice of intent, or regulation issued under the authority of this article, written notice shall be given to the operator or prospector of the alleged violation. Such notice shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute the violation and may include the nature of any corrective action proposed to be required.

(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 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.

(3) In the event any operator fails to comply with a cease-and-desist order issued by the board, the board or the office may request the attorney general to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order. Suits under this section shall be brought in the district court where the alleged violation occurs. If the board or the office determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

(4) The board or the office may require the alleged violator to appear before the board no sooner than twenty days after the issuance of such cease-and-desist order; except that an earlier date for hearing may be requested by the alleged violator.

(5) If a hearing is held pursuant to the provisions of this section, it shall be open to the public and conducted in accordance with the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S. The board shall permit all parties to respond to the notice served, to present evidence and arguments on all issues, and to conduct cross-examination required for a full disclosure of the facts.

(6) (a) Upon a determination, after hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke the pertinent permit.

(b) If the board suspends or revokes the permit of an operator, the operator may continue mining operations only for the purpose of bringing the mining operation into satisfactory compliance with the provisions of the operator's permit. Once such operations are completed to the satisfaction of the board, the board shall reinstate the permit of the operator.

(7) Any person who violates any provision of any permit issued under this article shall be subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day for each day during which such violation occurs; except that any operator who operates under a permit issued 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 during which such violation occurs.

**Source: L. 76:** Entire article R&RE, p. 744, § 1, effective July 1. **L. 91:** (1), (3), and (4) amended, p. 1422, § 6, effective May 6. **L. 92:** (1), (3), and (4) amended, p. 1943, § 45, effective July 1. **L. 93:** (2) amended, p. 1195, § 14, effective July 1.

**34-32-124.5. Emergencies endangering public health or environment - definition.** (1) Following an investigation, an emergency response is justified pursuant to section 34-32-122 (3) if the board or office determines that:

(a) Any person is:

(I) Engaging in any activity not sanctioned by, or that 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;

(II) An operator with a permit who is failing or refusing to respond to a board order requiring corrective actions for any failure or imminent failure of:

(A) Any impoundment, embankment, or slope identified in the permit;

(B) Any environmental protection facility or measure identified in the permit that is designed for control or containment of chemicals or waste that are toxic, toxic-forming, or acid; or

(C) Any other measure identified in the permit or as provided for in this article or any rule promulgated pursuant to this article that is intended to protect human health or property or the environment; or

(b) Circumstances exist, regardless of whether caused by a person, at a legacy mine site that create a danger to public health or welfare or the environment. For purposes of this paragraph (b), "legacy mine site" means a site where hard rock mining operations have been abandoned as those terms are defined in section 34-34-101 (1)(b) and (4).

**Source: L. 93:** Entire section added, p. 1196, § 15, effective July 1. **L. 2016:** Entire section amended, (HB 16-1276), ch. 165, p. 526, § 2, effective May 17.

**34-32-125. Conflict with "Colorado Surface Coal Mining Reclamation Act".** Nothing in this article shall apply to any mining operation regarding reclamation of mined land which is regulated by the board or office pursuant to article 33 of this title.

**Source: L. 79:** Entire section added, p. 1306, § 8, effective July 1. **L. 92:** Entire section amended, p. 1944, § 46, effective July 1.

**34-32-126. Fees - mined land reclamation cash fund. (Repealed)**

**Source: L. 87:** Entire section added, p. 1841, § 1, effective August 27. **L. 88:** Entire section repealed, p. 1215, § 16, effective July 1.

**34-32-127. Mined land reclamation fund - created - fees - fee adjustments - rules.** (1) (a) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mined land reclamation fund, which fund is hereby created. The moneys in the mined land reclamation fund shall consist of fees collected by the office pursuant to this article. All interest derived from the investment of moneys in the mined land reclamation fund shall be credited to the fund. Any balance remaining in the fund at the end of any fiscal year shall remain in the fund and shall be subject to appropriation by the general assembly for the purposes for which the fund was created.

(b) The general assembly shall make annual appropriations from the mined land reclamation fund for the direct and indirect costs of the office incurred in the performance of its duties under this article. Pursuant to section 34-32-102 (3), the mined land reclamation fund shall be used for, and shall be limited to, the actual costs of processing permits and for conducting annual reviews and inspections.

(2) (a) The office shall collect fees for fiscal year 2014-15 and for each subsequent year of operation for operations according to the following schedule:

(I) Applications pursuant to:

(A) Section 34-32-110 (1) $ 288

(B) Section 34-32-110 (2) $ 1,006

(C) Section 34-32-110 (7) $ 1,725

(C.5) Section 34-32-110 relating to reclamation permit amendments $ 661

(D) Repealed.

(E) Section 34-32-112, except for applications relating to the mining operations specified in sub-subparagraphs (F) and (G) of this subparagraph (I) $ 2,156

(F) Section 34-32-112 relating to quarries $ 2,674

(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 $ 3,565

(H) Section 34-32-112 (8) relating to reclamation permit amendments, except as specified in sub-subparagraph (N) of this subparagraph (I) $ 1,783

(I) Section 34-32-112 (8) relating to revisions to permits other than amendments $ 173

(J) Section 34-32-112 (8) relating to temporary cessations of operations $ 115

(K) Section 34-32-113 $ 86

(L) Section 34-32-119 $ 115

(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 that shall not be less than $1,000 or more than $10,350 for such operation, except as specified in sub-subparagraph (N) of this subparagraph (I).

(N) Oil shale application, amendment, and revision to a permit other than an amendment fee: If the costs to review and process an oil shale application, amendment, or revision to a permit other than an amendment exceeds twice the value of the fee for a new application, amendment, or revision to a permit other than an amendment pursuant to sub-subparagraph (H) or (M) of this subparagraph (I), the applicant shall pay the additional costs. The costs shall include those of the division, another division of the department involved in the review, and any consultants or other nongovernmental agents that have specific expertise on the issue in question acting at the request of the division in the review of the oil shale permit application, amendment, or revision to a permit other than an amendment. The division shall inform the applicant that the actual fee may exceed twice the value of the listed fee and shall provide the applicant with an estimate of the actual charges for the review of the application, amendment, or revision to a permit other than an amendment within ten days after receipt of the application. An appeal of this estimate shall be made to the board within ten days after the applicant's receipt of the estimate.

(O) In situ uranium application, amendment, and revision to a permit other than an amendment fee: If the costs to review and process an in situ uranium application, amendment, or revision to a permit other than an amendment exceeds twice the value of the fee for a new application, amendment, or revision to a permit other than an amendment pursuant to sub-subparagraph (H) or (M) of this subparagraph (I), the applicant shall pay the additional costs. The costs shall include those of the division, another division of the department involved in the review, and any consultants or other nongovernmental agents that have specific expertise on the

issue in question acting at the request of the division in the review of the in situ uranium permit application, amendment, or revision to a permit other than an amendment. The division shall inform the applicant that the actual fee may exceed twice the value of the listed fee and shall provide the applicant with an estimate of the actual charges for the review of the application, amendment, or revision to a permit other than an amendment within ten days after receipt of the application. An appeal of this estimate shall be made to the board within ten days after the applicant's receipt of the estimate.

(II) and (III) (Deleted by amendment, L. 95, p. 1189, § 5, effective July 1, 1995.)

(IV) Annual fees for fiscal year 2014-15 and for each subsequent year for operations pursuant to:

(A) Repealed.

(A.5) Section 34-32-110 (1)(if the fee is not subject to sub-subparagraph (A) of this subparagraph (IV), excluding designated mining operations) $ 172

(B) Section 34-32-110 (2)(excluding designated mining operations) $ 259

(C) Repealed.

(D) Section 34-32-112 (excluding designated mining operations) $ 633

(E) Section 34-32-112 (for designated mining operations) $ 1,150

(F) Section 34-32-110 (for designated mining operations) $ 518

(G) Section 34-32-113 $ 86

(V) Fees to the public for services such as copying, making copies of and mailing board minutes, computer printouts, compilation reports, or other services shall be the same as the cost to the office for providing such services.

(a.1) Repealed.

(b) (Deleted by amendment, L. 95, p. 1189, § 5, effective July 1, 1995.)

(c) Repealed.

(3) Notwithstanding the amount specified for any fee in subsection (2) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source: L. 91:** Entire section added, p. 1429, § 1, effective July 1. **L. 92:** (1), IP(2)(a), (2)(a)(V), and (2)(b) amended, p. 1944, § 47, effective July 1. **L. 93:** (2) amended, p. 1196, § 16, effective July 1. **L. 95:** (2)(a)(II), (2)(a)(III), (2)(a)(V), and (2)(b) amended, p. 1189, § 5, effective July 1. **L. 96:** (2)(a)(I)(D), (2)(a)(IV)(C), and (2)(c) repealed, p. 179, § 4, effective April 18. **L. 98:** (3) added, p. 1340, § 61, effective June 1. **L. 2007:** (2)(a) amended, p. 958, § 1, effective July 1. **L. 2008:** (2)(a)(I)(C.5) and (2)(a)(I)(O) added and (2)(a)(I)(N) amended, pp. 1652, 1653, §§ 1, 2, effective August 5. **L. 2014:** IP(2)(a), IP(2)(a)(IV), and (2)(a)(IV)(A) amended and (2)(a)(IV)(A.5) and (2)(a.1) added, (SB 14-076), ch. 42, p. 212, § 2, effective March 20.

**Editor's note:** Subsection (2)(a.1) provided for the repeal of subsections (2)(a)(IV)(A) and (2)(a.1), effective July 1, 2015. (See L. 2014, p. 212.)

## ARTICLE 32.5

Colorado Land Reclamation Act for the
Extraction of Construction Materials

**34-32.5-101. Short title.** This article shall be known and may be cited as the "Colorado Land Reclamation Act for the Extraction of Construction Materials".

**Source: L. 95:** Entire article added, p. 1155, § 1, effective July 1.

**34-32.5-102. Legislative declaration.** (1) The general assembly hereby declares that the extraction of construction materials for government and private enterprise and the reclamation of land affected by such extraction are necessary and proper activities that are compatible. It is the intent of the general assembly to foster and encourage the development of an economically sound and stable extraction materials industry and to encourage the orderly development of the state's natural resources while requiring those persons involved in extraction operations to reclaim land affected so that it may be put to a use beneficial to the people of this state. It is the further intent of the general assembly to conserve natural resources, aid in the protection of wildlife and aquatic resources, establish agricultural, recreational, residential, and industrial sites, and protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that a reclamation regulatory program shall be developed under which the economic costs of reclamation measures shall bear a reasonable relationship to the environmental benefits derived from such measures. When considering the requirements of reclamation measures, the mined land reclamation board or the office of mined land reclamation shall determine the economic reasonableness of the action by evaluating the benefits expected to result from the use of such measures. When considering economic reasonableness, the financial condition of an operator shall not be a factor.

(3) The general assembly further finds and declares that:

(a) It is the policy of this state to recognize that extraction operations are conducted by both government and private entities;

(b) All residents of this state benefit from the reclamation of land;

(c) The funding needed to ensure that reclamation is achieved should be borne equitably by the public and private sectors;

(d) The funding for enforcement and other activities conducted for the benefit of the general public should be supported by the general fund; and

(e) It is the policy of this state to allocate resources adequate to accomplish the purposes of this article.

**Source: L. 95:** Entire article added, p. 1155, § 1, effective July 1.

**34-32.5-103. 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 an operation. Affected lands include, but shall not be limited to, private ways, roads (except those roads

excluded by this subsection (1)); land excavations; exploration sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property that result from or are used in such operations are situated. "Affected land" does not include land that has been reclaimed pursuant to an approved plan or otherwise, as may be approved by the board, or off-site roads that were constructed for purposes unrelated to the proposed operation, were in existence before a permit application was filed with the office, and will not be substantially upgraded to support the operation or off-site groundwater monitoring wells.

(1.5) "Aggrieved" means suffering actual loss or injury, or being exposed to potential loss or injury, to legitimate interests. Such interests include, but are not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Construction material" means rock, clay, silt, sand, gravel, limestone, dimension stone, marble, or shale extracted for use in the production of nonmetallic construction products.

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

(5) "Development" means work performed with respect to a construction materials deposit following the exploration required to prove construction materials are in existence in commercial quantities but prior to production activities. Development work includes, but is not limited to, work that must be performed for the purpose of preparing the site for mining, defining further the deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(6) "Director" means the director of the division of reclamation, mining, and safety.

(7) "Division" means the division of reclamation, mining, and safety created in section 34-20-103.

(8) "Executive director" means the executive director of the department of natural resources.

(9) "Exploration" means the act of searching for or investigating a construction materials deposit. "Exploration" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes, and digging pits, cuts, or other works for the purpose of extracting samples prior to the commencement of development or extraction, and the building of roads, access ways, and other facilities related to such work. "Exploration" does not include:

(a) An activity that causes very little or no surface disturbance, such as airborne surveys and photographs, the use of instruments or devices that are hand-carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work that causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration activities; or

(b) Any single activity that results in the disturbance of a single block of land totaling one thousand six hundred square feet or less of the land's surface, not to exceed two such disturbances per acre; except that the cumulative total of such disturbances may not exceed five acres statewide in any exploration operation extending over twenty-four consecutive months.

(10) "Financial warranty" means a warranty of the type described in section 34-32.5-117 (3).

(11) "Life of the mine" means, with respect to a permit granted pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112, a period lasting as long as:

(a) An operator continues to engage in the extraction of construction materials and complies with this article. The life of the mine includes that period of time after the cessation of production that is necessary to complete the reclamation of disturbed lands as required by the board and this article and continues until the board releases the operator, in writing, from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

(b) Construction material reserves are shown by the operator to remain in the operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if such operator files a notice with the board stating the reasons for nonproduction, a plan for the resumption of production, and the measures taken to comply with reclamation and other necessary activities as established by the board to maintain the operation in a nonproducing state. The requirement of a notice of temporary cessation shall not apply to operators who resume operating within one year and have included in their permit applications a statement that the affected lands are to be used for less than one hundred eighty days per year.

(c) Production is resumed within five years after the date production ended, or the operator files a report with the board requesting an extension of the period of temporary cessation of production stating the reasons for the continuation of nonproduction and those factors necessary to, and the plans for, resumption of production. In no case shall a temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article.

(d) The board does not take action to declare termination of the life of the mine, which action shall require a sixty-day notice to the operator alleging a violation of paragraph (a), (b), or (c) of this subsection (11), or that inadequate reasons are provided in an operator's report under such paragraphs. In such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present his or her full case and shall provide reasonable time for such operator to comply with this article.

(e) The operator complies with section 34-32.5-109 (2).

(12) "Mining" means the extraction of construction materials.

(13) "Mining operation" means the development or extraction of a construction material from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation. The term also includes transportation and processing operations on affected land. The term does not include concentrating, milling, evaporation, cleaning, preparation, transportation, and other off-site operations not conducted on affected land.

(14) "Office" means the office of mined land reclamation, created in section 34-32-105.

(15) "Open mining" means the mining of materials by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. "Open mining" also means mining directly from such deposits where there is no overburden. The term includes but is not limited to such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

(16) "Operator" means a person, firm, general or limited partnership, association, or corporation or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

(17) "Overburden" means earth and other materials that lie above natural minerals and includes earth and other materials that are disturbed from their natural state in the process of extracting construction materials.

(18) "Performance warranty" means a warranty of the type described in section 34-32.5-117 (2).

(19) "Reclamation" means the employment, during and after an operation, of procedures reasonably designed to minimize as much as practicable the disruption from an operation and provide for the establishment of plant cover, stabilization of soil, protection of water resources, or other measures appropriate to the subsequent beneficial use of the affected lands. Reclamation shall be conducted in accordance with the performance standards of this article.

(20) "Refuse" means all waste material directly associated with the cleaning and preparation of substances excavated by an operation.

**Source: L. 95:** Entire article added, p. 1156, § 1, effective July 1. **L. 2006:** (9) amended, p. 1193, § 1, effective May 25; (1) amended, p. 1285, § 2, effective May 26; (6) and (7) amended, p. 217, § 13, effective August 7.

**34-32.5-104. Administration.** In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office and the board have the full power and authority to carry out and administer the provisions of this article. The office is responsible for the enforcement of reclamation permits only and has no authority or duty to enforce other local, state, or federal agency permits unless otherwise authorized by law.

**Source: L. 95:** Entire article added, p. 1159, § 1, effective July 1.

**34-32.5-105. Office of mined land reclamation - mined land reclamation board.** The office and the board created in section 34-32-105 shall administer this article.

**Source: L. 95:** Entire article added, p. 1160, § 1, effective July 1.

**34-32.5-106. Duties of board.** In addition to the duties of the board set forth in section 34-32-106 (1), the board shall cause to be published the minutes of its meetings and approve or deny reclamation permits. The board may delegate its responsibility to approve reclamation permits to the director except for regular permits under section 34-32.5-112, where there is a written objection.

**Source: L. 95:** Entire article added, p. 1160, § 1, effective July 1.

**34-32.5-107. Powers of board.** The board has the powers set forth in section 34-32-107.

**Source: L. 95:** Entire article added, p. 1160, § 1, effective July 1.

**34-32.5-108. Rules.** The board may adopt and promulgate reasonable rules respecting the administration of this article.

**Source: L. 95:** Entire article added, p. 1160, § 1, effective July 1.

**34-32.5-109. Reclamation permit required - existing permits.** (1) Before engaging in a new operation, an operator shall first obtain from the board or office a reclamation permit pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112. Notwithstanding this subsection (1), an operator who obtained a permit under section 34-32-110, 34-32-111, or 34-32-112 before July 1, 1995, which permit was valid as of such date, shall continue to operate under such permit, and such permit shall be deemed to be a permit issued under the provisions of this article.

(2) (a) A reclamation permit shall be effective for the life of the stated operation if the operator complies with the conditions of such reclamation permit, this article, and rules promulgated pursuant to this article that are in effect at the time the permit is issued or amended, except as otherwise provided in paragraph (b) of this subsection (2). Nothing in this article shall be construed to abrogate the duty of the operator to comply with other applicable statutes and rules.

(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 postmining 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 with that 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.

(3) 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, 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. The operator shall be responsible for assuring that the mining operation and the postmining land use comply with city, town, county, or city and county land use 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 political subdivisions. Any mining operator subject to this article shall also be subject to zoning and land use authority and regulation by political subdivisions as provided by law.

(4) Upon receipt of an application for a reclamation permit, the board shall provide notice of such application to all counties in which proposed mining operations are located and to each municipality located within two miles of the area of proposed mining operations.

**Source: L. 95:** Entire article added, p. 1160, § 1, effective July 1. **L. 96:** (1) amended, p. 179, § 5, effective April 18.

**34-32.5-110. Existing limited impact operations - expedited process.** (1) (a) Any person desiring to conduct mining operations on less than ten acres, 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:

(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 34-32.5-116.

(b) The application required by this subsection (1) shall be sent to the office. If the office denies the application, the applicant may appeal to the board for final determination.

(2) A fee as specified in section 34-32.5-125, and a financial warranty in an amount the board shall determine pursuant to section 34-32.5-117 (4), shall accompany the application and shall be paid by the applicant.

(3) 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.

(4) Applications for permits made pursuant to subsection (1) 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 (2) of this section. The provisions of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 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 that 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 34-32.5-114 and 34-32.5-115.

(5) (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 subsection (1) of this section may request the conversion of the permit by filing an application for a permit pursuant to subsection (1) of this section or section 34-32.5-112; 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 (5) shall be processed and final action taken thereon in accordance with subsection (1) of this section or section 34-32.5-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (5) or section 34-32.5-115, 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 subsection (2) of this section or in section 34-32.5-115 (3) or 34-32.5-117 (4).

(c) The provisions of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 concerning publication, notice, written objections, petitions, and supporting documents shall so far as practicable apply to this section.

(d) The board or office shall not deny the conversion of a permit for any reason other than those set forth in section 34-32.5-115 (4).

(6) If the operator is a department, division, or agency of federal, state, county, or municipal government, 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 (1) to (5) of this section. Financial warranty under subsection (2) of this section shall not be required of the operator if it is a unit of county or municipal government or the department of transportation 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 34-32.5-116.

(7) An operator may, within the term of a reclamation permit, apply to the board or to the office for a reclamation permit amendment increasing the acreage to be affected or otherwise revising 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 amended application shall be accompanied by a fee as specified in section 34-32.5-125.

**Source: L. 95:** Entire article added, p. 1161, § 1, effective July 1.

**34-32.5-111. Special permits - fifteen-calendar-day processing.** (1) (a) An operator of a construction materials extraction operation is subject to this section if the operation is conducted solely to obtain materials for highway, road, utility, or similar construction purposes under a federal, state, county, city, town, or special district contract that requires work to commence within a specified short period of time and will affect no more than thirty acres of land.

(b) An operator of a one-time excavation project that is not performed pursuant to a federal, state, county, city, town, or special district contract is subject to this section if the project generates small quantities of construction materials that are exported from the extraction site and are incidental to the intent of the project. A one-time excavation project that results in excess construction materials and that introduces construction materials into the construction materials market must obtain a permit pursuant to this subsection (1)(b). An operation that qualifies for a permit pursuant to this subsection (1)(b) must be clearly defined, of short duration and scope, affect no more than thirty acres, and not employ material processing activities typically associated with mining operations. Reclamation of all affected lands shall be completed within twelve months after issuance of the permit. An operator possessing a permit issued pursuant to this subsection (1)(b) must convert to the appropriate regular construction materials permit if extraction and export of materials from the site are not completed within twelve months after issuance of a permit pursuant to this subsection (1)(b).

(2) (a) An operator shall apply for a special permit by filing a written application with the board on forms provided by the board for such purpose. An approved special permit shall authorize the operator to engage in the operations described on such permit until the contractual reason for such operations has been completed.

(b) An application shall consist of:

(I) Three application forms;

(II) The application fee specified in section 34-32.5-125;

(III) The financial warranty specified in subsection (5) of this section, unless the office shows good cause that the board should set such financial warranty at a different amount pursuant to section 34-32.5-117; and

(IV) Three copies of an accurate map of the affected land, prepared by a professional land surveyor, professional engineer, or other qualified person. Such map shall show 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 operation.

(c) Each application form must include:

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

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

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

(IV) The approximate size of the affected land;

(V) Information sufficient to describe or identify the type of operation proposed and how it will be conducted;

(VI) The measures to be taken to comply with applicable provisions of section 34-32.5-116;

(VII) The terms of the governmental contract that make a special permit necessary or a clear description of the one-time excavation project described in subsection (1)(b) of this section;

(VIII) Evidence of any financial warranty required under the governmental contract; and

(IX) A statement that the operator has applied for necessary local government approval.

(3) If the board determines that any of the affected land lies within the boundaries of lands described in section 34-32.5-115 (4)(f), such land shall be withdrawn from the operation.

(4) At any time after the completion of reclamation the operator may notify the board that the land or a portion of the land has been reclaimed. Upon receipt of such notice the board

shall cause the land to be inspected, and, within sixty days after the board finds the reclamation to be satisfactory and in accordance with the plan agreed upon, the board shall release the performance and financial warranties or the appropriate portions of such warranties.

(5) Special permits shall be denied or issued by the board within fifteen calendar days after the date an application is submitted. Approval shall depend on the application, map, fee, performance warranty, and financial warranty being in compliance with this section. If action on an application is not completed within such fifteen-day period, the permit shall be approved and promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand five hundred dollars per affected acre or such other amount as may be specified by rule of the board.

(6) A governmental subdivision shall be exempt from subparagraphs (II) and (III) of paragraph (b) of subsection (2) of this section when such subdivision, acting as an operator, requires a permit solely to mine construction materials for the construction of public roads under a contract with the department of transportation or otherwise.

**Source: L. 95:** Entire article added, p. 1164, § 1, effective July 1. **L. 2018:** (1), IP(2)(c), and (2)(c)(VII) amended, (SB 18-184), ch. 132, p. 857, § 1, effective August 8.

**Editor's note:** Section 3 of chapter 132 (SB 18-184), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

**34-32.5-112. Application for reclamation permit - changes in permits - fees - notice.** (1) (a) To obtain a reclamation permit, an operator shall apply in writing to the board or the office on forms provided by the board. If approved, the reclamation permit shall authorize the operator to engage in the mining operation described in the application upon the affected land for the life of the mine.

(b) Each application shall consist of:

(I) Five copies of the application;

(II) A reclamation plan submitted with each copy of the application;

(III) An accurate map of the affected land submitted with each copy of the application; and

(IV) The application fee specified in section 34-32.5-125.

(c) Each application form shall include:

(I) The legal description and area of affected land;

(II) The name of the owner of the surface of the area of affected land;

(III) The name of the owner of the substance to be mined;

(IV) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;

(V) The address and telephone number of the general office and the local address and telephone number of the applicant;

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

(VII) The size of the area to be worked at any one time;

(VIII) A timetable estimating the periods required for 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 or the office.

(2) The reclamation plan shall include provisions for, or a 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:

(a) A description of the types of reclamation the operator proposes to achieve in the reclamation of the affected land, why each was chosen, and the amount of acreage accorded to each;

(b) A description of how the reclamation plan will be implemented to meet section 34-32.5-116;

(c) A proposed plan or schedule indicating when and how reclamation will be implemented, and such plan or schedule shall not be tied to a specific date but shall be tied to the implementation or completion of different stages of the mining operation;

(d) A map showing the proposed affected lands by all phases of the total scope of the mining operation. Such map shall:

(I) Indicate the expected physical appearance of the area of the affected land, correlated to the proposed timetables required by subparagraph (VIII) of paragraph (c) of subsection (1) of this section and the plan or schedule required by paragraph (c) of this subsection (2); and

(II) Portray the proposed final land use for each portion of the affected lands.

(3) The map of the affected lands shall:

(a) Be made by a professional land surveyor, professional engineer, or other qualified person;

(b) Identify the area that corresponds with the application;

(c) Show adjoining surface owners of record;

(d) Be made to a scale of not less than one hundred feet to the inch and not more than six hundred sixty feet to the inch;

(e) Show the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines within the area of the affected land and within two hundred feet of all boundaries of such area;

(f) Show the total area to be involved in the operation, including the area to be mined and the area of affected land;

(g) Show the topography of the area using contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

(h) Indicate on a map or by a statement the general type, thickness, and distribution of soil over the area in question, including the affected land;

(i) Show the type of vegetation covering the affected land.

(4) The reclamation plan shall also show by statement or map the depth and thickness of the deposit to be mined and the thickness and type of the overburden to be removed, and where overburden is stockpiled, the approximate volumes stockpiled.

(5) The application fee specified in section 34-32.5-125 shall be paid.

(6) Reclamation shall be completed within five years after the date the operator advises the board that each phase of construction material extraction has been completed, as provided in section 34-32.5-116 (4)(q). Such five-year 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.

(7) (a) An operator may, within the term of a reclamation permit, apply to the board or the office for a reclamation permit amendment to increase the acreage to be affected or otherwise revise the reclamation plan. An application for the amendment of a reclamation permit shall be reviewed by the board or office in the same manner as an application for a new reclamation permit. The operator shall also submit such supplemental performance and financial warranties as may be required by the board or office for the additional acreage. If the area described in the original application is reduced, then the amount of the financial warranty shall be reduced proportionately. When applicable, the operator shall file with the application for amendment a map and an application with the same content as required for an original application.

(b) An amended application shall be accompanied by the fee specified in section 34-32.5-125.

(c) When an operator files a notice of temporary cessation pursuant to section 34-32.5-103 (11)(b), such notice shall be accompanied by the fee specified in section 34-32.5-125.

(8) The information provided in an application for a reclamation permit that relates to the location, size, or nature of the deposit or information required by subsection (4) of this section and that is marked confidential by the operator shall be protected by the board and the office as confidential information. Such information shall not be a matter of public record in the absence of a written release from the operator or until the mining operation has been terminated. A person who willfully and knowingly violates this subsection (8) or section 34-32.5-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(9) (a) Upon the filing of an application for a reclamation permit, the applicant shall place a copy of such application for public inspection at the office of the board and the office of the county clerk and recorder of the county in which the affected land is located. Such copy shall not include the information exempted by subsection (8) of this section. The copy placed at the office of the county clerk and recorder shall not be recorded but shall be retained until such application has been heard by the board or the office and shall be available for inspection during such period. At the end of such period, the copy may be reclaimed or destroyed by the applicant.

(b) The applicant shall cause notice of the filing of the application to be published in a newspaper of general circulation in the area of the proposed mining operation once a week for four consecutive weeks, commencing not more than ten days after the filing of such application with the board or office. Such notice shall contain information about the:

(I) Identity of the applicant;

(II) Location of the proposed mining operation, if such information does not violate subsection (8) of this section;

(III) Proposed dates of commencement and completion of the operation;

(IV) Proposed future use of the affected land;

(V) Location where additional information about the operation may be obtained;

(VI) Location and final date for filing objections with the board or the office.

(c) The applicant shall mail a copy of such notice immediately after first publication to all owners of record of the surface and mineral rights of the affected land, the owners of record of all land surface within two hundred feet of the affected lands, and any other owners of record designated by the board who may be affected by the proposed mining operation. Proof of such notice and mailing, such as certified mail with return receipt requested, where possible, shall be provided to the board or the office and shall become part of the application.

**Source: L. 95:** Entire article added, p. 1165, § 1, effective July 1. **L. 2002:** (8) amended, p. 1546, § 301, effective October 1. **L. 2004:** (9)(c) amended, p. 758, § 1, effective May 13.

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**34-32.5-113. Exploration notice - reclamation requirements.** (1) A person desiring to conduct exploration shall, prior to entry upon the lands, file with the board a notice of intent to conduct exploration operations on a form approved by the board. Such notice shall be accompanied by the fee specified in section 34-32.5-125.

(2) The notice shall contain:

(a) The name of the person or organization doing the exploration;

(b) A statement that exploration will be conducted pursuant to the terms and conditions listed on the approved form;

(c) A brief description of the type of operations that will be undertaken;

(d) A description of the lands to be explored, by township and range;

(e) An approximate date of commencement of operations; and

(f) A description of the measures to be taken to reclaim affected lands, consistent with section 34-32.5-116.

(3) All information provided to the board in a notice of intent to conduct exploration shall be protected as confidential information by the board and shall not be a matter of public record In the absence of a written release from the operator.

(4) (a) Upon filing a notice of intent to conduct exploration, the applicant shall provide a financial warranty in an amount determined by the office.

(b) An applicant may submit statewide warranties for exploration if such warranties are in an amount fixed by the board by rule and such person otherwise complies with this section for every area to be explored.

(5) Upon completion of the exploration, there shall be filed with the board a notice of completion of exploration operations. Reclamation shall be completed according to section 34-32.5-116 and the approved notice of intent.

(6) All drill holes sunk for the purpose of exploring for locatable or leasable minerals on any land within the state of Colorado shall be plugged, sealed, or capped pursuant to this subsection (6) by the person conducting the exploration. This subsection (6) shall not apply to holes drilled in conjunction with a mining operation for which the board has issued a permit nor to wells or holes regulated pursuant to section 34-33-117 and to article 60 of this title or article 80, 90, 91, or 92 of title 37, C.R.S.

(7) (a) Drill holes sunk for exploration purposes shall be abandoned in the following manner:

(I) Any artesian flow of groundwater to the surface shall be eliminated by a plug made of cement or similar material or by a procedure sufficient to prevent such flow.

(II) (A) Drill holes that encounter an aquifer in volcanic or sedimentary rock shall be sealed using a sealing procedure that is adequate to prevent fluid communication between aquifers.

(B) For purposes of this subparagraph (II), "aquifer" shall have the same meaning as set forth in section 37-90-103 (2), C.R.S.

(III) Each drill hole shall be securely capped at a minimum depth that is compatible with local cultivation practices or at a minimum of two feet below either the original land surface or the collar of the hole, whichever is lower. The cap shall be made of concrete or other material which is satisfactory for such capping and the site shall be backfilled above the cap to the original land surface.

(IV) If a drill hole is to be ultimately used as or converted to a water well, the user shall comply with the applicable provisions of title 37, C.R.S.

(V) Each drill site shall be reclaimed pursuant to section 34-32.5-116, including, if necessary, reseeding if grass or a crop was destroyed.

(b) Abandonment in the manner provided in paragraph (a) of this subsection (7) shall occur immediately following the drilling of the hole and the probing for construction materials in the exploration process; except that a drill hole may be maintained as temporarily abandoned without being plugged, sealed, or capped. However, no drill hole that is to be temporarily abandoned without being plugged, sealed, or capped shall be left in such a condition as to allow fluid communication between aquifers. Such temporarily abandoned drill holes shall be securely covered in a manner that will prevent injury to persons and animals.

(c) No later than sixty days after the completion of the abandonment of a drill hole that has artesian flow at the surface, the person conducting the exploration shall submit to the head of the office a report containing the location of such hole to within two hundred feet of its actual location, the estimated rate of flow of such artesian flow, if known, and a description of the technique used to plug such drill hole. Such report shall be confidential and shall not be a matter of public record.

(d) No later than twelve months after the completion of the abandonment of a drill hole, the person conducting the exploration shall file with the head of the office a report containing the location of the hole to the nearest forty-acre legal subdivision and the facts of the technique used to plug, seal, or cap the hole. Such report and the information in such report shall be confidential and shall not be a matter of public record.

(e) The head of the office may waive, upon written application filed with the director, any of the administrative provisions of this subsection (7) that pertain to aquifers.

(8) The board shall inspect explored lands within ninety days after receiving notification from the person exploring the lands that reclamation has been completed. If the board finds the reclamation satisfactory, it shall release all applicable performance and financial warranties. The financial warranty shall not be held for more than sixty days after satisfactory completion.

(9) The board and the office are authorized to inspect any ongoing exploration operation or any exploration operation prior to the request for release of performance and financial warranties in order to determine compliance with this article.

**Source: L. 95:** Entire article added, p. 1169, § 1, effective July 1.

**34-32.5-114. Protests - petition for hearing.** An aggrieved person has the right to file written objections to and any person has the right to file written statements in support of an application for a permit and to petition for a hearing. Such protests or petitions for a hearing shall be filed with the board or office not more than twenty days after the date of last publication of notice made pursuant to section 34-32.5-112 (9). For good cause shown in such protest or petition documents, the board may, in its discretion, hold a hearing pursuant to section 34-32.5-

115 to determine whether the permit should be granted. The applicant shall be notified within ten days after any objections are filed with respect to the application and shall be supplied with a copy of the written objections.

**Source: L. 95:** Entire article added, p. 1171, § 1, effective July 1.

**34-32.5-115. 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 to determine whether a permit should be granted.

(2) Prior to holding a hearing, the board or the office shall provide notice to any person who filed a protest or petition for a hearing or statement in support of an application pursuant to section 34-32.5-114. Notice of the time, date, and location of the hearing shall be published in a newspaper of general circulation in the locality of the proposed mining operation once a week for the two consecutive weeks immediately preceding the hearing. The hearing shall be conducted pursuant to article 4 of title 24, C.R.S. A final decision on the application shall be made within one hundred twenty days after 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 may reasonably extend the time in which a final decision must be made by sixty days.

(3) If action upon an application is not completed within the 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) In the determination of whether the board or the office shall grant a permit to an operator, the applicant must comply with the requirements of this article and section 24-4-105 (7), C.R.S. The board or office shall not deny a permit except on one or more of the following grounds:

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

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

(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this article.

(d) The proposed mining operation, the reclamation program, or the proposed future use is 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.

(e) The mining operation will adversely affect the stability of any significant, valuable, and permanent manmade structures located within two hundred feet of the affected land; except that the permit shall not be denied on this basis 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 or, where such an agreement cannot be reached, the applicant provides an appropriate engineering evaluation that demonstrates that such structures shall not be damaged by proposed construction materials excavation operations.

(f) The mining operation is 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 parks and wildlife commission or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan does not conform to the requirements of section 34-32.5-116.

**Source: L. 95:** Entire article added, p. 1172, § 1, effective July 1. **L. 2012:** (4)(f)(IV) amended, (HB 12-1317), ch. 248, p. 1234, § 88, effective June 4.

**34-32.5-116. Duties of operators - reclamation plans.** (1) Every operator to whom a permit is issued pursuant to this article shall perform the reclamation 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 necessary to achieve the proposed postmining land use.

(3) (a) Each year, on the anniversary date of the permit, an operator shall submit the annual fee specified in section 34-32.5-125, a report and 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, reclamation that will be performed during the coming year, the dates for the beginning of active operations, and the date active operations ceased for the year, if any.

(b) Notwithstanding any provision of paragraph (a) of this subsection (3), an operator who has filed an application pursuant to this article shall submit the annual fee specified in section 34-32.5-125 in addition to the map and plan. Where an operator is late in payment of the annual fee by greater than sixty days, the office shall set the matter for a hearing before the board for permit revocation and forfeiture of the financial warranty.

(4) Reclamation plans and their implementation are required on all affected lands and shall conform to the following requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final post-extraction land use selected in accordance with paragraph (m) of this subsection (4).

(b) If earth dams are constructed to impound water, the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules, or regulations of the federal government or the state of Colorado or with any local government pollution ordinances.

(c) An operator shall demonstrate that all mined material disposed of within the affected area and all affected areas to be reclaimed as part of the approved application will not result in any unauthorized release of pollutants to the surface drainage system.

(d) No unauthorized release of pollutants to groundwater shall occur from any materials mined, handled, or disposed of within the permit area.

(e) All refuse shall be disposed of in a manner that controls unsightliness or the deleterious effects of such refuse.

(f) In those areas where revegetation is part of the reclamation plan, land shall be revegetated so that a diverse, effective, and long-lasting vegetative cover is established that is capable of self-regeneration and is at least equal, with respect to the extent of cover, to the natural vegetation of the surrounding area. Species chosen for revegetation shall be compatible for the proposed post-extraction land use and shall be of adequate diversity to establish successful reclamation.

(g) Where it is necessary to remove overburden to mine the construction material, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a period of time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that such topsoil is preserved from wind and water erosion, remains free of contamination, 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.

(h) 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. Nothing in this paragraph (h) shall be construed to allow the operator to avoid compliance with other statutory provisions governing well permits and augmentation requirements and replacement plans when applicable.

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

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

(k) All affected areas to be seeded or to receive transplants shall be seeded or transplanted using reclamation practices and techniques acceptable to the office. Planting methods include seedbed and seed preparation and soil amendments appropriate to the topography, physical and chemical characteristics of soil, and selected plant species adequate to give the best chance for successful reclamation.

(l) The operator may permit the public to use lands it owns 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.

(m) With respect to 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. Before approving a new reclamation plan or a change in an existing reclamation plan, the board may confer with the local board of county commissioners and the board of supervisors of the conservation district if the mining operation is within the boundaries of a conservation district.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to slopes commensurate with the proposed land use that shall not be too steep to be traversed by livestock. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local conservation district, if any, shall determine when grazing may start.

(o) If the operator's choice of reclamation is for agricultural or horticultural crops that normally require the use of farm equipment, the operator shall grade the affected land so 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 such 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 minimum requirements necessary for such reclamation shall be agreed upon between the operator and the board.

(q) (I) All reclamation requirements required by this section shall be carried to completion with reasonable diligence and conducted concurrently with mining operations to the extent practicable, taking into consideration the mining plan, safety, economics, the availability of equipment and material, and other site-specific conditions relevant and unique to the affected land and the postmining land use. Upon completion of each phase of mining and, in accordance with the reclamation plan, final reclamation of each mining phase shall be completed prior to the expiration of five years after the date the operator advises the board in an annual report that such phase of mining has been completed, unless such period is extended by the board pursuant to section 34-32.5-112; except that reclamation may be completed in phases and the five-year period may be applied separately to each phase as it commences during the life of the mine.

(II) No planting shall be required on affected land:

(A) 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 operations;

(B) Within depressed haulage roads or final cuts while such roads or final cuts are being used or made; or

(C) Where permanent pools or lakes have been formed.

(III) No planting of any kind shall be required on affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are chemically incompatible with plant growth, 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. When natural weathering and leaching of any of such affected land, over a period of five years after commencement of reclamation, fails to remove the

chemical and physical characteristics inhibitory to plant growth or if, at any time within such five-year period, the board determines that any of such affected land is, and during the remainder of said five-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 and not otherwise subject to reclamation under this article.

(IV) With the approval of the board and the owner of the land to be reclaimed, an operator may substitute land previously mined and owned by the operator that is 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 excavated or mined but not owned by the operator if the operator has not previously abandoned unreclaimed land affected by mining operations. As an alternative, the board may grant the reclamation of lesser or greater acreage if the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If an area is so substituted, the operator shall submit a map of the substituted area conforming to all map requirements in 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.

(r) A building, or a structure placed on affected land during extraction operations, may remain on the affected land at the option of the operator with the approval of the landowner and the board if such building or structure conforms to local building and zoning codes and is compatible with the postmining land use.

**Source: L. 95:** Entire article added, p. 1174, § 1, effective July 1. **L. 96:** (3) amended, p. 180, § 6, effective April 18. **L. 2002:** (4)(m) and (4)(n) amended, p. 518, § 16, effective July 1.

**34-32.5-117. Warranties of performance - warranties of financial responsibility - release of warranties.** (1) A permit shall not be issued under this article until the board receives the performance and financial warranties described in subsections (2), (3), and (4) of this section.

(2) A "performance warranty" is a written promise made by the operator to the board to comply with this article and 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, such operators may limit the scope of their individual performance warranties if such warranties, in the aggregate, warrant the performance of all requirements of this article.

(3) (a) A "financial warranty" is a written promise a party makes to the board to be responsible for reclamation costs, up to the amount specified in subsection (4) of this section, and includes proof of financial responsibility. A financial warranty shall be in such form as the board may prescribe and may be provided by the operator, by a third party, or by any combination of persons or entities.

(b) 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 such property. A person offering such a financial warranty shall submit information to show clear title to and the value of such property.

(c) The board may refuse to accept a financial warranty if:

(I) The value of such warranty is dependent upon the success, profitability, or continued operation of the mine; or

(II) It determines that such warranty cannot reasonably be converted to cash within one hundred eighty days of forfeiture.

(d) For construction materials operations:

(I) This subsection (3) shall apply on July 1, 1993, to a deed of trust used as collateral for a new financial warranty completed on or after such date;

(II) This subsection (3) shall be effective on January 1, 1996, with respect to a:

(A) Financial warranty that is collateral for a deed of trust used as collateral for a financial warranty in existence on July 1, 1993, and subsequent amendments of such deed of trust; and

(B) Financial warranty completed before July 1, 1993, if the value of such financial warranty includes a construction material value or if construction material value is used to update such warranty. The value of a financial warranty described in this sub-subparagraph (B) shall include the construction material value for the life of the warranty.

(e) An instrument offered as a financial warranty pursuant to this subsection (3) shall provide that the board may recover any necessary costs it incurs, including attorney fees, in foreclosing on or realizing collateral used to secure such financial warranty in the event of forfeiture.

(f) Proof of financial responsibility may consist of 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 this 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, and 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 the 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 the amount specified in 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 of such warranty;

(D) Existing liens and encumbrances applicable to project-related fixtures and equipment shall be subordinated to the lien described in section 34-32.5-118; except that liens in favor of the United States, a state, or a political subdivision shall not be so subordinated;

(E) Project-related fixtures and equipment shall 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) The obligations enjoy a rating by such rating organization of 'A' or better;

(C) The financial warrantor's net worth was at least twice the amount of all financial warranties made by such warrantor as of the close of the most recent fiscal year;

(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 such year the financial warrantor's:

(A) Net worth was at least ten million dollars and was equal to or greater than twice the amount of all financial warranties;

(B) Tangible fixed assets in the United States were worth at least twenty million dollars;

(C) Total liabilities-to-net-worth ratio was not more than two to one;

(D) Net income, excluding nonrecurring items, was positive. Nonrecurring items that affect net income shall 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) Proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with 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 a 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 such year plus all lands affected in previous permit years and not yet fully reclaimed. For purposes of this paragraph (b), reclamation costs shall be computed with reference to current reclamation costs. A financial warranty shall be sufficient to assure the completion of reclamation of affected lands if, because of forfeiture, the office has to complete such reclamation and shall include an additional amount equal to five percent of the amount of the financial warranty to defray 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 a financial warranty.

(c) (I) The board may:

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

(B) By rule or permit condition, require that proof of value of all or any group of warranties held by the board be submitted on a periodic basis;

(C) By rule or permit condition, limit certain types of warranties to specific purposes or require that a specified 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 an adjustment to fulfill the new requirements.

(5) (a) An operator may file a written notice of completion with the office whenever such operator believes that any or all requirements of this article have been completed with respect to any or all of such operator's affected lands. Within sixty days after receiving such notice, or as soon as weather conditions permit, the office shall inspect affected lands and the reclamation described in the notice to determine if the operator has complied with all applicable requirements.

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

(c) If the board or office finds that an operator has not complied with applicable requirements of this article, it shall advise the operator of such noncompliance not more than sixty days after the date of the inspection.

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

(6) (a) A financial warranty shall be maintained in good standing for the entire life of a permit issued under this article. A financial warrantor shall immediately notify the board of an event that may impair its warranty.

(b) Each financial warrantor who provides proof of financial responsibility in a form described in subsection (3)(f)(IV) to (3)(f)(VII) or subsection (8) of this section shall cause to be filed with the board a certification by an independent auditor. Such certification shall be filed annually and shall provide that, as of the close of the financial warrantor's most recent fiscal year, such financial warrantor continued to meet all applicable requirements of such subparagraphs (IV) to (VII). A financial warrantor who no longer meets such requirements shall cause to be filed an alternate form of financial warranty.

(c) A financial warrantor who provides proof of financial responsibility in a form described in paragraph (b) of this subsection (6) shall notify the board within sixty days after a net loss is incurred in a 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 convenes 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. If a financial warrantor refuses to sign such an agreement, the board may, without hearing, order such financial warrantor to provide an alternate form of financial warranty.

(f) If the board finds, at any hearing held pursuant to this subsection (6), 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 the requirements of article 4 of title 24, C.R.S.

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

(8) (a) The board or office may accept a first-priority lien on project-related fixtures and equipment that must remain on site for the reclamation plan to be performed in lieu of including the cost of acquiring and installing such fixtures and equipment in the amount of the financial warranty prescribed pursuant to subsection (4) of this section.

(b) The board or office may accept a first-priority lien on project-related fixtures and equipment that must be demolished or removed from the site under a reclamation plan and may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited does not exceed the cost of demolishing and removing such 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. A financial warrantor that provides 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.

**Source: L. 95:** Entire article added, p. 1178, § 1, effective July 1.

**34-32.5-118. Forfeiture of financial warranties.** (1) A financial warranty shall be subject to forfeiture whenever the board determines that one or more of the following circumstances exist:

(a) The operator has violated a cease-and-desist order entered pursuant to section 34-32.5-124 and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to do so has elapsed; or

(b) The operator is in default under a performance warranty and has failed to cure such default although the operator has been given written notice and has had ample time to do so; or

(c) The financial warrantor has failed to maintain a financial warranty in good standing as required by section 34-32.5-117; or

(d) The financial warrantor no longer has the financial ability to carry out any obligations required under this article.

(2) When the board has reason to believe a financial warranty is subject to forfeiture, it shall so notify the operator and all financial warrantors. The board shall grant the operator and all financial warrantors the right to appear before the board at a hearing to be held not less than thirty days after the parties' receipt of such notice. Any such hearing shall be held in accordance with article 4 of title 24, C.R.S.

(3) (a) At a hearing held pursuant to subsection (2) of this section, the board may withdraw or modify any determination that the financial warranty is subject to forfeiture, settle or compromise the determination, or confirm its determination that the financial warranty should be forfeited.

(b) Upon finding that a financial warranty should be forfeited, the board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected financial warrantors to immediately deliver to the board all amounts warranted by applicable financial warranties.

(4) (a) The board, upon issuing an order pursuant to subsection (3) of this section, may request the attorney general to institute proceedings to secure or recover amounts warranted by forfeited financial warranties. The attorney general shall have the power, inter alia, to:

(I) Foreclose upon any real and personal property encumbered for the benefit of the state;

(II) Collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the board;

(III) Dispose of pledged property.

(b) The amount of a forfeited financial warranty shall constitute a lien upon project-related fixtures or equipment offered as proof of financial responsibility pursuant to section 34-32.5-117. Such lien shall be in favor of this state.

(c) The lien described in paragraph (b) of this subsection (4) shall have priority over all other liens and encumbrances, irrespective of the date of recordation, except liens of record on June 19, 1981, and liens of the United States, this state, and political subdivisions of this state for unpaid taxes and shall attach and be deemed perfected as of the date the board approves issuance of the operator's permit.

(5) Funds recovered by the attorney general in proceedings brought pursuant to subsection (4) of this section shall be held in the special account described in section 34-32.5-122 and shall be used to reclaim lands covered by forfeited warranties; except that five percent of the amount of such forfeited warranties shall be deposited in the mined land reclamation fund, created in section 34-32-127, to cover administrative costs incurred by the office in performing reclamation. The board shall have a right of entry to reclaim such lands, and upon completion of such reclamation the board shall present a full accounting to the financial warrantor and shall refund all unspent moneys.

(6) Notwithstanding any discharge of applicable financial warranties, an operator in default shall remain liable for the actual cost of reclaiming affected lands less any amounts expended by the board pursuant to subsection (5) of this section.

(7) Notwithstanding any provision of this section to the contrary, a corporate surety may elect to reclaim affected lands in accordance with an approved plan in lieu of forfeiting a bond penalty.

**Source: L. 95:** Entire article added, p. 1183, § 1, effective July 1.

**34-32.5-119. Operators - succession.** When one operator succeeds another at an uncompleted operation, the board shall release the first operator from all liability as to that operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes all liability for the reclamation of the affected land

and such obligation is covered by appropriate performance and financial warranties. The fee specified in section 34-32.5-125 (1)(a)(X) shall be paid to the board by the successor operator before the first operator is released from liability and before any financial warranties are released.

**Source: L. 95:** Entire article added, p. 1185, § 1, effective July 1. **L. 96:** Entire section amended, p. 180, § 7, effective April 18.

**34-32.5-120. Permit refused - operator in default.** The board shall not grant a permit for new mining operations to an operator who is found to be in violation of this article at the time of application.

**Source: L. 95:** Entire article added, p. 1185, § 1, effective July 1.

**34-32.5-121. Entry upon lands for inspection - reporting certain conditions.** (1) The board, the office, or their authorized representatives may enter upon the lands of an operator at any reasonable time for inspection purposes to determine if the requirements of this article have been or are being met.

(2) 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 or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property.

**Source: L. 95:** Entire article added, p. 1185, § 1, effective July 1.

**34-32.5-122. Fees, civil penalties, and forfeitures - deposit.** (1) All fees and assessments collected pursuant to this article and five percent of the proceeds of any financial warranty forfeited pursuant to section 34-32.5-123 for administrative costs associated with reclaiming sites for which the financial warranty has been revoked shall be deposited in the mined land reclamation fund, created in section 34-32-127. All civil penalties collected pursuant to this article shall be deposited in the general fund. Ninety-five percent of the proceeds of all financial warranties forfeited under section 34-32.5-118 shall be deposited in a special account in the general fund established by the board for the purpose of reclaiming lands that were required to be reclaimed under permits upon which such financial warranties had been forfeited.

(2) An applicant that desires to use the self-insurance provisions in section 34-32.5-117 (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 such applicant. Such funds are hereby annually made available to the office, which shall utilize outside financial and legal services for this purpose.

**Source: L. 95:** Entire article added, p. 1185, § 1, effective July 1.

**34-32.5-123. Operating without a permit - penalty.** (1) If an operator or person conducting exploration fails to obtain a valid permit or file a notice of intent pursuant to this article, the board or the office may issue an immediate cease-and-desist order. Concurrently with

the issuance of such an order, the board or the office may seek a restraining order or injunction pursuant to section 34-32.5-124.

(2) An operator who operates without a permit shall be subject to a civil penalty of not less than one thousand dollars per day nor more than five thousand dollars per day for each day the land has been affected, not to exceed three hundred sixty-five days. An operator who mines substantial acreage beyond the approved permit boundary may be found to be operating without a permit.

(3) A person who conducts exploration without filing a notice of intent shall be subject to a civil penalty of not less than fifty dollars per day 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.

(4) In addition to the civil penalties imposed in subsections (2) and (3) of this section, the board shall also assess a civil penalty in an amount not less than the amount necessary to cover costs incurred by the division in investigating the alleged violation.

**Source: L. 95:** Entire article added, p. 1186, § 1, effective July 1.

**34-32.5-124. Failure to comply with conditions of order, permit, or regulation.** (1) Whenever the board or the office has reason to believe that a violation of an order, permit, notice of intent, or regulation issued under this article has occurred, written notice of the alleged violation shall be given to the operator or person conducting the exploration. Such notice shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the alleged violator's agent for service of process. The notice shall state the provision alleged to have been violated and the facts alleged to constitute such violation and may include the nature of any corrective action proposed to be required.

(2) If the board determines that any provision of this article or any notice, permit, or regulation issued or promulgated pursuant to this article has been violated, it 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. Such order may include the nature of any corrective action proposed to be required and shall be served personally or by certified mail, return receipt requested, upon the alleged violator or the violator's agent for service of process.

(3) If an operator fails to comply with a cease-and-desist order issued by the board, the board or the office may request the attorney general to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order. Suits under this section shall be brought in the district court where the alleged violation occurs. If the board or the office determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

(4) The board or the office may require the alleged violator to appear before the board no sooner than thirty days after the issuance of such cease-and-desist order; except that an earlier date for hearing may be requested by the alleged violator.

(5) If a hearing is held pursuant to this section, it shall be open to the public and conducted in accordance with article 4 of title 24, C.R.S. The board shall permit all parties to respond to the notice served, present evidence and arguments on all issues, and conduct the cross-examination necessary for a full disclosure of the facts.

(6) (a) Upon a determination, after a hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke such permit.

(b) If the board suspends or revokes the permit of an operator, such operator may continue mining operations only for the purpose of bringing such operations into satisfactory compliance with the provisions of such operator's permit. Once such operations are completed to the satisfaction of the board, the board shall reinstate such permit.

(7) A person who violates any provision of a permit issued under this article shall be subject to a civil penalty of not less than one hundred dollars per day nor more than one thousand dollars per day for each day during which such violation occurs.

**Source: L. 95:** Entire article added, p. 1186, § 1, effective July 1.

**34-32.5-125. Mined land reclamation fund - fees.** (1) Fees for fiscal year 2007-08 and for each subsequent year of operation shall be collected by the office for operations according to the following schedule:

(a) Applications pursuant to:

(I) Section 34-32.5-110 (2) $ 1,258

(II) Section 34-32.5-110 (2) relating to permit amendments $ 827

(III) (A) Section 34-32.5-111 (1)(a)$ 898

(B) Section 34-32.5-111 (1)(b)$ 400

(IV) Section 34-32.5-112, except for applications relating to the mining operations specified in subparagraph (I) of this paragraph (a) $ 2,696

(V) Section 34-32.5-112 relating to quarries $ 3,342

(VI) Section 34-32.5-112 (8) relating to reclamation permit amendments $ 2,229

(VII) Sections 34-32.5-110 to 34-32.5-112 relating to revisions to permits other than amendments $ 216

(VIII) Section 34-32.5-103 (11) relating to temporary cessations of operations $ 144

(IX) Section 34-32.5-113 $ 108

(X) Section 34-32.5-119 $ 144

(b) Annual fees for fiscal year 2007-08 and for each subsequent year for operations pursuant to:

(I) Section 34-32.5-110 (2) $ 323

(II) Section 34-32.5-112 $ 791

(III) (A) Section 34-32.5-111 (1)(a)$ 504

(B) Section 34-32.5-111 (1)(b)$ 200

(IV) Section 34-32.5-113 $ 86

(c) (Deleted by amendment, L. 2000, p. 1165, § 1, effective July 1, 2000.)

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

**Source: L. 95:** Entire article added, p. 1187, § 1, effective July 1. **L. 98:** (2) added, p. 1341, § 62, effective June 1. **L. 2000:** (1) amended, p. 1165, § 1, effective July 1. **L. 2007:** IP(1), (1)(a), and (1)(b) amended, p. 960, § 2, effective July 1. **L. 2018:** (1)(a)(III) and (1)(b)(III) amended, (SB 18-184), ch. 132, p. 858, § 2, effective August 8.

**Editor's note:** Section 3 of chapter 132 (SB 18-184), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after August 8, 2018.

## ARTICLE 33

Colorado Surface Coal
Mining Reclamation Act

**34-33-101. Short title.** This article shall be known and may be cited as the "Colorado Surface Coal Mining Reclamation Act".

**Source: L. 79:** Entire article added, p. 1254, § 1, effective July 1.

**34-33-102. Legislative declaration.** It is declared to be the policy of this state that surface coal mining operations and the reclamation of land affected by such operations are both necessary and proper activities. The purpose of this article is to assure that the coal required for local and national energy needs and for economic and social well-being is provided and to provide a balance among the protection of the environment, agricultural productivity, and the need for coal as an essential source of energy. It is the intent of the general assembly by the enactment of this article to allow for the continued development of the surface coal mining operations in this state, while requiring those persons involved in surface coal mining operations to reclaim land affected by such operations as contemporaneously as possible with the surface coal mining operations so that the affected land may be put to a beneficial use. It is the further intent of the general assembly by the enactment of this article to protect society and the environment from the adverse effects of surface coal mining operations, assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from such operations; assure that surface coal mining operations are not conducted where reclamation as required by this article is not feasible; and to assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the state under this article. It is the further intent of the general assembly to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of this article and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public, to aid in the protection of wildlife and aquatic resources, and to protect and promote the health, safety, and general welfare of the people of this state. It is the intent of the general assembly that, in the administration of this article, the small operator be assisted in complying with the provisions of this article, particularly in the areas of bonding, technical and administrative assistance, and timely processing of permit applications.

**Source: L. 79:** Entire article added, p. 1254, § 1, effective July 1.

**34-33-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Administrator" means the head of the office of mined land reclamation in the division of reclamation, mining, and safety in the department of natural resources.

(2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be permitted where the board determines that they are in compliance with section 34-33-120 (2)(h).

(4) "Board" means the mined land reclamation board created pursuant to section 34-32-105.

(5) "Complete permit application" means an application which minimally addresses each and every requirement of sections 34-33-110 and 34-33-111 and section 34-33-120 or 34-33-121.

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

(7) "Division" means the division of reclamation, mining, and safety in the department of natural resources.

(8) "Executive director" means the executive director of the department of natural resources.

(9) "Federal land" means any land, including mineral interests, owned by the United States, but excluding Indian lands.

(10) "Historic areas" means those lands which are listed or are eligible for listing in the national register of historic places or the state register of historic properties or which are designated pursuant to the federal "Historic Sites, Buildings, and Antiquities Act", as amended.

(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, in a surface coal mining and reclamation operation which could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions, or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(12) "Indian lands" means all lands, including, but not limited to, mineral interests and rights-of-way, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, including mineral interests held in trust for or supervised by any Indian tribe.

(13) "Indian tribe" means any Indian tribe, band, group, or community having a governing body recognized by the secretary of the United States department of the interior.

(13.5) "Office" means the office of mined land reclamation, created in section 34-32-105.

(14) "Operator" means any person engaged in surface coal mining and reclamation operations who removes or intends to remove more than two hundred fifty tons of coal from the earth or from coal mine waste disposal facilities within twelve consecutive calendar months in any one location.

(15) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, oil shale and oil extracted from shale by an in situ process, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

(16) "Permit" means a permit to conduct surface coal mining and reclamation operations.

(17) "Permit applicant" or "applicant" means a person applying for a permit.

(18) "Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by section 34-33-113 and shall be readily identifiable by appropriate markers on the site.

(19) "Permit revision" means a significant alteration of the terms or requirements of a permit issued pursuant to this article, including, but not limited to, significant changes in the reclamation plan, and other actions which the board may by regulation prescribe. "Permit revision" does not include a technical revision as defined in subsection (27) of this section.

(20) "Permittee" means a person holding a permit.

(21) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, Indian tribe conducting surface coal mining and reclamation operations outside Indian lands, any other business organization, and any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government.

(22) "Prime farmland" shall have the same meaning prescribed pursuant to the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the regulations thereunder.

(23) "Reclamation plan" means a plan submitted by an applicant under this article which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 34-33-111.

(24) "Secretary" means the secretary of the United States department of the interior.

(25) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations.

(26) "Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of section 34-33-121 which involve surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, removal of coal from coal mine waste disposal facilities, the use of explosives and blasting, and the use of in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site;

except that such activities do not include any of the following: Coal exploration subject to section 34-33-117, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe, or the extraction of geothermal resources.

(b) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(27) "Technical revision" means a minor change, including incidental boundary revisions, to the terms or requirements of a permit issued under this article, which change shall not cause a significant alteration in the operator's reclamation plan.

(28) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this article due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of such permit or this article due to indifference, lack of diligence, or lack of reasonable care.

**Source: L. 79:** Entire article added, p. 1255, § 1, effective July 1. **L. 81:** (14) and (26)(a) amended, p. 1681, § 1, effective June 16. **L. 92:** (14), (21), and (26)(a) amended, p. 1894, § 1, effective May 29; (1) and (7) amended and (13.5) added, p. 1944, § 48, effective July 1. **L. 95:** (14), (21), and (26)(a) amended, p. 147, § 1, effective April 7. **L. 2006:** (1) and (7) amended, p. 217, § 14, effective August 7.

**Cross references:** For the "Historic Sites, Buildings, and Antiquities Act", see 16 U.S.C. §§ 461-467; for the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-33-104. Administration.** In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office and board have the full power and authority to carry out and administer the provisions of this article.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** Entire section amended, p. 1945, § 49, effective July 1.

**34-33-105. Jurisdiction of office and board.** The office and board shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this article.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** Entire section amended, p. 1945, § 50, effective July 1.

**34-33-106. Additional duties of division.** (1) In addition to duties of the division set forth in article 32 of this title, the division shall:

(a) Carry on a continuing review of the problems of surface coal mining and land reclamation in this state;

(b) Cause to be published the monthly agenda of the board with a brief description of any affected land and the name of the applicant. These publications shall be in a newspaper of general circulation in the locality of the proposed surface coal mining operations listed in that month's agenda.

(2) It is the duty of the department of agriculture, the department of higher education, the department of public health and environment, the state conservation board, the Colorado geological survey, the division of water resources, the division of parks and wildlife, the university of Colorado, Colorado state university, Colorado school of mines, and the state forester to furnish the board and its designees, as far as practicable, whatever data and technical assistance the board may request and deem necessary for the performance of reclamation and enforcement duties pursuant to this article.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 2002:** (2) amended, p. 515, § 7, effective July 1.

**34-33-107. Powers of department.** The department may initiate and encourage studies and programs with the office and other appropriate state agencies relating to the development of less destructive methods of surface coal 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.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** Entire section amended, p. 1945, § 51, effective July 1.

**34-33-108. Rules and regulations - no more stringent.** (1) On July 1, 1979, the board shall commence development of reasonable rules and regulations respecting the administration and enforcement of this article and, in conformance therewith, shall promulgate such reasonable rules and regulations pursuant to the provisions of section 24-4-103, C.R.S. Rules and regulations promulgated pursuant to this article shall be no more stringent than required to be as effective as the federal "Surface Mining Control and Reclamation Act of 1977", as amended and federal regulations thereunder, unless the board makes a specific finding that either protection of the public safety or the environment requires a more stringent regulation. Nothing in this subsection (1) shall supercede rules in effect prior to May 29, 1992.

(2) Any rule or regulation promulgated by the board which is required by a federal law, rule, or regulation shall become repealed and shall not be enforced when said federal law is repealed or said federal rule or regulation is deleted or withdrawn. Any provision of a permit issued under this article that is required by any rule of the board which is repealed in accordance with this subsection (2) shall not be enforceable. The repeal of such rule or regulation shall become effective ninety days after publication of the repeal in the federal register but, upon

request, will be subject to a rule-making hearing by the board as set forth in article 4 of title 24, C.R.S.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 81:** Entire section amended, p. 1681, § 2, effective June 16; entire section amended, p. 1685, § 1, effective June 23. **L. 92:** Entire section amended, p. 1897, § 8, effective May 29. **L. 95:** (2) amended, p. 148, § 2, effective April 7.

**Cross references:** For the federal "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-33-109. Permits.** (1) No later than eight months after the date on which a Colorado program is approved by the secretary pursuant to section 503 of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, (Pub.L. 95-87), such date to be determined and set forth in a rule of the board, no person shall conduct on lands within this state any surface coal mining and reclamation operations unless such person has first obtained a permit under this article; except that a person conducting surface coal mining and reclamation operations under an existing valid permit may conduct such operations beyond such date if an application for a permit has been filed in accordance with the provisions of this article, but the initial administrative decision has not been rendered; and except that no permit shall be required for reclamation operations on abandoned or unreclaimed lands not required to be reclaimed under state or federal law.

(2) No later than two months following said approval of a Colorado program by the secretary, all operators of surface coal mines, operating on such date of approval and intending to operate such mines after the expiration of eight months from such approval of the Colorado program, shall file an application for a permit with the division; except that, with regard to the requirements of section 34-33-110 (2)(1), such application shall be considered filed for the purposes of this subsection (2) if it contains all applicable hydrologic information reasonably available to the applicant as of the date of the application.

(3) If, upon such date of approval by the secretary of a Colorado program, a person has filed with the office an application for a permit in accordance with the "Colorado Mined Land Reclamation Act" and section 502 of said Pub.L. 95-87, and the office or board has not yet made a final decision on such application, the board or office shall, unless such application is withdrawn, act on such application in accordance with the "Colorado Mined Land Reclamation Act" and section 502 of Pub.L. 95-87; except that in no event shall such person be relieved of the obligation to obtain a permit as required by subsection (1) of this section and said Pub.L. 95-87.

(4) No governmental office of the state, other than the board or office, nor any political subdivision of the state shall have the authority to require reclamation of lands affected or proposed to be affected by surface coal mining operations.

(5) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years; except that, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for such specified longer term, the board or office may grant a permit for such longer term. A successor in interest to a permittee who applies for a new permit within thirty days after succeeding to such interest and

who is able to obtain bond coverage the same as or equivalent to that of the original permittee may continue surface coal mining and reclamation operations according to the approved surface coal mining operations and reclamation plan of the original permittee until such successor's application is granted or denied.

(6) A permit shall terminate if the permittee has not commenced the surface coal mining operations covered by such permit within three years after the issuance of the permit; except that the office or board may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement or threatening substantial economic loss to the permittee or by reason of conditions beyond the control and without the fault or negligence of the permittee; except that, in the case of a coal lease issued under the federal "Mineral Lands Leasing Act", as amended, extensions of time may not extend beyond the period allowed for diligent development in accordance with section 7 of that act; and except that, with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface coal mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(7) (a) Any permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to permit areas. The holder of the permit may apply for renewal, and such renewal shall be issued subsequent to fulfillment of the public notice requirements of sections 34-33-118 and 34-33-119, unless it is established by a preponderance of the evidence and written findings by the board are made that:

(I) The terms and conditions of the existing permit are not being satisfactorily met; except that renewal may be granted to the holder of the permit on the condition that the holder of the permit demonstrates that said holder of the permit is meeting and will continue to meet a schedule agreed to by such holder of the permit and the office for correcting any permit violation, consistent with section 34-33-123;

(II) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this article or regulations promulgated thereunder;

(III) The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(IV) The operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the board or office might require pursuant to section 34-33-113; or

(V) Any additional revised or updated information required by the office has not been provided.

(b) Prior to the approval of any renewal of permit, the office shall provide notice to the United States office of surface mining reclamation and enforcement, to the surface and mineral owners of record of the affected land, and to the board of county commissioners of the county in which the affected land is located.

(c) If an application for renewal of a permit includes a proposal to extend the surface coal mining and reclamation operations beyond the existing permit area, the portion of the application for renewal which addresses any new land areas shall be subject to the full standards applicable to new applications under this article; except that, if the surface coal mining and reclamation operations authorized by a permit issued pursuant to this article were not subject to the standards contained in section 34-33-114 (2)(e)(I) by reason of the exception provided in section 34-33-114 (2)(e)(II), the portion of the application for renewal of the permit which

addresses any new land areas previously identified in the reclamation plan submitted pursuant to section 34-33-111 shall not be subject to the standards contained in section 34-33-114 (2)(e)(I).

(d) Any permit renewal shall be for an additional term not to exceed the period of the original permit established by this article. Application for a permit renewal shall be made at least one hundred eighty days prior to the expiration of the existing permit. The office shall mail to the operator notice of the need to renew such permit at least ninety days prior to the final date for permit renewal.

(e) In any hearing on renewal of a permit, the burden of persuasion shall be on the opponents of renewal.

(f) The holder of a valid permit may continue surface mining operations under said permit, subject to section 34-33-123, beyond the expiration date until a final administrative decision on renewal is rendered if a renewal application is received by the office at least one hundred eighty days prior to the expiration date of the permit.

**Source: L. 79:** Entire article added, p. 1258, § 1, effective July 1. **L. 92:** (3) to (6), (7)(a)(I), (7)(a)(IV), (7)(a)(V), (7)(b), (7)(d), and (7)(f) amended, p. 1945, § 52, effective July 1.

**Cross references:** For the federal "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq; for the "Mineral Lands Leasing Act", see 30 U.S.C. § 181 et seq; for the "Colorado Mined Land Reclamation Act", see article 32 of this title.

**34-33-110. Application for permit.** (1) Any person desiring to obtain a permit to perform surface coal mining and reclamation operations shall make written application therefor to the office on forms approved by the board. Each application shall be submitted pursuant to the provisions of this article and shall be accompanied by a fee of twenty-five dollars, plus ten dollars for each acre of affected land; except that such fee shall not exceed two thousand five hundred dollars and shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to this article. The board shall develop procedures so as to enable the cost of the fee to be paid over the term of the permit. All fees collected under the provisions of this article shall be deposited in the general fund.

(2) The permit application shall include the following:

(a) The name of the applicant and the address and telephone number of the general office and the local office of the applicant;

(b) The names and addresses of:

(I) Every legal owner of record of the property (surface and mineral) to be mined;

(II) The holders of record of any leasehold interests in the property;

(III) Any purchaser of record of the property under a real estate contract;

(IV) The operator, if he is a person different from the applicant;

(V) The owners of record of all surface and subsurface property interests adjacent to any part of the permit area;

(c) If any of the entities described in paragraph (a) or (b) of this subsection (2) are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(d) A statement of any current or previous surface coal mining permits held by the applicant for operations in the United States and the permit identification in each pending application;

(e) If the applicant is a partnership, corporation, association, or other business entity, where applicable, the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning of record ten percent or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application;

(f) A statement of whether the applicant or any subsidiary, affiliate, or person controlled by or under common control with the applicant has ever held any federal or state mining permit for surface coal mining operations which, in the five-year period prior to the date of submission of the application, has been suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(g) A copy of the applicant's notification to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks, which notification shall include the names of every legal owner of record of property (surface and mineral) in the proposed site, a description of the exact location and boundaries of the proposed site sufficient so that the proposed operation is readily locatable by local residents, and the location at which the application is available for public inspection;

(h) A description of the type and method of surface coal mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed;

(i) The anticipated or actual starting and termination dates of each phase of the surface coal mining operation and the number of acres of land to be affected;

(j) An accurate map or plan, of an appropriate scale, clearly showing the land to be affected as of the date of the application and the area of land within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations and a statement of those documents upon which the applicant bases such legal right to enter and commence surface coal mining operations on the area affected and whether that right is the subject of pending court litigation; except that nothing in this article shall be construed as vesting in the board or office the jurisdiction to adjudicate property rights disputes;

(k) The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged;

(l) A determination of the probable hydrologic consequences of the surface coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that an assessment can be made by the office of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability;

(m) When requested by the office, the climatological factors that are unique to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(n) Accurate maps or plans, of an appropriate scale, clearly showing the land to be affected as of the date of application and all types of information set forth on topographical maps of the United States geological survey of a scale of one to twenty-four thousand or one to twenty-five thousand or larger, including all manmade features and significant known archeological sites existing on the date of application. Such maps or plans shall show, among other things specified by the office, all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas abutting the permit area, and the location of all buildings within one thousand feet of the permit area.

(o) Cross sections, maps, or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a qualified licensed professional engineer or professional geologist, showing pertinent elevation and location of test borings or core samplings and depicting the following: The nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all coal crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of known workings of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; the location of any settling or water treatment facility; the location of constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(p) A statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam; and an analysis of the chemical and physical properties, including sulphur content, of such coal; a chemical analysis of potentially acid-forming or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined; except that the provisions of this paragraph (p) may be waived by the board or office with respect to the specific application by a written determination that such requirements are unnecessary; and

(q) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey made or obtained according to standards established by the secretary of the United States department of agriculture in order to confirm the exact location of such prime farmlands, if any.

(3) Each applicant shall be required to submit to the office as part of the permit application a reclamation plan which shall meet the requirements of this article.

(4) Each applicant shall file a copy of the application for public inspection with the county clerk and recorder of the county where the surface coal mining operations are proposed to occur, or any other public office, subject to regulations issued by the board, except for that information pertaining to the coal seam itself.

(5) Each applicant shall be required to submit to the office as part of the permit application evidence that the applicant has satisfied other state or federal self-insurance requirements or a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the

surface coal mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the term of the permit or any renewal, including the term of all reclamation operations.

(6) Each applicant shall submit to the office as part of the permit application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of section 34-33-120 (2)(o).

(7) Information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected; except that information which pertains to the quantity of coal or the analysis of the chemical and physical properties of the coal (excepting that information which the office reasonably believes to concern a mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(8) The permit application, including the reclamation plan, shall contain such other information, in addition to that required by this section or by section 34-33-111, or regulations promulgated thereunder, as the office deems necessary; except that requests by the office for such additional information shall be based upon good cause shown in terms of site specific needs and shall bear a reasonable relationship to the purposes and provisions of this article. Any applicant or operator shall have the right, at any regular meeting of the board, upon proper notice, to seek the informal opinion of the board concerning any information request or requirement made by the office in connection with the permit application or reclamation plan contained therein, and such informal opinion shall not be binding on any of the parties.

**Source: L. 79:** Entire article added, p. 1261, § 1, effective July 1. **L. 92:** (4) amended, p. 1895, § 2, effective May 29; (1), (2)(j), (2)(l), (2)(m), (2)(n), (2)(p), (3), and (5) to (8) amended, p. 1947, § 53, effective July 1. **L. 2004:** (2)(o) amended, p. 1314, § 67, effective May 28.

**34-33-111. Reclamation plan requirements.** (1) Each reclamation plan submitted as part of a permit application pursuant to this article shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(a) The identification of the lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits will be sought;

(b) The condition of the land to be covered by the permit prior to any surface coal mining operations, including:

(I) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining;

(II) The capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 34-33-110 (2)(q); and

(III) The productivity of the land prior to mining, including appropriate classification as prime farmlands, as well as the average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management;

(c) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface and the federal, state, and local governments or agencies thereof which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation;

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(e) The engineering techniques proposed to be used in the surface coal mining and reclamation operations and a description of the major equipment to be used; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation; a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 34-33-120 (2)(g), for those food, forage, and forest lands subject to the provisions of section 34-33-120 (2)(g); an estimate of the cost per acre of the reclamation, including a statement as to how the applicant plans to comply with each of the requirements set out in section 34-33-120;

(f) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

(g) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(h) The consideration which has been given to making the surface coal mining and reclamation operations consistent with surface-owner plans and with applicable state and local land use plans and programs;

(i) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards as administered by applicable state and federal agencies;

(j) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;

(k) All lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(l) The results of test boring made at the area or other equivalent information and data in a form satisfactory to the office, including the location of subsurface water, and an analysis of the chemical properties, including acid-forming properties, of the mineral and overburden; except that information which pertains to the quantity of the coal or to the analysis of the chemical and physical properties of the coal (excepting that information which the office reasonably believes to concern a mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and shall not be made a matter of public record;

(m) A detailed description of the measures to be taken during the surface coal mining and reclamation operations to assure the protection of:

(I) The quality of surface water and groundwater systems, both on-site and off-site, from adverse effects of the surface coal mining and reclamation operations;

(II) The rights of present users to such water; and

(III) The quantity of water in surface and groundwater systems. Protection measures may include providing water by exchange, substitution, replacement, or augmentation, as appropriate under state law.

(2) Any information required by this section which is not on public file pursuant to state law shall be held in confidence by the board and the office.

**Source: L. 79:** Entire article added, p. 1264, § 1, effective July 1. **L. 92:** (1)(l) and (2) amended, p. 1949, § 54, effective July 1.

**34-33-112. Small operator assistance.** (1) If the office finds that the probable total annual production at all locations of any operator or parent company will not exceed one hundred thousand tons, upon written request of the operator, the office shall, to the extent that funding or services are appropriated or otherwise provided for the express purposes of this section:

(a) Have performed by a qualified public or private laboratory designated by the board the determination of probable hydrologic consequences required by section 34-33-110 (2)(l) and the statement of test borings or core samplings required by section 34-33-110 (2)(p);

(b) Provide additional necessary technical and administrative assistance to the operator in the preparation of permit applications and revisions under this article.

**Source: L. 79:** Entire article added, p. 1266, § 1, effective July 1. **L. 92:** Entire section amended, p. 1949, § 55, effective July 1.

**34-33-113. Performance bonds.** (1) After a permit application has been approved but before a permit is issued, the applicant shall file with the division, on a form prescribed and furnished by the board, a performance bond, payable to this state and conditioned upon faithful performance of all the requirements of this article and the permit. The bond shall cover the area of land within the permit area upon which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the board an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined as part of the proposed decision of the office pursuant to section 34-33-114, and subject to review by the board as provided in section 34-33-119. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the board in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than ten thousand dollars.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operations and for a period coincident with the operator's responsibility for revegetation requirements in section 34-33-120. The bond shall be executed by the applicant and a corporate surety licensed to do business in this state; except that the applicant may elect to deposit cash, negotiable bonds of the United States government or any political subdivision of

this state, or negotiable certificates of deposit of any bank or other savings institution organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. Cash or securities so deposited shall be deposited on the same terms upon which surety bonds may be deposited.

(3) The office may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the office that the applicant has the financial means sufficient to self-bond for reclamation, pursuant to reasonable bonding regulations promulgated by the board, consistent with the purposes and provisions of this article.

(4) Cash or securities posted as bond shall be deposited by the state treasurer in separate escrow accounts, to be known as reclamation surety accounts, and interest accruing on said funds shall be paid to the operator annually.

(5) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the office from time to time for good cause as affected land acreages are increased or decreased or when the cost of future reclamation changes.

**Source: L. 79:** Entire article added, p. 1266, § 1, effective July 1. **L. 92:** (1), (3), and (5) amended, p. 1950, § 56, effective July 1. **L. 97:** (3) amended, p. 172, § 1, effective March 28.

**34-33-114. Permit approval or denial.** (1) Upon the basis of a complete permit application, including a reclamation plan, or revision or renewal thereof, as required by this article, including public notification and opportunity for public hearing as required by sections 34-33-118 and 34-33-119, the office shall process the permit application and issue a proposed decision granting or denying the permit, in whole or in part, or requiring modifications to the permit application within the time periods provided for in sections 34-33-118 and 34-33-119, and the office shall notify the applicant in writing of the proposed decision. The applicant for a permit or for a revision of a permit shall have the burden of establishing that such application is in compliance with all the requirements of this article. Within ten days after issuing its proposed decision granting or denying a permit, the office shall file a notice with the board of county commissioners of the county in which the area of land to be affected is located stating the proposed decision issued and describing the location of the affected land.

(2) No application for a permit or for a revision of an existing permit shall be approved unless the application affirmatively demonstrates and the office or board finds in writing, on the basis of the information set forth in the application or from information otherwise available which will be documented in the decision and made available to the applicant, that:

(a) The permit application is accurate and contains all information required under this article and regulations promulgated thereunder and that all the requirements of this article have been complied with;

(b) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in section 34-33-110 (2)(l) has been made by the office and the proposed operation thereof has been designed to prevent material damage to hydrologic balance outside the permit area;

(d) Granting the permit will not conflict with any designation decision issued pursuant to section 34-33-126 or pursuant to section 522 of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, Pub.L. 95-87, nor is the area proposed to be mined within an area under study for unsuitability designation in an administrative proceeding commenced pursuant to section 34-33-126 or section 522 of said Pub.L. 95-87;

(e) (I) The proposed surface coal mining operations would:

(A) Not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands upon which the board finds that the farming which will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on said land's agricultural production; or

(B) Not materially damage the quantity or quality of surface water or groundwater systems that supply the alluvial valley floors described in sub-subparagraph (A) of this subparagraph (I).

(II) The requirements of subparagraph (I) of this paragraph (e) shall not affect those surface coal mining operations which, in the year preceding August 3, 1977, either produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained permit approval to conduct surface coal mining operations within said alluvial valley floors.

(f) In cases where the applicant proposes to extract coal by surface methods and where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the office:

(I) The written consent of the surface owner to the extraction of coal by surface coal mining; or

(II) A conveyance that expressly grants or reserves the right to extract the coal by surface coal mining, but, if the conveyance does not expressly grant the right to extract coal by surface coal mining, the surface-subsurface legal relationship shall be determined in accordance with state law; except that nothing in this article shall be construed to authorize the board to adjudicate property rights disputes;

(g) Subject to valid rights existing as of August 3, 1977, and with the further exception of those surface coal mining operations which were in existence on August 3, 1977, the application:

(I) Does not include any lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under said act, and national recreation areas designated by act of the United States congress;

(II) Does not include any federal lands within the boundaries of any national forest; except that surface coal mining operations may be permitted on such lands if the secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and:

(A) Surface operations and impacts are incident to an underground coal mine; or

(B) Where the secretary of the United States department of agriculture determines, with respect to lands in national forests which do not have significant forest cover, that surface mining is in compliance with the "Multiple-Use Sustained-Yield Act of 1960", as amended, the

"Federal Coal Leasing Amendments Act of 1975", as amended, the "National Forest Management Act of 1976", as amended, and the provisions of this article;

(III) Will not adversely affect any publicly owned park or place included in the national register of historic sites unless approved jointly by the office and the federal, state, or local agency with jurisdiction over the park or the historic site;

(IV) Does not include lands within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line; except that the office may permit such roads to be relocated or the area affected to lie within one hundred feet of such road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected; and

(V) Does not include lands within three hundred feet of any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building or school, church, community, or institutional building or any public park, nor within one hundred feet of a cemetery.

(3) The applicant shall file with his permit application a schedule listing any and all notices of violations of this article and any applicable law of the United States or of this state, or any applicable rule or regulation of any department or agency of the United States, other states, and this state, pertaining to air or water environmental protection received by the applicant in connection with any surface coal mining operations during the three-year period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation. When the schedule or other information available to the board or office indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this article or such other laws referred to in this subsection (3), the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the board, department, or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the board, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled such surface coal mining operations with a demonstrated pattern of willful violations of this article of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article.

(4) (a) In addition to finding the application in compliance with the provisions of subsection (2) of this section, if the surface area proposed to be affected by the operation contains prime farmland pursuant to section 34-33-110 (2)(q), the office shall, after consultation with the secretary of the United States department of agriculture, and pursuant to regulations issued by the secretary of the United States department of the interior with the concurrence of the secretary of the United States department of agriculture, grant a permit to mine on prime farmland if the board or office finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and that the operator can meet the soil reconstruction standards in section 34-33-120 (2)(g). Except as provided in subsection (2) of this section, the requirements of this paragraph (a) shall apply to all permits issued on and after August 3, 1977.

(b) Nothing in this subsection (4) shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface coal mining and reclamation operations for which a permit was issued prior to August 3, 1977.

**Source: L. 79:** Entire article added, p. 1267, § 1, effective July 1. **L. 81:** (3) amended, p. 1681, § 3, effective June 16. **L. 92:** (1), IP(2), (2)(c), IP(2)(f), (2)(g)(III), (2)(g)(IV), (3), and (4)(a) amended, p. 1950, § 57, effective July 1.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.; for the "Multiple-Use Sustained-Yield Act of 1960", see 16 U.S.C. § 528 et seq.; for the "Federal Coal Leasing Amendments Act of 1975", see 30 U.S.C. §§ 184, 191, 201, 202, 207, and 208; for the "National Forest Management Act of 1976", see 16 U.S.C. § 1600 et seq.

**34-33-115. Revision of permit.** (1) (a) During the term of the permit, the permittee may submit an application for revision of the permit, together with any necessary revisions to the reclamation plan, to the office.

(b) An application for revision of a permit shall not be approved unless the office finds that the reclamation required by this article can be accomplished under any necessary revisions to the reclamation plan. The revisions shall be approved or disapproved within the time periods provided for by sections 34-33-118 and 34-33-119. The board shall, by regulation, establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; except that any revisions which propose significant alterations in the reclamation plan shall be subject to notice and hearing requirements.

(c) Any applications for extension of the area covered by the permit, except incidental boundary revisions, must be made by application for a permit revision or another permit.

(2) No transfer, assignment, or sale of rights granted under any permit issued pursuant to this article shall be made without the written approval of the division.

(3) The office shall, within a time limit prescribed in regulations promulgated by the board, review outstanding permits and may, for good cause shown, require reasonable revisions or modifications of the permit provisions during the term of each such permit; except that such revisions or modifications shall be based upon written findings and shall be subject to the notice and hearing requirement established by this article.

**Source: L. 79:** Entire article added, p. 1270, § 1, effective July 1. **L. 92:** Entire section amended, p. 1952, § 58, effective July 1. **L. 95:** (1)(c) amended, p. 148, § 3, effective April 7.

**34-33-116. Technical revision of permit - regulations.** (1) During the term of the permit, the permittee may submit an application for a technical revision of the permit to the office.

(2) An application for a technical revision of a permit shall contain:

(a) An identification of the permit by permit number or other appropriate reference which is the subject of the technical revision;

(b) A specific description of the requested change in the terms of the permit; and

(c) Such other information as may be necessary for the office to properly evaluate the technical revision.

(3) Consistent with the provisions of subsection (2) of this section, the board may promulgate regulations further defining the form and content of applications for technical revisions; except that applications for technical revisions shall not be subject to the full standards and information requirements applicable to new permit applications under this article; and except that the board or office may reasonably request additional information to evaluate the proposed technical revision.

(4) The board shall promulgate regulations providing for the processing of applications for technical revisions, which regulations shall provide for adequate public notice of such applications and an opportunity for an expeditious hearing before the board for any person who may be adversely affected by the proposed technical revision.

(5) Within sixty days after the filing of a complete application for a technical revision, the office shall issue a proposed decision approving or denying the application in whole or in part. A written copy of such decision shall be promptly provided to the permittee and shall be published once in a newspaper of general circulation in the locality of the affected surface coal mining operation. Any requests for a hearing regarding the proposed decision of the office must be received in writing by the office within ten days after such publication. If no request for a hearing is received within such ten-day period, the proposed decision of the office shall immediately become final.

**Source: L. 79:** Entire article added, p. 1271, § 1, effective July 1. **L. 92:** Entire section amended, p. 1953, § 59, effective July 1.

**34-33-117. Coal exploration permit - regulations.** (1) Coal exploration activities which cause substantial disturbance of the natural land surface shall be conducted in accordance with exploration regulations issued by the board. Such regulations shall include, at a minimum:

(a) A requirement that, prior to conducting any exploration under this section, any person must file with the office notice of intention to explore, including a description of the exploration area and the period of supposed exploration; and

(b) Provisions for reclamation in accordance with the performance standards in section 34-33-120 of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(2) Information submitted to the office pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intending to explore the described area shall not be available for public examination.

(3) Any person who conducts any coal exploration activities which cause substantial disturbance of the natural land surface in violation of this section or regulations issued pursuant to this section shall be subject to the provisions of section 34-33-123.

(4) No operator shall remove more than two hundred fifty tons of coal pursuant to an exploration permit without the specific written approval of the board or office.

(5) The regulations adopted pursuant to this section shall include any additional requirements and provisions which the board deems necessary; except that such regulations shall have a reasonable relation to the purposes and provisions of this article.

**Source: L. 79:** Entire article added, p. 1271, § 1, effective July 1. **L. 92:** (1)(a), (2), and (4) amended, p. 1953, § 60, effective July 1.

**34-33-118. Public notice and public hearings on complete applications.** (1) Upon submission of an application for permit, or revision or renewal thereof, as provided by this article, the office shall, within ten days of receipt of said application, review the submission and determine if it is complete. If the application is complete, the applicant shall be duly notified and the application shall be considered filed for the purposes of this article. If the application is incomplete, notice to that effect shall be mailed to the applicant within said ten-day period, and the applicant shall be given the opportunity to amend, revise, or otherwise make said application complete. At the time of submission of an application for a permit, or for renewal or revision of an existing permit, pursuant to the provisions of this article, the applicant shall submit to the office the proposed notice of publication of the ownership, precise location, and boundaries of the land to be affected by the proposed surface coal mining operation.

(2) Upon notification to the applicant that the application for a permit or the application for a permit revision or renewal is complete, the applicant shall place the notice of ownership, precise location, and boundaries of land to be affected by the proposed surface coal mining operation in a local newspaper of general circulation in the locality of said operation. This publication shall be published at least once a week for four consecutive weeks.

(3) On or before the time of first publication, the office shall notify appropriate state and federal agencies and various local government bodies, municipalities, regional planning commissions, boards of county commissioners, county planning agencies, sewage and water treatment authorities, and water conservancy and water conservation districts in the locality in which the proposed surface coal mining operations will take place of the operator's application indicating the application number, a legal description of the land covered by the application, and where a copy of the application may be inspected. These local bodies, agencies, or authorities may submit written comments, within thirty days of the last publication of the above notice, with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted to the applicant by the office and shall be made available to the public at the same locations as the permit application.

(4) Any person having an interest which is or may be adversely affected by a decision of the office regarding the proposed surface coal mining operation, or the officer or head of any federal, state, or local government agency or authority, shall have the right to submit written objections to or comments upon the initial or revised application for a permit to the office within thirty days after the last publication of the above notice. Such objections and comments shall immediately be transmitted to the applicant by the office and shall be made available to the public, at the same locations as the permit application.

(5) Within sixty days of the filing of an application for a permit, the office shall review said application and notify the applicant of preliminary findings as to the substantive adequacy or inadequacy of the application.

(6) Within thirty days after the last publication of the notice specified in subsection (2) of this section, any person who files objections or comments pursuant to subsection (3) or (4) of this section may also request an informal conference. If an informal conference is requested, the office shall hold an informal conference in the locality of the proposed surface coal mining operation. Notice of the date, time, and location of such informal conference shall be given to the

applicant and published by the office in a newspaper of general circulation in the locality of the conference at least two weeks prior to the scheduled conference date. The informal conference shall be held within a reasonable time after close of the comment periods specified under subsections (3) and (4) of this section but no later than thirty days after the close of said periods. The office may arrange with the applicant, upon request by any person who has submitted objections, comments, or a request for an informal conference, access to the proposed mining area for the purpose of gathering information relevant to the proceedings. An electronic or stenographic record shall be made of the informal conference, unless waived by all parties thereto. Such record shall be maintained by the office and shall be accessible to the parties until final release of the applicant's performance bond. In the event that all persons requesting the informal conference stipulate agreement prior to the requested informal conference and withdraw their request, such informal conference need not be held.

**Source: L. 79:** Entire article added, p. 1272, § 1, effective July 1. **L. 92:** Entire section amended, p. 1954, § 61, effective July 1.

**34-33-119. Permit application decisions of the office - appeals.** (1) If an informal conference has been held pursuant to section 34-33-118 (6), any party thereto may submit additional information or comments to the office for a period of twenty days following the conference. The office shall issue a proposed decision, granting or denying the permit in whole or in part, no earlier than twenty days and no later than sixty days after the informal conference. The office may, for good cause shown, extend the time for the proposed decision up to an additional sixty days if the application is unusually complex or controversial or if significant snow cover prevents adequate on-site inspection.

(2) If there has been no informal conference pursuant to section 34-33-118 (6), the office shall issue a proposed decision, granting or denying the permit in whole or in part, within one hundred twenty days of the filing of the application. The office may, for good cause shown, extend the time for the proposed decision up to an additional sixty days if the application is unusually complex or controversial or if significant snow cover prevents adequate on-site inspection.

(3) The proposed decision of the office under subsection (1) or (2) of this section shall be in writing, and a copy thereof shall be furnished to the applicant and all persons who have objected to or submitted comments on the application. If the proposed decision is to deny the application in whole or in part, the office shall set forth specific reasons for the proposed decision. If the proposed decision is to grant the application in whole or in part or with modifications or stipulations, the modifications and stipulations and reasons for the decision shall accompany the notice of proposed decision.

(4) The office shall publish notice of the proposed decision in a newspaper of general circulation in the locality of the surface coal mining operations once a week for two weeks following issuance of the proposed decision. Any person with an interest which may be adversely affected by the proposed decision may request a formal hearing before the board on the proposed decision. Such request must be made within thirty days of first publication of the proposed decision of the division, be in writing, and state with reasonable specificity the reasons for the request and the objections to the proposed decision.

(5) If a formal hearing is requested, the board shall hold such hearing in an appropriate location no later than thirty days after said request and shall notify the applicant and any person requesting said hearing of the date, time, and location of said hearing. The board shall also publish notice of the proposed hearing in a newspaper of general circulation in the locality of the hearing. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., and shall be adjudicatory in nature. No person who presided at a conference under section 34-33-118 (6) shall either preside at the hearing or participate in the decision thereon in any administrative appeal therefrom. The board may render its decision at the close of the hearing and must, in any event, render a decision within thirty days after the hearing. The board shall issue and furnish the applicant and all persons who participated in the hearing with a copy of the written decision, reversing, affirming, or modifying the proposed decision of the office, and stating the reasons therefor. The decision of the board shall be implemented by the office within five days after the written decision of the board.

(6) If no formal hearing is requested pursuant to subsection (4) of this section, the office shall issue and implement the proposed decision as final within five days after the close of the thirty-day period provided by subsection (4) of this section for filing a request for a formal hearing.

(7) When a formal hearing is requested pursuant to subsection (4) of this section, the board may grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits in the final determination of the proceeding; and

(c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(8) For the purpose of such hearing, the board may administer oaths, subpoena witnesses or written or printed materials, compel attendance of the witnesses or production of the materials, and take evidence including, but not limited to, site inspections of the land to be affected and other surface coal mining operations carried on by the applicant in the general vicinity of the proposed operation. A verbatim record of each formal hearing required by this section shall be made, and a transcript shall be made available on request to any party or by order of the board.

(9) If any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector is aggrieved by the decision of the board or if the office fails to act within the time limits specified in this article, such applicant or person shall have the right to appeal in accordance with section 34-33-128.

**Source: L. 79:** Entire article added, p. 1273, § 1, effective July 1. **L. 92:** (1) to (6) and (9) amended, p. 1955, § 62, effective July 1.

**34-33-120. Environmental protection performance standards - regulations.** (1) Any permit issued under this article shall require that the surface coal mining and reclamation operations meet all applicable performance standards of this article.

(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require such operations to:

(a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(b) Restore land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution which would be contrary to state or federal laws, rules, or regulations, and so long as the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is not violative of federal, state, or local law;

(c) Except as provided in subsection (3) of this section with respect to all surface coal mining and reclamation operations, backfill, compact where needed to provide stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land, eliminating all highwalls, spoil piles, and depressions unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this article; except that, in surface coal mining which is carried out at the same location over a substantial period of time where the operations transect the coal deposit, and where the thickness of the coal deposits relative to the volume of the overburden is large, and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, where needed, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; except that in surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate original contour, backfill, grade, and compact, where needed, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and except that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and shall be revegetated in accordance with the requirements of this article;

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operations to effectively control erosion and attendant air and water pollution;

(e) Remove the topsoil from the land in a separate layer, replace it on the backfill area or, if not utilized immediately, segregate it in a separate pile from other spoil, and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the

topsoil, maintain a successful cover by quick-growing plant or other means thereafter 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 usable condition for sustaining vegetation when restored during reclamation; except that, if 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 is best able to support vegetation;

(f) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(g) Unless exempted by section 34-33-114 (4)(b), for all prime farmlands as identified in section 34-33-110 (2)(q) to be mined and reclaimed, comply with specifications for soil removal, storage, replacement, and reconstruction to be established by the secretary of the United States department of agriculture, and the operator shall be required, as a minimum, to:

(I) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(II) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and, if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(III) Replace and regrade the root zone material described in subparagraph (II) of this paragraph (g) with proper compaction and uniform depth over the regraded spoil material; and

(IV) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (I) of this paragraph (g);

(h) Create, if authorized in the approved reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(I) The size of the impoundment is adequate for its intended purposes;

(II) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566, 16 U.S.C. sec. 1006;

(III) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(IV) The level of water will be sufficiently stable for its intended use;

(V) Final grading will provide adequate safety and access for proposed water users; and

(VI) Such water impoundments will not result in the diminution of the quality of water or the quantity of water available to water right holders for agricultural, industrial, recreational, or domestic uses;

(i) Conduct any augering operation associated with surface coal mining in a manner to maximize recoverability of coal reserves remaining after the mining and reclamation operations are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the office determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health or safety; except that the office may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(I) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) Preventing or removing water from contact with toxic producing deposits;

(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses;

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering groundwaters and surface waters;

(II) (A) Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) Constructing any siltation structures pursuant to sub-subparagraph (A) of this subparagraph (II) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(III) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the office. The office may approve the retention of sediment ponds as permanent impoundments if all requirements of paragraph (h) of this subsection (2) are met.

(IV) Restoring recharge capacity of the mined area to approximate premining conditions;

(V) Avoiding channel deepening or enlargement resulting from the discharge of water from mines;

(VI) Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors;

(VII) Taking such other actions reasonably related to the purposes of this paragraph (j) as the office may prescribe for good cause shown;

(k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers and through the use of incombustible and impervious materials if necessary and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this article;

(l) Refrain from surface coal mining within five hundred feet, measured horizontally, from active and abandoned underground mines in order to prevent breakthroughs and to protect

the health and safety of miners; except that the office shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the office and by the United States mine safety and health administration, or its successor, and if such operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection 515 (f) of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of groundwaters or surface waters and that contingency plans are developed to prevent sustained combustion;

(o) Ensure that explosives used in connection with the extraction of coal by surface methods are used only in accordance with existing state and federal law and blasting regulations promulgated by the board, in consultation with appropriate state agencies, which shall include provisions to:

(I) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every business or residence located within one-half mile of the proposed blasting site and by providing daily notice to resident occupants in such areas prior to any blasting or notice of less frequency as each resident occupant in such areas shall approve in writing;

(II) Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(III) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of groundwaters or surface waters outside the permit area;

(IV) Require that all blasting operations be conducted by trained and competent persons certified under a program which meets the minimum criteria established by applicable law;

(V) Provide that, upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of such structures and submit the survey to the office and a copy to the resident or owner making the request. The area of the survey shall be decided by the office and shall include such provisions as the board shall promulgate.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; except that, where

the applicant proposes to combine surface coal mining operations with underground mining to assure maximum practical recovery of the mineral resources, the board or office may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining prior to reclamation:

(I) If the board or office finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) The proposed underground mining is necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(C) The applicant has satisfactorily demonstrated that the plan or revision for the underground mining activities conforms to applicable local and state requirements for underground mining and that the permits necessary for the underground mining activities have been issued by the appropriate authorities;

(D) The areas proposed for the variance have been shown by the applicant to be necessary for the proposed underground mining;

(E) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article;

(F) Provisions for the off-site storage of spoil will comply with paragraph (v) of this subsection (2);

(II) If the board has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this article;

(III) If variances granted under the provisions of this paragraph (p) are to be reviewed by the office not more than three years from the date of issuance of the variance; and

(IV) If liability under the bond filed by the applicant with the office pursuant to section 34-33-113 (2) will continue for the duration of the underground mining activities and until the requirements of this subsection (2) and section 34-33-125 have been fully complied with;

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, or damage to fish or wildlife or their habitat or to public or private property;

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(s) Establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the postmining land use specified in the approved reclamation plan;

(t) Assume responsibility for successful revegetation, as required by paragraph (s) of this subsection (2), for a period of five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with paragraph (s) of this subsection (2); except that, in those areas or regions of the state where the annual average precipitation is twenty-six inches or less, the operator's assumption of responsibility and liability will extend for a period of ten years after the last year of augmented seeding, fertilizing, irrigation, or other

work; except that, when the board approves a long-term, intensive, agricultural postmining land use, the applicable five-year or ten-year period of responsibility for revegetation shall commence at the date of initial planting for such long-term, intensive, agricultural postmining land use; and except that, when the board issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the office may grant exception to the provisions of paragraph (s) of this subsection (2);

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations and require that such operations not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(v) Place all excess spoil material resulting from surface coal mining and reclamation operations in such a manner that:

(I) The spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(II) The areas of disposal are within the bonded permit areas and all vegetative matter shall be removed immediately prior to spoil placement;

(III) The appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement;

(IV) The disposal area does not contain springs, natural watercourses or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(V) If placed on a slope, the spoil is placed upon the most moderate slope of those upon which, in the judgment of the division, the spoil could be placed in compliance with all of the requirements of this article and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(VI) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size is constructed to prevent mass movement;

(VII) The final configuration will be compatible with the natural drainage pattern and surroundings and suitable for the proposed postmining land use;

(VIII) The design of the spoil disposal area is certified by a qualified licensed professional engineer in conformance with professional standards; and

(IX) All other provisions of this article are met;

(w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological, and other characteristics of the site;

(x) To the extent possible using the best technology currently available, minimize disturbances from and adverse impacts of the surface coal mining operations on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable; and

(y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such a distance as the office shall determine shall be retained in place as a barrier to slides and erosion.

(3) (a) When an applicant meets the requirements of paragraphs (b) and (c) of this subsection (3), a permit may be granted for surface coal mining operations without regard to the requirement to restore to approximate original contour set forth in paragraph (c) of subsection (2) of this section or subparagraph (II) or (III) of paragraph (a) of subsection (4) of this section if

surface coal mining operations will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in subparagraph (I) of paragraph (c) of this subsection (3)), by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accordance with the requirements of this subsection (3).

(b) In cases where an industrial, a commercial, an agricultural, a residential, or a public use including a recreational facility is proposed for the postmining use of the affected land, the office shall grant a permit for a surface coal mining operation of the nature described in paragraph (a) of this subsection (3) if:

(I) After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(II) The applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be:

(A) Compatible with adjacent land uses;

(B) Obtainable according to data regarding expected need and market;

(C) Assured of investment in necessary public facilities;

(D) Supported by commitments from public agencies where appropriate;

(E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the surface coal mining and reclamation operations with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(III) The proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs;

(IV) The office provides the board of county commissioners, of the county in which the land is located, and any state or federal agency which the office determines to have an interest in the proposed use an opportunity of not more than sixty days to review and comment on the proposed use; and

(V) All other requirements of this article will be met.

(c) In granting any permit pursuant to this subsection (3), the office shall require that:

(I) The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(II) The reclaimed area be stable;

(III) The resulting plateau or rolling contour drain inward from the outslopes except at specified points;

(IV) No damage be done to natural watercourses;

(V) Spoil will be placed on the mountaintop bench as is necessary to achieve the proposed postmining land use; except that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of paragraph (v) of subsection (2) of this section;

(VI) Stability of the spoil retained on the mountaintop be ensured; and

(VII) All other requirements of this article will be met.

(d) The board shall promulgate specific regulations to govern the granting of permits in accord with the provisions of this subsection (3).

(e) All permits granted under the provisions of this subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(4) (a) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; except that the provisions of this subsection (4) shall not apply to surface coal mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or in which an operator is in compliance with the provisions of subsection (3) of this section:

(I) Ensure that, when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; except that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of paragraph (c) of subsection (2) of this section or subparagraph (II) of this paragraph (a) shall be permanently stored pursuant to paragraph (v) of subsection (2) of this section.

(II) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the approximate original contour, which material shall maintain stability following the surface coal mining and reclamation operations.

(III) The operator shall not disturb land above the top of the highwall unless the board or office finds that such disturbance will facilitate compliance with the environmental protection standards of this section; except that the land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance.

(b) For the purposes of this subsection (4), the term "steep slope" means any slope above twenty degrees or such lesser slope as may be determined by the board or office after consideration of soil, climate, and other characteristics of a region.

(5) (a) The board shall establish procedures pursuant to which it may permit variances for the purposes set forth in paragraph (c) of this subsection (5): If the watershed control of the area is improved; and if complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following the surface coal mining and reclamation operations.

(b) When an applicant meets the requirements of paragraphs (c) and (d) of this subsection (5), a variance from the requirement to restore to approximate original contour set forth in subparagraph (II) of paragraph (a) of subsection (4) of this section shall be granted for surface coal mining if the owner of the surface knowingly requests in writing, as a part of the permit application, or application for permit revision, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, an agricultural, a commercial, a residential, or a public use, including a recreational facility, in accordance with the provisions of paragraphs (c) and (d) of this subsection (5).

(c) Before granting a variance pursuant to this subsection (5), the board or office shall determine that:

(I) The proposed postmining land use of the affected land will be an equal or better economic or public use, after consultation with appropriate land use planning agencies in such

matter, and that such use is designed and certified by a qualified licensed professional engineer in conformance with professional standards established to ensure the stability, drainage, and configuration necessary for the proposed postmining land use; and

(II) After approval of the appropriate state environmental agencies, the watershed of the affected land will be improved.

(d) In granting a variance pursuant to this subsection (5), the board or office shall require that only such amount of spoil be placed off the mine bench as is necessary to achieve the proposed postmining land use, ensure stability of the spoil retained on the bench, and meet all other requirements of this article and shall ensure that all spoil placements off the mine bench comply with paragraph (v) of subsection (2) of this section.

(e) The board shall promulgate specific regulations to govern the granting of variances in accord with the provisions of this subsection (5).

(f) All variances granted under the provisions of this subsection (5) shall be reviewed not more than three years from the date of issuance of the variance, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(6) Any additional criteria, mining or reclamation measures, or other conditions which the office requires the operator to meet, satisfy, or undertake in connection with the issuance, revision, or transfer of permits or in connection with the conduct of a surface coal mining operation shall be based upon good cause shown by the office, taking into consideration the specific conditions at the site, and shall bear a reasonable relationship to the purposes and provisions of this article. Any applicant or operator shall have the right, at any regular meeting of the board, upon proper notice, to seek the informal opinion of the board concerning any request or requirement of the office for such additional criteria, mining or reclamation measures, or other conditions, and such informal opinion of the board shall not be binding upon any of the parties.

**Source: L. 79:** Entire article added, p. 1275, § 1, effective July 1. **L. 92:** (2)(i), (2)(j)(III), (2)(j)(VII), (2)(l), (2)(o)(V), IP(2)(p), (2)(p)(I), (2)(p)(III), (2)(p)(IV), (2)(t), (2)(y), IP(3)(b), (3)(b)(IV), (3)(c), (4)(a)(III), (4)(b), (5)(c), (5)(d), and (6) amended, p. 1956, § 63, effective July 1. **L. 2004:** (2)(v)(VIII) and (5)(c)(I) amended, p. 1315, § 68, effective May 28.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-33-121. Surface effects of underground coal mining.** (1) The board shall promulgate rules and regulations directed toward the surface effects of underground coal mining, embodying the requirements of this section and in accordance with the procedures of this article and the rules and regulations promulgated pursuant to this article; except that, in adopting any rules and regulations, the board shall consider the distinct difference between surface coal mining and underground coal mining.

(2) Each permit issued under this article and relating to underground coal mining shall require the operator to:

(a) (I) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize

mine stability, and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner.

(II) If material damage results from subsidence caused by underground coal mining operations to any occupied residential dwelling and related structures or any noncommercial building, the operator of the underground coal mining operations conducted on or after April 7, 1995, shall either:

(A) Promptly repair the damage by rehabilitating, restoring, or replacing the damaged occupied residential dwelling and related structures or noncommercial building; or

(B) Compensate the owner of the damaged occupied residential dwelling and related structure or noncommercial building in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable, premium-prepaid insurance policy.

(III) Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed for the conduct of the underground coal mining;

(c) Fill or seal exploratory holes no longer necessary for underground coal mining, maximizing, to the extent technologically and economically feasible, return of mine and processing waste, tailings, and any other waste incident to the underground coal mining activities, the mine workings, or excavations;

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary, and assure that the leachate will not degrade, below water quality standards established pursuant to applicable federal and state law, surface water or groundwaters and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria contained in applicable state and federal law, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments;

(f) Establish on regraded areas and all other affected lands, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal, in extent of cover, to the natural vegetation of the area;

(g) Protect off-site areas from damages which may result from such underground coal mining activities;

(h) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to the health and safety of the public;

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of surface water and groundwater systems both during and after underground coal mining and during reclamation by:

(I) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) Preventing or removing water from contact with toxic producing deposits;

(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses;

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering groundwaters and surface waters; and

(II) Conducting surface activities incident to underground coal mining so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area (but in no event shall such contributions be in excess of requirements set by applicable state or federal law), and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(j) With respect to other surface impacts not specified in this subsection (2), including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 34-33-120 for such effects which result from surface coal mining operations; except that the board or office shall make modifications in the requirements imposed by this paragraph (j) as are necessary to accommodate the distinct difference between surface and underground coal mining;

(k) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of resources where practicable;

(l) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(3) In order to protect the stability of the affected land, the office, after consultation with the operator and the office of active and inactive mines, shall order an immediate cessation of those portions of underground coal mining activities which are found in violation of section 34-24-109 or 34-48-102 or which are adjacent to permanent streams if the office finds an imminent danger to the inhabitants of urbanized areas, cities, towns, and communities.

(4) The provisions of this article relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface activities and impacts incident to underground coal mining with modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining.

**Source: L. 79:** Entire article added, p. 1285, § 1, effective July 1. **L. 88:** (3) amended, p. 1437, § 37, effective June 11. **L. 92:** (2)(j) and (3) amended, p. 1960, § 64, effective July 1. **L. 95:** (2)(a) amended, p. 148, § 4, effective April 7.

**34-33-122. Inspections and monitoring.** (1) For the purposes of administering and enforcing any permit under this article or of determining whether any person is in violation of any requirement of this article, the board shall require permittees to establish and maintain records of information relative to surface coal mining and reclamation operations which the board deems necessary in order for it or the office to monitor such operations.

(2) For those surface coal mining and reclamation operations which affect or potentially affect surface water and groundwater, on or off the site, the office shall, to the extent it deems necessary and after consultation with the division of water resources, require the permittee to:

(a) Establish monitoring sites to record the effect of the operations on the level and amount of such water;

(b) Maintain records of well logs and borehole data;

(c) Establish such monitoring sites to record precipitation in the area of the surface coal mining operation.

(3) The office shall require such monitoring of surface and groundwater quality, both on and off the site, as it deems necessary to determine compliance by permittees with the water quality provisions of this article.

(4) (a) The authorized representative of the board or office, upon presentation of appropriate credentials, shall have the power to enter at reasonable times, and without delay, upon or through any surface coal mining and reclamation operations and to have access to and copy any record, wherever located, and to inspect any monitoring equipment or method of operation required under this article or any permit issued under this article.

(b) Such inspections shall occur on an irregular basis, during times of operation at the mine, averaging not less than one partial inspection per month and one complete inspection per calendar quarter for each permitted surface coal mining and reclamation operation. Inspections may occur at any time at sites if a surface coal mining operation does not have a valid permit under this article or if there is reason to believe in a particular instance that significant environmental harm exists.

(c) Such inspections shall occur without prior notice to the permittee or his agents or employees, except for necessary on-site meetings with the permittee, and shall include the filing of inspection reports on forms approved by the board.

(5) Each permittee shall conspicuously maintain at the entrances to his surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and telephone number of the permittee and the permit number of the surface coal mining and reclamation operations.

(6) Upon detection of a violation of any requirement of this article during an inspection, the authorized representative of the board or office shall forthwith issue a notice of violation to the operator in accordance with section 34-33-123.

(7) Any person who is or may be adversely affected by a particular surface coal mining operation may request that an inspection for violations be held. Such request shall be acted upon by the office if it is in writing and if it contains sufficient basis for the allegation that a violation has occurred. When a state inspection is to be made as a result of such information, the office shall notify such person when the inspection is proposed to be carried out, and such person shall be allowed to accompany the inspector during the inspection if such person remains in the presence of and under the control, direction, and supervision of the inspector and if such person agrees to comply with all applicable state and federal safety rules and regulations.

(8) Copies of any records, reports, inspection materials, or information obtained under this article by the board, except information identified as confidential pursuant to the provisions of this article, shall be made immediately available to the public at the office of mined land reclamation's office and at a convenient place in the area of the surface coal mining and reclamation operations.

(9) No employee of the division performing any function or duty under this article shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection (9) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than twenty-five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**Source: L. 79:** Entire article added, p. 1287, § 1, effective July 1. **L. 81:** (4)(b) amended, p. 1682, § 4, effective June 16. **L. 92:** (1), IP(2), (3), (4)(a), and (6) to (8) amended, p. 1961, § 65, effective July 1.

**34-33-123. Enforcement - civil and criminal penalties.** (1) When, on the basis of any inspection, an authorized representative of the office determines that any condition or practices exist at a surface coal mining operation which is subject to this article or that any operator is in violation of any requirement of this article or any permit condition required by this article, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, such authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion thereof relevant to the condition, practice, or violation. Where such authorized representative finds that the ordered cessation of surface coal mining and reclamation operations will not completely abate the imminent danger or the significant imminent environmental harm, the representative shall, in addition to the cessation order, impose affirmative obligations on the operator requiring such operator to abate the imminent danger or the significant imminent environmental harm. The order shall specify a reasonable time in which such abatement shall be accomplished.

(2) When, on the basis of any inspection, an authorized representative of the office determines that any operator is in violation of any requirement of this article or any permit condition required by this article, but such violation does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant imminent environmental harm to land, air, or water resources, such authorized representative shall issue a notice of violation to the operator or a designated agent of the operator fixing a reasonable time, but not more than ninety days, for the abatement of the violation.

(3) If the operator who is issued a notice of violation under subsection (2) of this section fails to abate the violation within the abatement period as originally set or subsequently extended, for good cause shown and upon written finding to that effect, the authorized representative of the office shall immediately order a cessation of the surface coal mining and reclamation operations or that portion thereof relevant to the violation.

(4) Each notice of violation and cessation order issued pursuant to this section shall be on a written form approved by the board, shall be signed by the person issuing it, and shall set forth with reasonable specificity the nature of the violation, including a reference to the provisions of the permit, statute, or regulation allegedly violated, the steps necessary to abate the violation in the most expeditious manner possible, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. The notice of violation or cessation order shall also inform the operator that a civil penalty may be assessed for the violation, if any, and that the operator

has the right to have review of the notice or order in public hearing before the board in accordance with section 34-33-124. The procedure which the operator must follow to obtain such a hearing on any matters contained in the notice of violation or cessation order shall be included in the notice or order. Each notice of violation or cessation order shall be served in a timely fashion on the operator, through his designated agent or management personnel at the mine, in person or by certified mail, return receipt requested.

(5) Except as set forth in subsection (6) of this section, cessation orders issued under this section shall remain in effect until the condition, practice, or violation has been abated or until vacated, modified, or terminated in writing by an authorized representative of the office or by the board. An authorized representative of the office may vacate, modify, or terminate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously fixed was not caused by lack of diligence on the part of the operator. An authorized representative of the office shall immediately terminate a cessation order by written notice to the permittee when such representative determines that all conditions, practices, or violations listed in the order have been abated.

(6) Any notice of violation or cessation order issued pursuant to this section which requires cessation of mining, expressly or by necessary implication, shall automatically expire thirty days after service of the notice or order to the operator unless an informal hearing on the cessation of mining portion of the notice or order is held within such time at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. Such hearing shall be presided over by the authorized representatives of the office and pursuant to such reasonable procedural rules as the board may adopt by regulation. The office shall either affirm, modify, vacate, or terminate the notice or order or grant temporary relief therefrom. The authorized representative of the office who originally ordered the cessation of mining shall not take part in any such decision. Such hearings may be waived by the operator to whom the order was issued, and the holding of or failure to hold such a hearing shall not affect such operator's right to board review under section 34-33-124.

(7) When the office determines that a pattern of violations of any requirements of this article or any permit conditions required by this article exists or has existed and that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this article or any permit conditions or that such violations are willfully caused by the permittee, the office shall forthwith issue an order to the permittee to show cause why the permit should not be suspended or revoked and shall provide opportunity for a public hearing before the board to be held in accordance with section 34-33-124 and pursuant to such rules and regulations the board may adopt.

(8) (a) Any operator who violates any permit condition or who violates any other provision of this article may be assessed a civil penalty by the division; except that, if such violation leads to the issuance of a cessation order under subsection (1) or (3) of this section, the civil penalty shall be assessed. Such penalty shall not exceed five thousand dollars for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good

faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(b) The office shall notify the operator in writing of the proposed amount of any civil penalty within thirty days after the issuance of a notice or order charging a violation. The operator shall have ten days after receipt of the proposed penalty within which to request, on a written form approved by the board, an assessment conference in which all relevant information concerning the violation and penalty, including all information which the operator may submit, shall be reviewed by the operator or an authorized representative and a conference officer who shall be an authorized representative of the office.

(c) If the issues are resolved at the settlement conference, the conference officer shall prepare a settlement agreement, on a form approved by the board, which agreement shall be signed by the conference officer or his authorized representative and the operator charged with the violation. The settlement agreement shall provide, among other things, that, by paying the penalty as agreed, the operator waives all further right to review of the violation or penalty. The settlement agreement shall also require that the penalty, as agreed to, shall be paid within a certain time not to exceed thirty days from the date the agreement is signed by both parties. The settlement agreement shall not be effective if it is not signed by the operator or his authorized representative at the conference or within ten days thereafter.

(d) If the operator does not request a settlement conference, if a settlement conference is requested and the issues are not resolved there, or if the penalty agreed to in the settlement conference is not paid within the prescribed time, the office shall order the penalty fixed at whatever amount it deems appropriate based on the criteria set forth in paragraph (a) of this subsection (8) and on all relevant information which was received at the assessment conference, if held, and it shall give the operator written notice of the amount of the fixed penalty. The notice and order shall be on a form approved by the board, shall require payment of the fixed penalty within thirty days after the receipt of the notice and order by the operator, and shall state the procedure which the operator must follow to obtain a hearing before the board on the fact of the violation or the penalty. The notice and order shall be served on the operator or a designated agent of the operator no later than one hundred twenty days after the date the notice or order describing the violation was originally issued.

(e) Failure of the operator to forward the amount of the fixed penalty to the office and to request a public hearing in accordance with paragraph (f) of this subsection (8) shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(f) If the operator wishes to contest either the amount of the fixed penalty or the fact of the violation, the operator shall forward the amount of the fixed penalty to the office within thirty days after receipt of notice thereof for placement in an escrow account and request a public hearing before the board. Such hearing shall be held in accordance with section 34-33-124, and, when appropriate, the board shall consolidate such hearing with other proceedings under section 34-33-124. After such a public hearing has been held, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of the civil penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Failure of the operator to pay the civil penalty ordered by the board within thirty days after such order is issued shall result in a

waiver of all legal rights to contest the violation or the amount of penalty under section 34-33-128.

(g) If, after board review or judicial review of the fixed penalty, it is determined that no violation occurred or that the amount of the penalty should be reduced, the board shall, within thirty days of such determination, remit the appropriate amount to the operator with interest at the rate prevailing in the escrow account established under paragraph (f) of this subsection (8).

(h) Civil penalties owed under this section may be recovered in a civil action brought by the attorney general at the request of the board in the district court of this state for the district in which any of the affected land is located or in such other district agreeable to all parties to such action.

(i) Any operator who fails to correct a violation for which a notice or cessation order has been issued under this section within the period permitted for its correction, which period shall not end until the entry of an order of the court, in the case of any review proceedings under section 34-33-128 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation, shall be assessed a civil penalty of not less than seven hundred fifty dollars for each day during which such failure or violation continues.

(9) Any operator who willfully and knowingly violates a condition of a permit or fails or refuses to comply with any order issued under this section or any order incorporated in a final decision issued by the board under this article, except a notice and order issued under paragraph (d) of subsection (8) of this section or an order issued under paragraph (f) of subsection (8) of this section shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(10) Whenever a corporate operator violates a condition of a permit or fails or refuses to comply with any order issued under this section or any order incorporated in a final decision issued by the board under this article, except a notice and order issued under paragraph (d) of subsection (8) of this section or an order issued under paragraph (f) of subsection (8) of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon an operator under subsections (8) and (9) of this section.

(11) Whoever knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this article or any order or decision issued by the board or office under this article shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(12) The board or office may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of this state for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has its principal office, whenever such permittee or an agent of such permittee violates or fails or refuses to comply with any order or decision issued by the board or office under this article, or interferes with, hinders, or delays the board or office in carrying out the provisions of this article, or refuses to admit an authorized representative of the office to the mine, or refuses to permit inspection of the mine by such representative, or refuses to furnish any information or report requested by the office or board in furtherance of the provisions of this article, or refuses to permit access to, and copying

of, such records as the office or board determines necessary in carrying out the provisions of this article. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with rule 65 of the Colorado rules of civil procedure. Any relief granted by the court to enforce an order based on a violation or failure or refusal to comply with any order or decision issued by the board or office under this article shall continue in effect until the completion or final termination of all proceedings for review of such order under this article, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

(13) (a) When the office determines that it improvidently issued a permit that should not have been issued under the criteria set forth in section 34-33-114 (3), it shall implement remedial measures, including development of a cooperative plan with the permittee, imposition of a condition on the permit to correct the reason that the permit should not have been issued under section 34-33-114 (3), or issuance of an order to the permittee to show cause why the permit should not be suspended or revoked.

(b) When an order to show cause is issued pursuant to this subsection (13), the order shall include the reasons for the finding that the permit was improvidently issued and shall provide an opportunity for a public hearing before the board to be held in accordance with section 34-33-124 and pursuant to rules the board may adopt. Rules adopted pursuant to this section shall be no less effective than the federal rules provided in 30 CFR 773.21.

**Source: L. 79:** Entire article added, p. 1288, § 1, effective July 1. **L. 81:** (4) and (8)(d) amended, p. 1682, § 5, effective June 16. **L. 92:** (1) to (3), (5) to (7), (8)(b), (8)(d) to (8)(f), (11), and (12) amended, p. 1962, § 66, effective July 1. **L. 95:** (13) added, p. 149, § 5, effective April 7.

**34-33-124. Review by board.** (1) (a) An operator issued any notice of violation or cessation order pursuant to the provisions of section 34-33-123 or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order may request review thereof by the board within ninety days after the issuance of the notice or order or within ninety days after its modification, vacation, or termination. Such request for review may include a request for a hearing to enable the operator or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. Upon receipt of such request for a hearing, the hearing shall be held and, prior to such hearing, the board shall cause an investigation to be made as it deems appropriate. The filing of a request for review under this paragraph (a) shall not operate as a stay of any order or notice.

(b) The operator, any other persons requesting a hearing, and all other persons expressing an interest shall be given written notice of the time and place of any hearing requested under this section at least five days prior to such hearing. Notice of such hearings shall also be included in the monthly mailings of the division. Any such hearing shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(2) Upon receiving the report of any investigation and after any public hearing under paragraph (b) of subsection (1) of this section, the board shall make findings of fact and shall issue a written decision, incorporating therein its findings and an order vacating, affirming, modifying, or terminating the notice of violation or cessation order or the modification, vacation,

or termination of such notice or order reviewed. Where the request for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to section 34-33-123, the board shall issue a written decision within thirty days of the receipt of the request for review unless temporary relief has been granted by the board pursuant to subsection (3) of this section, by the office pursuant to section 34-33-123 (6), or by the court pursuant to section 34-33-128 (3).

(3) Pending completion of the investigation and hearing under this section, the operator or any other party may file with the board a written request that the board grant temporary relief from any notice or order, together with a detailed statement giving reasons for granting such relief. The board shall issue an order or decision granting or denying such relief expeditiously; except that, where the operator requests relief from an order for cessation of surface coal mining and reclamation operations issued pursuant to section 34-33-123, the order or decision on such a request shall be issued within five days of its receipt. The board may grant such relief under such conditions as it may prescribe if:

(a) An informal hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(b) The party requesting temporary relief shows that there is substantial likelihood that the findings of the board will be favorable to him; and

(c) Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air, or water resources.

(4) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 34-33-123 (7), the board shall hold a public hearing after giving written notice of the time, place, and date thereof to the permittee. Advance notice of such hearing shall be included in the monthly mailings of the office. Any such hearing shall be of record and shall be subject to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. Within sixty days following the public hearing, the board shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the board suspends or revokes the permit, the permittee shall immediately cease those surface coal mining operations on the permit area as specified by the board and shall complete reclamation within a period specified by the board, or the board shall declare the performance bonds for the operation as forfeited. Proceeds of forfeited bonds shall be available to the office and shall be used by the office for reclamation of the area covered by the bond.

(5) Whenever an order is issued under this section or as a result of any administrative proceeding under this article, at the request of any party to such proceeding, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) which the board determines to have been reasonably incurred by such party for or in connection with his participation in such proceedings may be assessed against any party to the proceedings, as the board deems just and proper.

**Source: L. 79:** Entire article added, p. 1293, § 1, effective July 1. **L. 81:** (1)(b), IP(3), and (3)(b) amended, pp. 1683, 1684, §§ 6, 7, effective June 16. **L. 92:** (2) and (4) amended, p. 1965, § 67, effective July 1.

**34-33-125. Release of performance bonds or deposits.** (1) The permittee may file a request with the office for the release of all or part of a performance bond or deposit. The permittee shall submit with such request a copy of a publication to be placed by the permittee at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such publication shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, the operator shall, prior to the filing of a request for release of performance bond or deposit, provide written notice of such operator's intention to seek release from the bond to adjoining property owners and appropriate local government bodies, municipalities, regional planning commissions, boards of county commissioners, county planning agencies, sewage and water treatment authorities, and water conservancy and water conservation districts in the locality in which the surface coal mining operations took place, and copies of such notifications shall be submitted to the office within thirty days of the filing of any request for release under this section.

(2) Upon receipt of a request for the release of a performance bond or deposit, the office shall, within thirty days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the results of inspections and monitoring conducted pursuant to section 34-33-122, the degree of difficulty to complete any remaining reclamation, and whether pollution of surface or subsurface water is occurring, the probability of continued pollution, and the estimated cost of abating such pollution. The written results of such inspection and evaluation shall be made immediately available for public inspection in the offices of the office of mined land reclamation.

(3) Any person with a valid legal interest which might be adversely affected by release of the bond or any federal, state, or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to or comments upon the requested release from bond with the office within thirty days after the last publication of the notice required in subsection (1) of this section. Upon receipt of any such objections or comments, copies thereof shall be transmitted to the permittee.

(4) The office shall provide written notification to the permittee of its proposed decision to release or not release all or part of the performance bond or deposit together with written reasons for such proposed decision within sixty days from the date of completion of the inspection and evaluation as required in subsection (2) of this section. The office shall further publish written notice of its proposed decision once a week for two successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation and shall immediately provide written notification of its proposed decision by certified mail to the board of county commissioners of the county in which the surface coal mining operation is located.

(5) If no request for an adjudicatory hearing as provided in subsection (6) of this section is received within the time periods specified therefor, the proposed decision of the office shall be final.

(6) The board shall hold an adjudicatory hearing on the proposed decision of the office upon the receipt of a written request for hearing from any person with a valid legal interest which might be adversely affected by the proposed decision of the office or from the responsible officer or head of any federal, state, or local government agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations. The request for an adjudicatory hearing must state with specificity the reasons why the hearing is requested and must be received within thirty days of issuance of the proposed decision of the office. Prior to the adjudicatory hearing, the board shall inform all interested parties of the time and place of the hearing and shall publish the date, time, and location of such hearing in a newspaper of general circulation in the locality of the surface coal mining operation for two consecutive weeks after receipt of a request for hearing. The board shall hold an adjudicatory hearing on the proposed decision of the office within thirty days of the receipt of any written request for such hearing and shall render a written decision affirming or reversing, in whole or in part, the decision of the office within thirty days following the conclusion of the adjudicatory hearing.

(7) The adjudicatory hearing on the proposed decision of the office shall be conducted pursuant to section 24-4-105, C.R.S., and, for the purpose of such hearing, the board shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of the materials, and take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each adjudicatory hearing required by this article shall be made and a transcript made available on the request of any party to such hearing or by order of the board.

(8) Without prejudice to the rights of any person which might be adversely affected, the applicant, or the responsibilities of the office pursuant to this section, the office may hold an informal conference as provided in section 34-33-118 to resolve any written comments or objections on the request for release, if such conference concludes by the sixtieth day following the inspection and evaluation required in subsection (2) of this section.

(9) The bond or deposit shall be released, in whole or in part, if the office, or the board where an adjudicatory hearing is held pursuant to subsection (6) of this section, is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, according to the following schedule:

(a) Up to sixty percent of the bond or collateral for the applicable permit area shall be released when the operator completes backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan;

(b) An additional portion of the bond or collateral shall be released when revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the board or office shall retain that amount of the bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 34-33-120 of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph (b) so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 34-33-

120 (2)(j) or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 34-33-110 (2)(q). Where a silt dam is to be retained as a permanent impoundment pursuant to section 34-33-120 (2)(h), a portion of the bond may be released under this paragraph (b) so long as provisions for sound future maintenance by the operator or the landowner have been made with the office.

(c) The remaining portion of the bond shall be released when the operator has successfully completed all surface coal mining and reclamation operations, but not before the expiration of the period specified for operator responsibility in section 34-33-120; except that no bond shall be fully released until all reclamation requirements of this article are fully met.

**Source: L. 79:** Entire article added, p. 1294, § 1, effective July 1. **L. 92:** (4) and (8) amended, p. 1895, § 3, effective May 29; (1) to (8), IP(9), and (9)(b) amended, p. 1965, § 68, effective July 1.

**34-33-126. Designating areas unsuitable for surface coal mining.** (1) (a) Upon petition pursuant to subsection (2) of this section, the board shall designate an area as unsuitable for all or certain types of surface coal mining operations if the board determines, based upon competent and scientifically sound data and information derived from the data base and inventory system established in section 34-33-130 or from any other source, that reclamation of the subject area pursuant to the requirements of this article is not technically and economically feasible.

(b) Upon petition pursuant to subsection (2) of this section, a surface area may be designated unsuitable for all or certain types of surface coal mining operations if such operations will:

(I) Be incompatible with state or local land use plans or programs;

(II) Adversely affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(III) Adversely affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, such lands to include aquifer and aquifer recharge areas; or

(IV) Affect natural hazard areas in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(c) Determination of the unsuitability of land for surface coal mining operations under this section shall be integrated as closely as possible with present and future land use planning, leasing, and regulation processes at the federal, state, and local levels.

(2) (a) Any person having an interest which is or may be adversely affected or any duly authorized governmental agency shall have the right to petition the board to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have such designation terminated. Any such petition which includes acreage identified in a pending permit application pursuant to the requirements of section 34-33-111 (1)(a) shall be filed with the board prior to completion of the informal conference provided for in section 34-33-118 (6) concerning such pending permit application. If no such informal conference is requested with respect to such

pending permit application, such petition shall be filed with the board on or before thirty days after the last publication of the notice provided for in section 34-33-118 (2). The petition shall be in writing, shall be directed to the board, and shall contain the following information:

(I) The name, address, and telephone number of the petitioner;

(II) The identification, including applicable range and township numbers, of the areas proposed for designation and a brief description of such areas. The petitioner shall make a good faith effort to identify the owners of record of surface and mineral interests in the land proposed for either designation or termination of designation and shall include a list of the names so obtained with the petition.

(III) The identification of the petitioner's interest which is or may be adversely affected;

(IV) Any allegations of fact with supporting evidence which would tend to establish the allegations.

(b) Within thirty days after receipt of the petition, the board shall notify the petitioner in writing as to the completeness or incompleteness of the petition. In the event the petition is deemed incomplete, the petitioner shall be notified in writing of the specific aspects of the petition which render it incomplete and be provided an opportunity to amend, revise, or otherwise make said petition complete.

(c) Within thirty days after the filing of a complete petition, the office shall make a determination of whether any identified coal resources exist in the area covered by the petition, whether the petition is frivolous, and, if the area or part thereof has been the subject of a previous unsuccessful petition to establish or terminate an unsuitability designation, whether any new factual allegations not contained in such previous petition are included in the petition. If the office determines that there are no identified coal resources in the area covered by the petition, the petition shall be returned to the petitioner with a statement of the finding. If the office determines that the petition is frivolous or that no new factual allegations are contained in the petition covering lands which were the subject of a previous unsuccessful petition, the office shall recommend to the board that the petition be dismissed and provide written notice to the petitioner of such recommendation. At its next regularly scheduled meeting following such recommendation of dismissal by the office, but in no event less than thirty days following notice to the petitioner of the office's recommendation, the board shall accept or reject the office's determination after providing the petitioner and other interested parties an opportunity to be heard at such meeting regarding the office's recommendation. If the board accepts the office's determination, the office shall promptly notify the petitioner that the petition has been dismissed and state the reasons therefor.

(d) Within thirty days after the filing of a complete petition, notice of the petition shall be sent by the office to the owners of record of all surface and mineral interests in the land included in such petition, and a copy of the petition shall be available at all times for inspection by the public in the office of the office of active and inactive mines. The office shall include a list of pending petitions in the monthly mailings of the office.

(e) Within ten months after the receipt of a complete petition, the board shall hold a public hearing in the locality of the affected area. At least one month prior to the date of public hearing, the board shall notify, in writing, the owners of all surface and mineral interests in the affected area regarding the time and place of the public hearing as well as the location where a copy of the subject petition may be examined. At least one month prior to the date of the public hearing, the board shall also publish, in a newspaper of general circulation in the area to be

affected by the petition, a notice of the public hearing with a description of the area to be affected as well as the location where a copy of the petition may be examined.

(f) A copy of the petition shall be sent to the county clerk and recorder of each county affected by such petition for recording in the real property records of said county and shall be made available for inspection by the public.

(g) After the filing of a petition and no later than fifteen days before the public hearing, any person may intervene. A petition to intervene shall contain allegations and supporting evidence which tends to establish or refute the allegations contained in the petition.

(h) Within sixty days after the public hearing on the petition, the board shall issue and furnish to the petitioner and any other party to the hearing a written decision on the petition and the reasons therefor. Any decision of the board on the petition shall be sent to the county clerk and recorder of each county affected by such petition for recording in the real property records of such counties.

(3) Prior to designating any area as unsuitable for surface coal mining operations, the board shall prepare and make available for public inspection and copy, at least one month prior to the hearing provided for in paragraph (c) of subsection (2) of this section, a detailed statement on:

(a) The potential coal resources of the area;

(b) The demand for coal resources; and

(c) The impact of such designation on the environment, the economy, and the supply of coal.

(4) The requirements of this section shall not apply to federal lands or to lands on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this article, or where substantial legal and financial commitments in such operations were in existence prior to January 4, 1977.

**Source: L. 79:** Entire article added, p. 1297, § 1, effective July 1. **L. 92:** (2)(c) and (2)(d) amended, p. 1968, § 69, effective July 1.

**34-33-127. Public agencies, public utilities, and public corporations.** Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, which proposes to engage in surface coal mining operations, which are subject to the requirements of this article, shall comply with the provisions of this article.

**Source: L. 79:** Entire article added, p. 1299, § 1, effective July 1. **L. 92:** Entire section amended, p. 1895, § 4, effective May 29.

**34-33-128. Judicial review.** (1) Any order or decision issued by the board in a civil penalty proceeding, or in a proceeding under section 34-33-126 to establish an unsuitability designation, or in any proceeding required to be conducted pursuant to article 4 of title 24, C.R.S., shall be subject to judicial review on or before thirty days after the date of such order or decision in accordance with subsection (2) of this section in the district court of this state for the district in which the surface coal mining operation is located. In the case of a proceeding to review an order or decision issued by the board under section 34-33-124, the court shall have

jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment.

(2) The court shall hear such petition or complaint solely on the record made before the board. The findings of the board, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the board for such further action as it may direct.

(3) In the case of a proceeding to review any order or decision issued by the board under this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(a) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(c) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(4) At the request of any party to a proceeding under this section, the court may assess costs and expenses, including attorney fees, against any party, as the court deems just and proper.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the board.

**Source: L. 79:** Entire article added, p. 1300, § 1, effective July 1.

**34-33-129. Surface coal mining operations not subject to this article.** (1) The provisions of this article shall not apply to any of the following activities:

(a) The extraction of coal by a landowner for such landowner's own noncommercial use from land owned or leased by said landowner; and

(b) (Deleted by amendment, L. 92, p. 1895, § 5, effective May 29, 1992.)

(c) The extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the board.

**Source: L. 79:** Entire article added, p. 1300, § 1, effective July 1. **L. 92:** Entire section amended, p. 1895, § 5, effective May 29.

**34-33-130. Data inventory.** (1) The board is hereby authorized and directed to cooperate with and seek assistance from state, county, and federal agencies and universities and research institutions in this state and to work in close cooperation with local planning units in order to establish a data base and an inventory system, drawing upon existing resources where possible, which will:

(a) Provide proper evaluation of the capacity of different land areas of the state to be reclaimed following surface coal mining operations;

(b) Be available to those making land use planning decisions concerning surface coal mining operations;

(c) Provide objective and scientific evaluation of fragile, historic, natural hazard, and renewable resource lands and lands listed in the Colorado natural areas registry or designated under the Colorado natural areas program.

(2) The board shall promulgate such rules and regulations which it deems necessary to establish such a data base and inventory system, and, in so doing, the board shall take into consideration those criteria and definitions which other federal and state agencies have adopted for use in determining lands unsuitable for mining.

(3) (a) The board may, at its discretion, appoint an advisory committee to assist it in establishing a data base and inventory system for surface coal mining operations. Such committee, if appointed, shall consist of experts in the areas of wildlife, plant ecology, natural areas, historic areas, reclamation, agriculture, coal geology, and land management planning and other areas as deemed necessary by the board.

(b) and (c) Repealed.

(4) The board is further authorized and directed to accept and seek grants and financial aid from the federal government and from private agencies for carrying out the purposes of this section.

**Source: L. 79:** Entire article added, p. 1301, § 1, effective July 1. **L. 86:** (3) amended, p. 424, § 55, effective March 26. **L. 88:** (3)(b) amended, p. 318, § 15, effective April 14. **L. 90:** (3)(b) and (3)(c) repealed, p. 334, § 24, effective April 3.

**34-33-131. Informal opinion as to alluvial valley floors.** Any person who proposes to engage in surface coal mining operations may, prior to making an application for a permit under this article, request that the board give an informal opinion on whether or not the area of land to be affected by such proposed operations is in, or adjacent to, an alluvial valley floor. Any such informal opinion shall be based upon sound scientific data, shall be in writing, and shall be advisory in nature.

**Source: L. 79:** Entire article added, p. 1301, § 1, effective July 1.

**34-33-132. Special coordination and review process - site-specific agreements.** (1) The department and any person contemplating opening a surface coal mining operation in this state may, at their discretion, enter into one or more site-specific agreements to identify and coordinate local, state, and federal government jurisdiction and review of land use planning, environmental analysis, and socioeconomic evaluation, to establish coordinating procedures for required action, and to ensure that such procedures be undertaken in a timely, sequential manner. Any such agreements shall be consistent with the provisions of this article.

(2) Such site-specific agreements may include:

(a) The schedule for completion of data collection required for environmental, technical, and policy review; and

(b) The schedule for completion of evaluation, review, and comments by all parties.

(3) Such agreements may list all applicable laws, regulations, and ordinances of this state and its agencies, the federal government and its agencies, and of the county or counties in which the proposed operation will be situated. The department may, with the advice and

concurrence of the board, develop rules and regulations to ensure relative uniformity in such agreements.

**Source: L. 79:** Entire article added, p. 1301, § 1, effective July 1.

**34-33-133. Abandoned mine reclamation plan.** (1) The office of active and inactive mines is authorized and directed to develop, in accordance with the provision of Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the rules and regulations thereunder, an abandoned mine reclamation program which may provide for, but need not be limited to, the following:

(a) Protection of public health, safety, general welfare, and property from the dangers and adverse effects of past mining practices;

(b) Acquisition, reclamation, and restoration of land and water resources previously degraded by the adverse effects of mining, including measures for the conservation and development of soil, water, woodland, fish and wildlife, recreation and tourism resources, and agricultural productivity;

(c) The protection, repair, replacement, construction, or enhancement of public facilities in communities affected by coal or other energy development.

(2) The office of active and inactive mines is authorized and directed to:

(a) Apply for, receive, and expend grant moneys or other funds for the development, administration, and fulfillment of the requirements of an abandoned mine reclamation program;

(b) Apply for, receive, and expend such funds legally available to Colorado from the abandoned mine reclamation fund established by Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended;

(c) Invite public inspection of, comment on, and involvement in the formulation of the abandoned mine reclamation program;

(d) Submit the abandoned mine reclamation program, after public review, to the secretary for approval and funding;

(e) Amend the approved abandoned mine reclamation program from time to time, after public review of the proposed amendments, as may be necessary or desirable.

**Source: L. 79:** Entire article added, p. 1302, § 1, effective July 1. **L. 92:** (2)(a) amended, p. 1896, § 6, effective May 29; entire section amended, p. 1968, § 70, effective July 1.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-33-133.5. Colorado mine subsidence protection program - rules.** (1) The board is authorized and directed to issue rules and regulations to develop a Colorado mine subsidence protection program, which shall provide protection for owners of private residential structures against damages caused by land subsidence from underground coal mines. The program shall be operated in accordance with the provisions of Title IV of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and the rules and regulations promulgated pursuant thereto. The board may assess and expend fees collected from participants who are insured under the program, and expend interest earned on such fees as necessary to defray administrative costs

of the program. In its discretion, the board may delegate such power and responsibility, by rule-making, to the division.

(2) **Creation of trust.** The Colorado coal mine subsidence trust is hereby created as part of the board. Trust funds shall be held in custody by the state treasurer in a fund to be known as the Colorado coal mine subsidence trust fund, which fund is hereby created. Moneys granted to the state by the federal government for the purposes specified in subsection (1) of this section, together with all interest earned, shall be credited to such trust fund. The state treasurer shall invest trust assets in lawful investments. The trust funds shall be available to the board to carry out the purposes of the Colorado mine subsidence protection program established pursuant to subsection (1) of this section.

**Source: L. 92:** Entire section added, p. 1896, § 7, effective May 29.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-33-134. Experimental practices.** In order to encourage advances in coal mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the board, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 34-33-120 and 34-33-121. Such departures may be authorized if: The experimental practices are potentially more or at least as environmentally protective, during and after coal mining operations, as those required by promulgated standards; the coal mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded the public health and safety below that provided by promulgated standards.

**Source: L. 79:** Entire article added, p. 1302, § 1, effective July 1.

**34-33-135. Civil actions.** (1) Subject to the requirements of subsection (2) of this section, any person having an interest which is or may be adversely affected may commence a civil action on such person's own behalf to compel compliance with the provisions of this article against:

(a) Any person or governmental agency or instrumentality who is alleged to be in violation of any provision of this article or any rule or regulation promulgated or any order or permit issued pursuant to this article; or

(b) The board or office when there is alleged a failure of the board or office to perform any act or duty under this article which is not discretionary with the board or office.

(2) No action may be commenced under:

(a) Paragraph (a) of subsection (1) of this section prior to sixty days after the plaintiff has given notice in writing of the alleged violation, setting forth such matters as the board shall by regulation prescribe, to the attorney general, the board and office, and any alleged violator;

(b) Paragraph (b) of subsection (1) of this section prior to sixty days after the plaintiff has given notice in writing of the alleged violation, setting forth such matters as the board shall by regulation prescribe, to the board and office and the attorney general; except that such action may be brought immediately after such notification of the alleged failure of the board or office complained of if such failure constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(2.5) The board or the office may intervene as a matter of right in any action commenced pursuant to paragraph (a) of subsection (1) of this section to which they are not otherwise a party.

(3) Any action initiated pursuant to this section shall be tried in such county as is provided by the Colorado rules of civil procedure.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines such award is appropriate. The court shall, if a temporary restraining order or injunction is sought, require the filing of a bond or equivalent security to the extent required by the Colorado rules of civil procedure.

(5) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this article or the regulations promulgated under this article or to seek any other allowable relief, including relief against the appropriate state agency.

(6) Any person who is injured in person or property through the violation by an operator of any rule or regulation promulgated or any order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, against such operator only in the county where said violation occurred. Nothing in this subsection (6) shall affect the rights established by or limits imposed under the workers' compensation laws of this state.

**Source: L. 79:** Entire article added, p. 1303, § 1, effective July 1. **L. 81:** (2.5) added, p. 1684, § 8, effective June 16. **L. 87:** (2)(b) amended, p. 1273, § 1, effective May 13. **L. 90:** (6) amended, p. 573, § 70, effective July 1. **L. 92:** IP(1), (1)(b), (2), and (2.5) amended, p. 1969, § 71, effective July 1.

**34-33-136. Water rights.** Nothing contained in this article shall be construed to affect or impair the rights and obligations attendant upon the ownership of water rights under Colorado water law.

**Source: L. 79:** Entire article added, p. 1304, § 1, effective July 1.

**34-33-137. Reservation clause.** Passage of this article shall not be deemed to be an admission by the state of Colorado as to the legality or constitutionality of the federal "Surface Mining Control and Reclamation Act of 1977", as amended, and shall not be construed to limit, waive, or otherwise affect the right of the state of Colorado, or its agencies, from contesting the constitutional or statutory validity of any part, section, provision, requirement, or regulation promulgated under such act, pursuant to which this article has been enacted.

**Source: L. 79:** Entire article added, p. 1304, § 1, effective July 1.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

## ARTICLE 34

Abandoned Mine Reclamation Program

**34-34-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Abandoned", with regard to mining operations, means lands that were subject to mining operations for which there is no continuing reclamation responsibility under state or federal laws and that have been abandoned or left in an inadequate reclamation status prior to:

(a) For coal mining operations, August 3, 1977, the date of enactment of the federal "Surface Mining Control and Reclamation Act of 1977";

(b) For hard rock mining operations, July 1, 1976, the date of enactment of the "Colorado Mined Land Reclamation Act", article 32 of this title.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Division" means the division of reclamation, mining, and safety or such agency as may lawfully succeed to the powers and duties of such division.

(4) "Hard rock" means an inanimate constituent of the earth in a solid, liquid, or gaseous state that, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material. For the purposes of this article, "hard rock" does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.

(5) "Mineral" means hard rock and coal.

(6) "Mining operations" means the development or extraction of a mineral from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation and the disposal of refuse from surface, underground, and in situ mining. The term includes the following operations on affected lands: Transportation, concentrating, milling, evaporation, and other processing. The term does not include: The exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the extraction of geothermal resources; or smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land.

(7) "Pre-law" means that no permit was issued pursuant to article 32, 32.5, or 33 of this title for a mining operation and no bond or other financial assurance covering the reclamation of the land affected by such mining operation exists.

**Source: L. 2005:** Entire article added, p. 690, § 1, effective July 1. **L. 2006:** (3) amended, p. 218, § 15, effective August 7.

**Cross references:** For the "Surface Mining Control and Reclamation Act of 1977", see 30 U.S.C. § 1201 et seq.

**34-34-102. Abandoned mine reclamation fund - project expenditures.** (1) The abandoned mine reclamation fund is hereby created in the state treasury. The fund shall consist of moneys received pursuant to section 34-33-133 (2)(a), moneys transferred from the severance tax operational fund pursuant to section 39-29-109.3 (1)(c), C.R.S., and interest earned on the investment of such moneys. Revenues in the fund shall not revert to the general fund. The fund shall be expended only for the purposes specified in this section. Appropriations from the fund shall be available for three successive state fiscal years.

(2) The division shall annually submit to the board a list of projects eligible to be reclaimed or safeguarded through expenditures from the fund. Project eligibility and selection shall be determined in accordance with current procedures applicable to the abandoned mine reclamation program established pursuant to section 34-33-133 and the following requirements:

(a) The board shall approve the expenditure of revenues from the fund for the purpose specified in this section after review by the board of county commissioners for the county in which the project is located; and

(b) The project shall be located where pre-law mining operations have occurred, the mining operations have been abandoned, and there is a high risk to the environment or public safety.

**Source: L. 2005:** Entire article added, p. 691, § 1, effective July 1. **L. 2008:** (1) amended, p. 1872, § 10, effective June 2. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 790, § 97, effective June 6.

## Metal Mines

## ARTICLE 40

Bureau of Mines

**34-40-100.3 to 34-40-123. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 32 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 41

Mining Industrial Development Board

**34-41-101 to 34-41-106. (Repealed)**

**Source: L. 74:** Entire article repealed, p. 195, § 1, effective July 1.

**Editor's note:** (1) All real or personal property belonging to the mining industrial development board was transferred to and became the property of the state of Colorado on July 1, 1974, in accordance with section 1 of chapter 30, Session Laws of Colorado 1974.

(2) This article was numbered as article 34 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1974, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

## ARTICLE 42

Mining District Laws

**34-42-101. Mining district records - filed.** A copy of all the records, laws, and proceedings of each mining district, insofar as they relate to lode claims, shall be filed in the office of the county clerk and recorder of the county in which the district is situated, within the boundaries of the mining district attached to the same, which shall be taken as evidence in any court having jurisdiction in the matters contained in such record or proceeding. All such records of deeds and conveyances, laws, and proceedings of any mining district filed in the county clerk and recorder's office of the proper county prior to November 7, 1861, and transcripts thereof duly certified, whether such records relate to gulch claims, lode claims, building lots, or other real estate, shall have the like effect as evidence.

**Source: R.S.** p. 466, § 11. **G.L.** § 1807. **G.S.** § 2396. **R.S. 08:** § 4258. **C.L.** § 3382. **CSA:** C. 110, § 274. **CRS 53:** § 92-21-1. **C.R.S. 1963:** § 92-21-1.

**34-42-102. Proof of customs and regulations admitted.** In actions regarding mining claims, proof shall be admitted of the customs, usages, and regulations established and in force in the mining districts embracing such claims; and such customs, usages, and regulations, when not in conflict with the laws of this state or of the United States, shall govern the decision in the action.

**Source: L. 1887:** p. 198, § 363. **Code 08:** § 397. **Code 21:** § 398. **Code 35:** § 398. **CRS 53:** § 92-21-2. **C.R.S. 1963:** § 92-21-2.

**34-42-103. Jury may view mining premises.** In all suits, actions, and proceedings brought in any court of this state involving title to, the right of possession of, or the mineral contained in any mine or mining claims, it is the duty of the court, at the trial of such suit, and upon the application of either party interested therein, to send the jury impaneled in the case, in a body, to view and inspect the premises. Each party to the suit shall have the privilege of nominating one person, to be approved by the court, to attend with the jury in their view and investigation of the premises in controversy, and such persons so selected and appointed by the court shall be authorized to act as guides to the jury, and to point out such features in the premises as it is desirable that the jury should see and answer all questions propounded by the jury; but such persons so selected shall not be at liberty to argue or discuss any questions involved in the case either with the jury or with each other in the presence of the jury; and if such persons violate the above provision, the court has the power to punish anyone so offending

for contempt of court by a fine of not more than one hundred dollars or by imprisonment for not more than ten days in the county jail.

**Source: L. 1893:** p. 78, § 1. **Code 08:** § 206. **Code 21:** § 207. **Code 35:** § 207. **CRS 53:** § 92-21-3. **C.R.S. 1963:** § 92-21-3.

**Cross references:** For civil contempt, see C.R.C.P. 107.

**34-42-104. Expenses.** The expenses incurred in sending the jury to investigate mining premises, as provided in section 34-42-103, shall be paid by the parties to the suit in equal proportions, unless the demand for such investigation is made by one party and objected to by the other, in which case the court may apportion such expenses as may seem just and equitable in the particular case.

**Source: L. 1893:** p. 78, § 2. **Code 08:** § 207. **Code 21:** § 208. **Code 35:** § 208. **CRS 53:** § 92-21-4. **C.R.S. 1963:** § 92-21-4.

## ARTICLE 43

Claims - How Located

**34-43-101. Length of lode claim.** The length of any lode claim located after June 1, 1874, may equal but not exceed fifteen hundred feet along the vein.

**Source: L. 1874:** p. 185, § 1. **G.L.** § 1811. **G.S.** § 2397. **R.S. 08:** § 4192. **C.L.** § 3278. **CSA:** C. 110, § 168. **CRS 53:** § 92-22-1. **C.R.S. 1963:** § 92-22-1.

**34-43-102. Width of lode claim.** The width of all lode claims located after April 13, 1923, may equal but not exceed three hundred feet on each side of the middle of the vein or crevice, and the owners of any lode claims located before April 13, 1923, and having a lesser width, who are desirous of securing the benefit of this section, may file an additional certificate claiming such additional width as provided in this section, if the additional certificate does not interfere with the existing rights of others at the time of filing of the same. No such additional certificate or other record thereof shall preclude the claimants from proving such titles as they may have held under previous location.

**Source: L. 1874:** p. 186, § 2. **G.L.** § 1812. **G.S.** § 2398. **R.S. 08:** § 4193. **L. 13:** p. 413, § 1. **L. 21:** p. 614, § 1. **C.L.** § 3279. **L. 23:** p. 458, § 1. **CSA:** C. 110, § 169. **CRS 53:** § 92-22-2. **C.R.S. 1963:** § 92-22-2.

**34-43-103. Lode claim certificate - contents.** (1) The discoverer of a lode, within three months from the date of discovery, shall record his claim in the office of the recorder of the county in which such lode is situated, by a location certificate, which shall contain:

(a) The name of the lode;

(b) The name of the locator;

(c) The date of location;

(d) The number of feet in length claimed on each side of the center of the discovery shaft;

(e) The general course of the lode as near as may be.

**Source: L. 1874:** p. 186, § 3. **G.L.** § 1813. **G.S.** § 2399. **R.S. 08:** § 4194. **C.L.** § 3280. **CSA:** C. 110, § 170. **CRS 53:** § 92-22-3. **C.R.S. 1963:** § 92-22-3.

**34-43-104. Location certificate void - when.** Any location certificate of a lode claim which does not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the general course of the lode, and such description as identifies the claim with reasonable certainty shall be void.

**Source: L. 1874:** p. 186, § 4. **G.L.** § 1814. **G.S.** § 2400. **R.S. 08:** § 4195. **C.L.** § 3281. **CSA:** C. 110, § 171. **CRS 53:** § 92-22-4. **C.R.S. 1963:** § 92-22-4.

**34-43-105. Certificate shall contain but one location.** No location certificate shall claim more than one location, whether the location is made by one or several locators. If it purports to claim more than one location it shall be absolutely void, except as to the first location therein described, and if they are described together, or so that it cannot be determined which location is first described, the certificate shall be void as to all.

**Source: L. 1874:** p. 190, § 17. **G.L.** § 1826. **G.S.** § 2412. **R.S. 08:** § 4196. **C.L.** § 3282. **CSA:** C. 110, § 172. **CRS 53:** § 92-22-5. **C.R.S. 1963:** § 92-22-5.

**34-43-106. Manner of locating claims.** (1) Before filing such location certificate, the discoverer shall locate his claim by:

(a) Sinking a discovery shaft upon the lode to the depth of at least ten feet from the lowest part of the rim of such shaft at the surface, or deeper if necessary, to show a well-defined crevice;

(b) Posting at the point of discovery on the surface a plain sign or notice, containing the name of the lode, the name of the locator, and the date of discovery;

(c) Marking the surface boundaries of the claim.

(2) The locator of any mining claim, in lieu of sinking a discovery shaft as required in paragraph (a) of subsection (1) of this section, may at his option, within the period allowed for the recording of the location certificate as provided in section 34-43-103, file in the office of the county clerk and recorder of the county in which such claim is located, a map which shall be attached to said location certificate, which map shall be of a scale of approximately one inch equals five hundred feet, prepared from an actual field survey and shall show the following:

(a) The name and address of the discoverer of the claim;

(b) The legal subdivisions of the land upon which the claim is located, if such land is surveyed;

(c) The claim pattern with courses and distances of the boundary lines, and reference to the nearest section or quarter-section corner of the public land survey, if surveyed, or reference

to a permanent monument, if unsurveyed, by which the location of the claim on the ground can be readily and accurately ascertained.

(3) The owner of any mining claim located prior to April 8, 1955, may avail himself of the provisions of this subsection (3) and subsection (2) of this section by preparing and filing with the county clerk and recorder of the county in which the claim is situated an amended location certificate with a map as provided in subsection (2) of this section within one hundred eighty days from April 8, 1955.

**Source: L. 1874:** p. 186, § 5. **G.L.** § 1815. **G.S.** § 2401. **R.S. 08:** § 4197. **C.L.** § 3283. **CSA:** C. 110, § 173. **CRS 53:** § 92-22-6. **L. 55:** p. 603, § 1. **C.R.S. 1963:** § 92-22-6.

**34-43-107. Marking boundaries.** Such surface boundaries shall be marked by six substantial posts hewed or marked on the sides which are in toward the claim, and sunk in the ground, one at each corner and one at the center of each side line. Where it is practically impossible on account of bedrock to sink such posts, they may be placed in a pile of stones, and where in marking the surface boundaries of a claim any one or more of such posts fall by right upon precipitous ground where the proper placing of it is impractical or dangerous to life or limb, it shall be legal and valid to place any such post at the nearest practicable point, suitably marked, to designate the proper place.

**Source: L. 1874:** p. 187, § 6. **L. 1876:** p. 94, § 1. **G.L.** § 1816. **G.S.** § 2402. **R.S. 08:** § 4198. **C.L.** § 3284. **CSA:** C. 110, § 174. **CRS 53:** § 92-22-7. **C.R.S. 1963:** § 92-22-7.

**34-43-108. To hold lode - crosscut - tunnel - adit.** Any open cut, crosscut, or tunnel which cuts a lode at the depth of ten feet below the surface shall hold such lode, the same as if a discovery shaft were sunk thereon, or an adit of at least ten feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft.

**Source: L. 1874:** p. 187, § 7. **G.L.** § 1817. **G.S.** § 2403. **R.S. 08:** § 4199. **C.L.** § 3285. **CSA:** C. 110, § 175. **CRS 53:** § 92-22-8. **C.R.S. 1963:** § 92-22-8.

**34-43-109. Sixty days to sink discovery shaft.** The discoverer shall have sixty days from the time of uncovering or disclosing a lode to sink a discovery shaft thereon.

**Source: L. 1874:** p. 187, § 8. **G.L.** § 1818. **G.S.** § 2404. **R.S. 08:** § 4200. **C.L.** § 3286. **CSA:** C. 110, § 176. **CRS 53:** § 92-22-9. **C.R.S. 1963:** § 92-22-9.

**34-43-110. What location includes - extralateral rights.** The location or location certificate of any lode claim shall be construed to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended downward, vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode.

**Source: L. 1874:** p. 187, § 9. **G.L.** § 1819. **G.S.** § 2405. **R.S. 08:** § 4201. **C.L.** § 3287. **CSA:** C. 110, § 177. **CRS 53:** § 92-22-10. **C.R.S. 1963:** § 92-22-10.

**34-43-111. Top not to be followed beyond lines.** If the top or apex of a lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior lines.

**Source: L. 1874:** p. 187, § 10. **G.L.** § 1820. **G.S.** § 2406. **R.S. 08:** § 4202. **C.L.** § 3288. **CSA:** C. 110, § 178. **CRS 53:** § 92-22-11. **C.R.S. 1963:** § 92-22-11.

**34-43-112. Placer claim certificate - recording - manner of locating.** (1) The discoverer of a placer claim, within thirty days from the date of discovery, shall record his claim in the office of the recorder of the county in which said claim is situated by a location certificate, which shall contain:

(a) The name of the claim, designating it as a placer claim;

(b) The name of the locator;

(c) The date of location;

(d) The number of acres or feet claimed; and

(e) A description of the claim by such reference to natural objects or permanent monuments as shall identify the claim.

(2) Before filing such location certificate the discoverer shall locate his claim:

(a) By posting upon such claim a plain sign or notice containing the name of the claim, the name of the locator, the date of discovery, and the number of acres or feet claimed;

(b) By marking the surface boundaries with substantial posts, sunk into the ground, one at each angle of the claim.

**Source: L. 1879:** p. 140, § 1. **G.S.** § 2385. **R.S. 08:** § 4205. **C.L.** § 3289. **CSA:** C. 110, § 179. **CRS 53:** § 92-22-12. **C.R.S. 1963:** § 92-22-12.

**34-43-113. Tunnel claim - recording.** If any person locates a tunnel claim for the purpose of discovery, he shall record the same, specifying the place of commencement and termination thereof with the names of the parties interested therein.

**Source: R.S.** p. 465, § 4. **G.L.** § 1800. **G.S.** § 2389. **R.S. 08:** § 4207. **C.L.** § 3290. **CSA:** C. 110, § 180. **CRS 53:** § 92-22-13. **C.R.S. 1963:** § 92-22-13.

**34-43-114. Affidavit of annual labor, improvements, or payment of federal claim rental fee - effect of filing.** (1) On or before December 30th of each year following the end of any set time or annual period allowed for the performance of labor or making improvements upon any lode claim or placer claim, or for the payment of an annual claim rental fee as required by federal law in lieu of such work or improvements, the person on whose behalf such outlay was made, or such person's representative, may make and record in the office of the recorder of the county wherein such claim is situate an affidavit in substance as follows:

STATE OF COLORADO )
) ss.
County of .....)

Before me, the subscriber personally appeared ....., who, being duly sworn, saith that at least ..... dollars [worth of work or improvements were performed or made upon] [claim rental fee as required by federal law was paid upon] (here describe claim or part of claim), situate in ..... mining district, county of ....., state of Colorado, between the ..... day of ....., A.D..., and the .... day of ....., A.D.... Such expenditure was made by or at the expense of ....., owners of said claim, for the purpose of complying with the law, and holding said claim.

Jurat:
(Signature) .....

(2) Such affidavit when recorded shall be prima facie evidence of the performance of such labor or the making of such improvements or the payment of such annual claim rental fee. The original thereof, or a certified copy of the record of the same, shall be received as evidence accordingly by the courts of this state, and this class of evidence shall be receivable, where relevant or material, in all causes.

(3) The fee for recording the affidavit described in subsection (1) of this section is set forth in section 30-1-103 (2)(m), C.R.S.

**Source: L. 1874:** p. 189, § 15. **G.L.** § 1824. **G.S.** § 2410. **L. 1887:** p. 342, § 1. **L. 1889:** p. 261, § 1. **R.S. 08:** § 4209. **C.L.** § 3291. **CSA:** C. 110, § 181. **CRS 53:** § 92-22-14. **C.R.S. 1963:** § 92-22-14. **L. 81:** (1) amended, p. 1687, § 1, effective April 30. **L. 88:** (3) added, p. 1107, § 2, effective January 1, 1989. **L. 94:** (1) and (2) amended, p. 634, § 1, effective April 14.

**34-43-115. Relocation by owner - conditions.** If at any time the locator of any mining claim, or his assigns, apprehends that his original certificate is defective, erroneous, or that the requirements of the law had not been complied with before filing, or is desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to June 1, 1874, and he is desirous of securing the benefits of this article, such locator, or his assigns, may file an additional certificate, subject to the provisions of this article, if his relocation does not interfere with the existing rights of others at the time of such relocation. No such relocation or other record thereof shall preclude the claimant from proving any such title as he may hold under previous location.

**Source: L. 1874:** p. 188, § 13. **G.L.** § 1823. **G.S.** § 2409. **R.S. 08:** § 4210. **C.L.** § 3292. **CSA:** C. 110, § 182. **CRS 53:** § 92-22-15. **C.R.S. 1963:** § 92-22-15.

**34-43-116. Relocation of abandoned claims.** The relocation of abandoned lode claims shall be by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim; or the relocator may sink the original discovery shaft ten feet deeper than it was at the time of abandonment, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected.

**Source: L. 1874:** p. 189, § 16. **G.L.** § 1825. **G.S.** § 2411. **R.S. 08:** § 4211. **L. 11:** p. 515, § 2. **C.L.** § 3293. **CSA:** C. 110, § 183. **CRS 53:** § 92-22-16. **C.R.S. 1963:** § 92-22-16.

## ARTICLE 44

Tenants in Common of Mines

**34-44-101. Legislative declaration.** This article shall be construed as a remedial law, intended to promote mining activity, and shall be liberally construed in favor of the working tenant.

**Source: L. 23:** p. 455, § 9. **CSA:** C. 92, § 16. **CRS 53:** § 92-23-9. **C.R.S. 1963:** § 92-23-9.

**34-44-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Mine" includes all real property acquired, used, or chiefly valuable for mining purposes.

(2) "Mining operation" includes all acts constituting the prospecting, development, and working of a mine, including the milling and sale of ore, minerals, and mine products, which are carried out with reasonable diligence from the beginning of work until completion of the operation, or until abandonment, or termination by law.

(3) "Person" includes a corporation, partnership, firm, association of persons, personal representative, heir, assignee, trustee, or receiver.

(4) "Tenant" includes tenant in common, joint tenant, or coparcener.

**Source: L. 23:** p. 455, § 9. **CSA:** C. 92, § 16. **CRS 53:** § 92-23-9. **C.R.S. 1963:** § 92-23-9.

**34-44-103. Mine owners - tenants in common - rights.** If two or more persons own any mine they shall be considered tenants in common. Any one or more such tenants in common shall have the right to enter upon, occupy, prospect, develop, and work said mine in a minerlike manner, extracting, milling, and disposing of the ore from the common property without the consent of any nonworking tenant in common, subject to accounting to the nonworking tenant in common for his proportionate share of the net profits of such mining operations.

**Source: L. 23:** p. 451, § 1. **CSA:** C. 92, § 8. **CRS 53:** § 92-23-1. **C.R.S. 1963:** § 92-23-1.

**34-44-104. Accounting - items considered.** In said accounting, the working tenant shall be permitted to set off against the proceeds of such mining operation all expenditures and expenses of said work, including: The building and repairing of such roads, whether public or private, as are necessary or expedient to furnish economical transportation to mill or reduction works or railroad; prospecting, development work, and mining, including openings and appliances for ventilation and drainage, and dead work generally; the purchase, installation, maintenance, and operation of tools, machinery, equipment, and appliances for prospecting,

developing, and working the mine, and of transporting ore and products, and all other expenses reasonably incident to or arising out of such mining operation. In said accounting, the working tenant shall be allowed setoff for the reasonable value of his service actually rendered in or upon the operation, but the amount of compensation shall not exceed the current rate of wages or compensation for work of like character in the community in which said mine is situate, and shall also be allowed setoff for his expenditures and expenses in prospecting unless it clearly and convincingly appears that said prospecting was done in bad faith with willful intent to injure or defraud the nonworking tenant.

**Source: L. 23:** p. 451, § 2. **CSA:** C. 92, § 9. **CRS 53:** § 92-23-2. **C.R.S. 1963:** § 92-23-2.

**34-44-105. Contribution from tenants - liens.** No working tenant shall have any right to demand contribution from any nonworking tenant, except out of the proceeds or net profits of such mining operation; and no lien shall be created or attach to the interest of the nonworking tenant, but only to the interest of the working tenant.

**Source: L. 23:** p. 452, § 3. **CSA:** C. 92, § 10. **CRS 53:** § 92-23-3. **C.R.S. 1963:** § 92-23-3.

**34-44-106. Statement - disposition of profits.** The working tenant shall render to the nonworking tenant, at least once in every six months after commencing said operation and also within thirty days after completing said operation, a written statement giving a true, full, and fair account of all of the expenditures and expenses of said work and mining operation, and of the proceeds of all ore or minerals extracted and sold, and the net profits or losses of the operation from the beginning of said operation to the date of such statement. If said operation has been conducted at a net profit the working tenant shall at once pay to the nonworking tenant his proportionate share of said net profits, and if he fails to do so, his right to continue such mining operation under the provisions of this article shall at once cease. In case the address of any nonworking tenant is unknown, or he has failed to notify the working tenant of a place at which, or an agent to whom, payment may be made, or if he cannot be conveniently found so that payment may be made to him of his proportionate share of said net profits, or in case any nonworking tenant is dead and there is no known executor or administrator of his estate in the state of Colorado qualified to receive such statement and payment, the working tenant may deposit said statement and payment with the state treasurer who shall receive said deposit under the same obligations and with like effect as other deposits made under the provisions of section 15-12-914, C.R.S.

**Source: L. 23:** p. 452, § 4. **CSA:** C. 92, § 11. **CRS 53:** § 92-23-4. **C.R.S. 1963:** § 92-23-4. **L. 73:** p. 1648, § 11.

**34-44-107. Actions of accounting - setoffs.** On and after April 13, 1923, in all actions for an accounting between tenants in common of any mine, the working tenant shall be allowed to establish his expenditures and expenses, by way of setoff against the proceeds and profits of

the operation, without being required to show either that the improvements were necessary or that they enhanced the value of the property.

**Source: L. 23:** p. 453, § 5. **CSA:** C. 92, § 12. **CRS 53:** § 92-23-5. **C.R.S. 1963:** § 92-23-5.

**34-44-108. Notice to tenants - contents - effect.** (1) Any tenant in common of any mine who commences to work the same without the consent of the other tenants in common and who desires to avail himself of the benefits of this article shall give a written notice to the other tenants in common interested in said mine stating his intention to work said mine. The notice shall describe the property by name, patent survey number, or book and page of the recorded location certificate, or other certain description, and shall give the name and post-office address of the working tenant, or the name and post-office address of the lessee where the proposed work is to be done under lease, the general plan, the date of commencing said mining operation, and the probable duration thereof, and shall invite the other tenants in common of said mine to join in said operation.

(2) Such notice shall be served, within ten days after its date, upon all other tenants in common by delivering a copy personally, or by depositing the same in the mail, postage prepaid, addressed to such person at his last known address. If any tenant in common cannot be served in this manner within ten days after the date of said notice, the notice shall be recorded within twenty days after its date in the office of the recorder of the county in which said mine is situated, and such record, from and after its recording, shall be constructive notice to all persons not otherwise notified.

(3) Any tenant in common in said mine shall have the right, within twenty days after the receipt of said notice by him personally, or within thirty days after the record of said notice in case he has not otherwise received notice or obtained knowledge of said mining operation, to join in said mining operation to the extent of his proportionate interest in said mine, upon giving to the working tenant written notice of his intention so to do, and upon paying to the working tenant his proportionate part of the expenditures and expenses of said mining operation from the date of commencing work to the date of so joining in said mining operation.

(4) In the event that any working tenant does not give the notice provided in this section, and serve or record the notice as provided in this section, he shall be denied any rights, benefits, or remedies created or conferred by this article, and shall have only such rights and remedies and be under such duties and liabilities as existed by law prior to April 13, 1923.

**Source: L. 23:** p. 454, § 6. **CSA:** C. 92, § 13. **CRS 53:** § 92-23-6. **C.R.S. 1963:** § 92-23-6.

**34-44-109. Setoff rules applicable - when.** The provisions of this article, as to the principles and rules of decision relating to setoff in accounting, shall apply to all actions for accounting between tenants in common of mines in which a final judgment or decree of accounting has not been made and entered of record.

**Source: L. 23:** p. 455, § 7. **CSA:** C. 92, § 14. **CRS 53:** § 92-23-7. **C.R.S. 1963:** § 92-23-7.

**34-44-110. Leases - rights and duties of lessee.** Any tenant in common, joint tenant, or coparcener in any mine shall have the right to lease his interest therein, and his lessee shall in such case be entitled to all the rights, benefits, and remedies, and shall be subject to all the duties and obligations of a working tenant as provided in this article.

**Source: L. 23:** p. 455, § 8. **CSA:** C. 92, § 15. **CRS 53:** § 92-23-8. **C.R.S. 1963:** § 92-23-8.

## ARTICLE 45

Offenses

**34-45-101. Damages for taking ore.** In trials for the recovery of the value of ore or minerals wrongfully mined and extracted, if plaintiff shows himself entitled to recover, and if he had the rightful possession of the ground from which the ore was taken at the time the action was brought or tried, the fact that defendant may have been in possession, either actual or constructive, when the case was tried shall not deprive plaintiff from recovering damages for the value of the ore or mineral mined and extracted according to the rules of law pertaining to the trials of actions of that character. But for the purpose of the action, plaintiff shall be deemed and held to be in possession of all the ground, drifts, stopes, openings, and premises from which the ore was taken, although he may not be able to reach such ground from his own openings and workings. The rule of law that plaintiff can recover nominal damages for the first entry, and then wait until he obtains actual possession of the ground from which the ore was taken, and then bring another action for the value of the ore or mineral so mined and taken, shall not be observed nor applied to defeat, in the first action, the recovery of the value of the ore or mineral so wrongfully mined and taken.

**Source: L. 1893:** p. 349, § 1. **R.S. 08:** § 4219. **C.L.** § 3307. **CSA:** C. 110, § 200. **CRS 53:** § 92-26-1. **C.R.S. 1963:** § 92-26-1.

**34-45-102. Conspiracy - threats - evidence - penalty. (Repealed)**

**Source: L. 1874:** p. 192, § 3. **G.L.** § 1828. **G.S.** § 2414. **R.S. 08:** § 4220. **C.L.** § 3308. **CSA:** C. 110, § 201. **CRS 53:** § 92-26-2. **C.R.S. 1963:** § 92-26-2. **L. 2003:** Entire section repealed, p. 915, § 24, effective August 6.

**34-45-103. Killing in entry by force.** If any persons associate and agree to enter by force of numbers, and such number is calculated to inspire terror, or by force and violence, or by threats of violence, against any persons in the actual possession of any lode, gulch, or placer claim, and upon or into such lode, gulch, or placer claim, and upon such entry, any persons are killed, said persons, and each of them, so entering, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trial of such cases, any person cognizant of such entry, who shall either be present, aiding and assisting, or shall by promise of money, property, influence, assistance, or other thing of value, in any way encourage such entry, shall be deemed a principal in the commission of said offense.

**Source: L. 1874:** p. 192, § 4. **L. 1876:** p. 94, § 1. **G.L.** § 1829. **G.S.** § 2415. **R.S. 08:** § 4221. **C.L.** § 3309. **CSA:** C. 110, § 202. **CRS 53:** § 92-26-3. **L. 63:** p. 339, § 53. **C.R.S. 1963:** § 92-26-3.

**Cross references:** For murder in the first degree, see § 18-3-102.

**34-45-104. Removal of trees a misdemeanor. (Repealed)**

**Source: L. 1889:** p. 460, § 1. **R.S. 08:** § 4222. **C.L.** § 3310. **CSA:** C. 110, § 203. **CRS 53:** § 92-26-4. **C.R.S. 1963:** § 92-26-4. **L. 77:** Entire section repealed, p. 293, § 9, effective May 26.

**34-45-105. Removal of cabins. (Repealed)**

**Source: L. 1889:** p. 460, § 2. **R.S. 08:** § 4223. **C.L.** § 3311. **CSA:** C. 110, § 204. **CRS 53:** § 92-26-5. **C.R.S. 1963:** § 92-26-5. **L. 77:** Entire section repealed, p. 293, § 9, effective May 26.

**34-45-106. Who is deemed owner. (Repealed)**

**Source: L. 1889:** p. 460, § 3. **R.S. 08:** § 4224. **C.L.** § 3312. **CSA:** C. 110, § 205. **CRS 53:** § 92-26-6. **C.R.S. 1963:** § 92-26-6. **L. 77:** Entire section repealed, p. 293, § 9, effective May 26.

**34-45-107. Penalty for wrongful removal. (Repealed)**

**Source: L. 1889:** p. 461, § 4. **R.S. 08:** § 4225. **C.L.** § 3313. **CSA:** C. 110, § 206. **CRS 53:** § 92-26-7. **C.R.S. 1963:** § 92-26-7. **L. 77:** Entire section repealed, p. 293, § 9, effective May 26.

## ARTICLE 46

Mining Equipment - Ownership

**34-46-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Mining equipment" includes all parts of a mine plant or any equipment used in connection with any such plant, whether the same is underground or on the surface, which contributes or may contribute to the mining, treatment, or handling of ores, or any metalliferous or nonmetalliferous mineral products, and, without restriction, such generalization includes any new or used tools, track, cars, pipe, cable, timber, belting, houses, tents, or treatment plants or parts thereof, of the value when new of not less than twenty-five dollars.

**Source: L. 41:** p. 540, § 1. **CSA:** C. 110, § 332. **CRS 53:** § 92-36-1. **C.R.S. 1963:** § 92-35-1.

**34-46-102. Written evidence of ownership required.** It is unlawful for any person to have in his possession any mining equipment acquired after April 16, 1941, without the written evidence of ownership or right of possession.

**Source: L. 41:** p. 540, § 2. **CSA:** C. 110, § 333. **CRS 53:** § 92-36-2. **C.R.S. 1963:** § 92-35-2.

**34-46-103. Prohibiting destruction, appropriation, or deprivation of use.** It is unlawful for any person to destroy or appropriate to his own use any mining equipment of which he is not the lawful owner and possessor or to deprive the lawful owner and possessor of the use or possession thereof.

**Source: L. 41:** p. 540, § 3. **CSA:** C. 110, § 334. **CRS 53:** § 92-36-3. **C.R.S. 1963:** § 92-35-3.

**34-46-104. When transportation prohibited except by railroad.** It is unlawful to transport any used mining equipment except by railroad transportation without first obtaining written evidence of ownership or right of possession thereof by the person transporting the same, or satisfying the local sheriff or other peace officers of the county in which machinery is located that the person desiring to move such used machinery or equipment as defined in section 34-46-101 is responsible and has a legal right to move such used machinery or equipment. Such evidence shall, upon demand of any peace officer or Colorado state trooper, be exhibited, and unless so exhibited, any such officer shall take possession of such mining equipment at the expense, if any, of the shipper and shall hold the same until the provisions of this article have been complied with.

**Source: L. 41:** p. 541, § 4. **CSA:** C. 110, § 335. **CRS 53:** § 92-36-4. **C.R.S. 1963:** § 92-35-4. **L. 2013:** Entire section amended, (HB 13-1300), ch. 316, p. 1696, § 103, effective August 7.

**34-46-105. Penalty.** Any person who violates any provision of this article commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**Source: L. 41:** p. 541, § 5. **CSA:** C. 110, § 336. **CRS 53:** § 92-36-5. **C.R.S. 1963:** § 92-35-5. **L. 77:** Entire section amended, p. 882, § 59, effective July 1, 1979. **L. 89:** Entire section amended, p. 848, § 124, effective July 1. **L. 2002:** Entire section amended, p. 1546, § 302, effective October 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 54 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**34-46-106. Possession prima facie unlawful - when.** Upon the trial of any person charged with the theft or unlawful possession of mining equipment, or with the violation of any provision of this article, the possession by such person of such mining equipment without written evidence of ownership or right of possession shall be prima facie evidence that such possession is unlawful.

**Source: L. 41:** p. 541, § 6. **CSA:** C. 110, § 337. **CRS 53:** § 92-36-6. **C.R.S. 1963:** § 92-35-6.

## ARTICLE 47

Safety Regulations

**34-47-101 to 34-47-131. (Repealed)**

**Source: L. 88:** Entire article repealed, p. 1199, § 10, effective May 3.

**Editor's note:** This article was numbered as article 33 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For current provisions relating to health and safety in mines, see articles 20 to 25 and 31 of this title.

## ARTICLE 48

Easements

**34-48-101. Right-of-way for water.** Whenever any persons are engaged in bringing water into any portion of a mine, they have the right-of-way secured to them, and may pass over any claim, road ditch, or other structure, if the water is guarded so as not to interfere with prior rights.

**Source: R.S.** p. 465, § 2. **G.L.** § 1798. **G.S.** § 2387. **R.S. 08:** § 4212. **C.L.** § 3294. **CSA:** C. 110, § 184. **CRS 53:** § 92-24-1. **C.R.S. 1963:** § 92-24-1.

**34-48-102. Mine under buildings.** No person has the right to mine under any building or other improvement unless he shall first secure the parties owning the same against all damages, except by priority of right.

**Source: R.S.** p. 465, § 3. **G.L.** § 1799. **G.S.** § 2388. **R.S. 08:** § 4213. **C.L.** § 3295. **CSA:** C. 110, § 185. **CRS 53:** § 92-24-2. **C.R.S. 1963:** § 92-24-2.

**34-48-103. Flooding - tailings - liability.** In no case shall any person be allowed to flood the property of another person with water, or wash down the tailings of his sluice upon the claim or property of other persons, but it is the duty of every miner to take care of his own tailings, upon his own property, or become responsible for all damages that may arise therefrom.

**Source: R.S.** p. 466, § 8. **G.L.** § 1804. **G.S.** § 2393. **R.S. 08:** § 4214. **C.L.** § 3296. **CSA:** C. 110, § 186. **CRS 53:** § 92-24-3. **C.R.S. 1963:** § 92-24-3.

**34-48-104. Right-of-way for hauling quartz.** Every miner has the right-of-way across any and all claims for the purpose of hauling quartz from his claim.

**Source: R.S.** p. 466, § 9. **G.L.** § 1805. **G.S.** § 2394. **R.S. 08:** § 4215. **C.L.** § 3297. **CSA:** C. 110, § 187. **CRS 53:** § 92-24-4. **C.R.S. 1963:** § 92-24-4.

**34-48-105. Rights-of-way - condemnation.** All mining claims, including patented and unpatented claims, shall be subject to the right-of-way of any ditch, flume, pipeline for transporting water or air for mining purposes, or of any tram, tramway, or pack trail, across any such locations or claims. Any person or corporation desiring to construct, maintain, and operate any such flume, ditch, pipeline, tram, tramway, or pack trail shall pay due and just compensation for such right-of-way to the owner of the claim through which it is proposed to construct, operate, and maintain such flume, ditch, pipeline, tram, tramway, or pack trail. When the parties cannot agree upon such right-of-way and the amount of compensation to be paid the owner of such claim, the same shall be determined in the manner provided by law for the exercise of right of eminent domain. Such ditch, flume, or pipeline shall be so constructed that the water from such ditch, flume, or pipeline shall not injure vested rights by flooding.

**Source: L. 1874:** p. 188, § 11. **G.L.** § 1821. **G.S.** § 2407. **R.S. 08:** § 4216. **L. 17:** p. 378, § 1. **C.L.** § 3298. **CSA:** C. 110, § 188. **CRS 53:** § 92-24-5. **C.R.S. 1963:** § 92-24-5.

**34-48-106. Security for mining under surface.** When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner, and if it is refused, he may enjoin such miner from working until such security is given. The order for injunction shall fix the amount of bond.

**Source: L. 1874:** p. 188, § 12. **G.L.** § 1822. **G.S.** § 2408. **R.S. 08:** § 4217. **C.L.** § 3299. **CSA:** C. 110, § 189. **CRS 53:** § 92-24-6. **C.R.S. 1963:** § 92-24-6.

**34-48-107. Tunnels - drifts - right-of-way - condemnation.** The owner of any mining claim or property who, by reason of established rights, shall be entitled to follow any mineral-bearing vein or lode into the property of another, and the owner of any mining claim or property lying on two or more sides of the property of another has the right to enter and cross such adjoining or intermediate claims or property, with such drifts, tunnels, and crosscuts as may be necessary for the practical or economical mining and development of his own property and for the purpose of extracting and removing ore therefrom. When any such owner and the owners of

such adjoining or intermediate claims or property through which such owner desires to pass under the terms of this section and sections 34-48-108 and 34-48-109 shall be unable to agree upon the terms, conditions, and purchase price of rights-of-way for such necessary drifts, tunnels, and crosscuts, then the owner seeking to exercise the rights granted in this section may exercise the right of eminent domain and condemn the rights-of-way into, across, and through such intermediate or adjacent lands such as may be necessary for the practical and economical working of his own property, and such rights-of-way are declared to be private ways of necessity.

**Source: L. 27:** p. 483, § 1. **CSA:** C. 110, § 190. **L. 43:** p. 432, § 1. **CRS 53:** § 92-24-7. **C.R.S. 1963:** § 92-24-7.

**34-48-108. Accounting.** Any owner exercising the rights and privileges granted in this article shall do so in such manner as not to interfere with the mining operations of the owner into or through whose property he seeks to go, and shall extract only such ore as is necessary in the reasonable exercise of the rights granted in this article, and all ore extracted shall be accounted for by the person exercising such rights to the owner of the property from which such ore is taken, at its gross value on the surface.

**Source: L. 27:** p. 484, § 2. **CSA:** C. 110, § 191. **CRS 53:** § 92-24-8. **C.R.S. 1963:** § 92-24-8.

**34-48-109. Surveys.** The owners of land through which it is proposed to construct such tunnel shall have the right at any reasonable time, upon application to the superintendent or other managing officer of such condemning owner, to enter his works with their surveyors and inspectors for the purpose of inspection and making a survey of any such works and shall have the right of ingress and egress through said works at all reasonable times.

**Source: L. 27:** p. 484, § 3. **CSA:** C. 110, § 192. **CRS 53:** § 92-24-9. **C.R.S. 1963:** § 92-24-9.

**34-48-110. Rights-of-way for conveyance and storage of water.** All persons and corporations engaged in mining or milling of ores have the right-of-way over, upon, under, and across all mining claims, including patented and unpatented claims, or other lands, for the construction, maintenance, and operation of flumes, ditches, pipelines, and conduits to convey water for use in said mines and mills, and to convey tailings and waste from said mines, mills, and reduction plants, and may also take and condemn any such claims or other lands for the construction, maintenance, and operation of reservoirs to be used for the settling or storing of tailings or waste from any such mines, mills, and reduction plants, without the consent of the owners of such property affected.

**Source: L. 37:** p. 850, § 1. **CSA:** C. 110, § 192(1). **CRS 53:** § 92-24-10. **C.R.S. 1963:** § 92-24-10.

**34-48-111. Right of eminent domain.** All persons or corporations shall pay due and just compensation for rights-of-way to the owners of the property through which it is proposed to construct any flume, ditch, pipeline, or conduit or upon which any reservoirs shall be located. When the parties cannot agree upon such right-of-way or reservoir site or the amount of compensation to be paid therefor, all such persons or corporations are vested with the power of eminent domain and are authorized to proceed to acquire such rights-of-way for flumes, ditches, pipelines, conduits, and reservoir sites, in the manner provided by law for the exercise of the right of eminent domain.

**Source: L. 37:** p. 851, § 2. **CSA:** C. 110, § 192(2). **CRS 53:** § 92-24-11. **C.R.S. 1963:** § 92-24-11.

**Cross references:** For right of eminent domain, see articles 1 to 7 of title 38.

## ARTICLE 49

Surveys

**34-49-101. Survey - notice - affidavit.** (1) In all actions pending in any district court of this state, wherein the title or right to possession of any mining claims shall be in dispute, the court may, upon application of any of the parties to such action, enter an order for an underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such action, or in any way interested in the result of the same, and, upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it is to attend upon such survey and observe the method of making the same, said second surveyor to be at the cost of the party asking therefor.

(2) It is also lawful in such order to specify the names of witnesses named by either party, not exceeding three on each side, to examine such property, who shall thereupon be allowed to enter into such property and examine the same. The court may also cause the removal of any rock, debris, or other obstacle in any of the drifts or shafts of said property, when such removal is shown to be necessary to a just determination of the question involved. No such order shall be made for survey and inspection except in open court or in chambers, upon notice of application for such order for at least six days, and not then except by agreement of the parties, or upon the affidavit of two or more persons, that such survey and inspection are necessary to the just determination of the action, which affidavits shall state the facts in such case, and wherein the necessity for survey exists, nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party.

**Source: L. 1874:** p. 190, § 1. **G.L.** § 1827. **G.S.** § 2413. **R.S. 08:** § 4218. **C.L.** § 3300. **CSA:** C. 110, § 193. **CRS 53:** § 92-25-1. **C.R.S. 1963:** § 92-25-1.

**34-49-102. Platting fractional claims.** The owners of adjoining, abutting, or adjacent fractions of patented mining properties may plat the same for taxation and description.

**Source: L. 17:** p. 376, § 1. **C.L.** § 3301. **CSA:** C. 110, § 194. **CRS 53:** § 92-25-2. **C.R.S. 1963:** § 92-25-2.

**34-49-103. Plat - monuments.** Such owners shall cause the same to be surveyed and a plat thereof to be made by the county surveyor or some other competent surveyor, which plat shall particularly describe each fraction as blocks and lots, describing by appropriate lines each fraction or parcel of land so platted. Reference shall also be made upon the plat to some known and permanent monument from which surveys may be made. If no such monument exists within convenient distance, the surveyor shall, at the time of making his survey, plant and fix at least three feet below the surface, at a corner most convenient for reference, a good and sufficient stone, the total expense of which shall not exceed the sum of fifteen dollars, and the surveyor shall designate upon the plat the point where the same may be found.

**Source: L. 17:** p. 376, § 2. **C.L.** § 3302. **CSA:** C. 110, § 195. **CRS 53:** § 92-25-3. **C.R.S. 1963:** § 92-25-3.

**34-49-104. Plat certified and recorded.** The plat, having been completed, shall be certified by the surveyor and acknowledged by him before a notary public or other officer authorized to take acknowledgments of deeds. The certificate of the surveyor and of acknowledgments, together with the plat, shall be recorded in the office of the county clerk and recorder in and for the county in which the land is situated, in the same manner as a deed of real estate is recorded. The acknowledgment and recording shall have like legal effect, and certified copies thereof and of such plat may be used in evidence to the same extent and with like effect, as in case of deeds.

**Source: L. 17:** p. 377, § 3. **C.L.** § 3303. **CSA:** C. 110, § 196. **CRS 53:** § 92-25-4. **C.R.S. 1963:** § 92-25-4.

**34-49-105. Not dedication of ways - fees.** The acknowledgment and recording of such plat shall not be held in law or in equity to be a conveyance in fee simple of any ways, driveways, or passageways noted on such plat, and no such plat or acknowledgment shall be admitted to record or have any effect in law or in equity until the fees of the surveyor and the charges in sections 34-49-103 and 34-49-106 shall be paid.

**Source: L. 17:** p. 377, § 4. **C.L.** § 3304. **CSA:** C. 110, § 197. **CRS 53:** § 92-25-5. **C.R.S. 1963:** § 92-25-5.

**34-49-106. County to provide books.** It is the duty of the county clerk and recorder of each county where such adjoining, abutting, or adjacent fractions of patented mining properties are situated, to provide an appropriate book for the making and preservation of the plats, surveys, certificates, and acknowledgments contemplated, and he shall be permitted to charge and collect from the owners of each such subdivision recording fees the same as for any one plat or subdivision.

**Source: L. 17:** p. 377, § 5. **C.L.** § 3305. **CSA:** C. 110, § 198. **CRS 53:** § 92-25-6. **C.R.S. 1963:** § 92-25-6. **L. 83:** Entire section amended, p. 1227, § 10, effective April 12.

**34-49-107. Designation by name and number.** It is the duty of the county clerk and recorder to designate by name or number such plat and each separate fraction of land included therein, and such fractions shall thereafter be known and described for taxation and all other purposes as so designated.

**Source: L. 17:** p. 377, § 6. **C.L.** § 3306. **CSA:** C. 110, § 199. **CRS 53:** § 92-25-7. **C.R.S. 1963:** § 92-25-7.

## ARTICLE 50

Drainage

**34-50-101. Common influx of water.** Whenever contiguous or adjacent mines upon the same or upon separate lodes have a common ingress of water, or from subterraneous communication of the water have a common drainage, it is the duty of the owners, lessees, or occupants of each mine so related to provide for their proportionate share of the drainage thereof.

**Source: L. 1870:** p. 82, § 1. **G.L.** § 1830. **G.S.** § 2416. **R.S. 08:** § 4226. **C.L.** § 3314. **CSA:** C. 110, § 207. **CRS 53:** § 92-27-1. **C.R.S. 1963:** § 92-27-1.

**34-50-102. Costs prorated.** Any parties so related, failing to comply with section 34-50-101 for the drainage of the mines owned or occupied by them, thereby imposing an unjust burden upon neighboring mines, whether owned or occupied by them, shall pay respectively to those performing the work of drainage, their proportion of the actual and necessary costs and expenses of doing such drainage to be recovered by an action in any court of competent jurisdiction.

**Source: L. 1870:** p. 82, § 2. **G.L.** § 1831. **G.S.** § 2417. **R.S. 08:** § 4227. **C.L.** § 3315. **CSA:** C. 110, § 208. **CRS 53:** § 92-27-2. **C.R.S. 1963:** § 92-27-2.

**34-50-103. Incorporating to drain mines.** It is lawful for mining companies and all individuals engaged in mining, having a common interest in draining such mines, to unite for the purpose of effecting the same under a common name and upon such terms and conditions as may be agreed upon. Every such association, having filed a certificate of incorporation as provided by law, shall be deemed a corporation, with all the rights, incidents, and liabilities of a body corporate, insofar as the same may be applicable.

**Source: L. 1870:** p. 82, § 3. **G.L.** § 1832. **G.S.** § 2418. **R.S. 08:** § 4228. **C.L.** § 3316. **CSA:** C. 110, § 209. **CRS 53:** § 92-27-3. **C.R.S. 1963:** § 92-27-3.

**34-50-104. Liability for noncooperation.** Failing to mutually agree as indicated in section 34-50-103 for drainage, jointly, one or more of the said parties may undertake the work of drainage, after giving reasonable notice; and should the remaining parties then fail, neglect, or refuse to unite in equitable arrangements for doing the work or sharing the expense thereof, they shall be subject to an action therefor as specified in section 34-50-102.

**Source: L. 1870:** p. 82, § 4. **G.L.** § 1833. **G.S.** § 2419. **R.S. 08:** § 4229. **C.L.** § 3317. **CSA:** C. 110, § 210. **CRS 53:** § 92-27-4. **C.R.S. 1963:** § 92-27-4.

**34-50-105. Action to recover - inspection.** (1) When an action is commenced to recover the cost and expenses for draining a lode or mine, it is lawful for the plaintiff to apply to the court for an order to inspect and examine the lodes or mines claimed to have been drained by the plaintiff; or someone for him shall make affidavit that such inspection or examination is necessary for a proper preparation of the case for trial. The court shall grant an order for the underground inspection and examination of the lode or mines described in the petition. Such order shall designate the number of persons, not exceeding three, besides the plaintiff or his representative, to examine and inspect such lode and mines and take the measurement thereof, relating the amount of water drained from the lode or mine, or the number of fathoms of ground mined and worked out of the lode or mine claimed to have been drained, and the cost of such examination and inspection to be borne by the party applying therefor.

(2) The court has power to cause the removal of any rock, debris, or other obstacles in any lode or vein, when such removal is shown to be necessary to a just determination of the question involved. No such order for inspection and examination shall be made except in open court or at chambers, upon notice of application for such order of at least three days, and not then except by agreement of the parties, and not unless it appears that the plaintiff has been refused the privilege of making the inspection and examination by the defendant, his or their agent.

**Source: G.L.** § 1834. **G.S.** § 2420. **R.S. 08:** § 4230. **C.L.** § 3318. **CSA:** C. 110, § 211. **CRS 53:** § 92-27-5. **C.R.S. 1963:** § 92-27-5.

**34-50-106. Right to use of water hoisted.** When any person or corporation engages in mining or milling, and in the prosecution of such business hoists or raises water from mines or natural channels, and the water flows away from the premises of such persons or corporations to any natural channel or gulch, the same shall be considered beyond the control of the party so hoisting or raising the same, and may be taken and used by other parties the same as that of natural water courses.

**Source: G.L.** § 1835. **G.S.** § 2421. **R.S. 08:** § 4231. **C.L.** § 3319. **CSA:** C. 110, § 212. **CRS 53:** § 92-27-6. **C.R.S. 1963:** § 92-27-6.

**34-50-107. Liability for flow of water hoisted.** After any such water has been so raised and flows into any such natural channel, gulch, or draw, the party so hoisting or raising the same shall only be liable for injury caused thereby, in the same manner as riparian owners along natural water courses.

**Source: G.L.** § 1836. **G.S.** § 2422. **R.S. 08:** § 4232. **C.L.** § 3320. **CSA:** C. 110, § 213. **CRS 53:** § 92-27-7. **C.R.S. 1963:** § 92-27-7.

**34-50-108. Applicable to opened mines only.** The provisions of this article shall not be construed to apply to incipient or undeveloped mines, but to those only which shall have been opened, and shall clearly derive a benefit from being drained.

**Source: G.L.** § 1837. **G.S.** § 2423. **R.S. 08:** § 4233. **C.L.** § 3321. **CSA:** C. 110, § 214. **CRS 53:** § 92-27-8. **C.R.S. 1963:** § 92-27-8.

**34-50-109. Evidence to be considered by court.** In the trial of cases arising under this article, the court shall admit evidence of the normal stand or position of the water while at rest in an idle mine; also the observed prevalence of a common water level or a standing water line in the same or separate lodes; also the effect, if any, the elevating or depressing the water by natural or mechanical means in any given lode has upon elevating or depressing the water in the same contiguous or separate lodes or mines; also the effect which draining or ceasing to drain any given lode or mine had upon the water in the same or contiguous or separate lodes or mines, and all other evidence which tends to prove the common ingress or subterraneous communication of water into the same lode or mine, or contiguous or separate lodes or mines.

**Source: G.L.** § 1838. **G.S.** § 2424. **R.S. 08:** § 4234. **C.L.** § 3322. **CSA:** C. 110, § 215. **CRS 53:** § 92-27-9. **C.R.S. 1963:** § 92-27-9.

## ARTICLE 51

Mine Drainage Districts

**34-51-101. Petition for drainage district - definition.** A majority of persons owning and operating mining claims in any mining camp or district whose aggregate valuation for the purpose of taxation within said district shall not be less than one-half the valuation for assessment of all mining claims and premises situated within the boundaries of the proposed drainage district may at any time file with the clerk of the district court of the county in which such claims or the larger part thereof are situated a verified petition addressed to the judge of said district court, praying for the organization of a mine drainage district. "Persons", as used in this article, includes partnerships, joint-stock associations, companies, and corporations.

**Source: L. 11:** p. 508, § 1. **C.L.** § 3323. **CSA:** C. 110, § 216. **CRS 53:** § 92-28-1. **C.R.S. 1963:** § 92-28-1.

**34-51-102. Contents of petition.** (1) The petition shall set forth the name of the proposed mine drainage district; the acreage of the mining premises situate therein severally owned by the petitioners; approximately the aggregate area of all mining claims within the district; that said mining premises are capable of being drained and unwatered by one common system of drainage; and that such drainage will be of common benefit to all mining premises within the proposed boundaries of the district.

(2) Such petition shall further designate the proposed boundaries and give the names of all mining claims known to be located or patented within the district and the names of owners thereof and their post-office addresses so far as known to the petitioners.

**Source: L. 11:** pp. 508, 509, §§ 2, 3. **C.L.** §§ 3324, 3325. **CSA:** C. 110, §§ 217, 218. **CRS 53:** §§ 92-28-2, 92-28-3. **C.R.S. 1963:** §§ 92-28-2, 92-28-3.

**34-51-103. Publication of notice - contents.** (1) Upon the filing of said petition, the court shall designate a newspaper published within the county where the district is situated and shall order that in such newspaper there shall be published a notice addressed individually to the owners of all the mining claims within the boundaries of the proposed district, other than the petitioners, and generally to all such other persons as may be interested in said mining claims.

(2) Such notice shall be published for four successive weeks. It shall contain a copy of the petition and shall state that the petition will be heard on such date thereafter as may be set by the court and stated in such notice and shall notify all persons, owners of mining claims within said district, or persons interested therein, to appear and plead to said petition on or before a date certain, and that otherwise default will be taken and a decree made according to the facts and equities of the case as they may be found by the court.

**Source: L. 11:** p. 509, §§ 4, 5. **C.L.** §§ 3326, 3327. **CSA:** C. 110, §§ 219, 220. **CRS 53:** §§ 92-28-4, 92-28-5. **C.R.S. 1963:** §§ 92-28-4, 92-28-5.

**34-51-104. Mail copy of notice.** The court shall further order that a copy of said notice be mailed by the clerk of the court to each person, other than the petitioners, named as an owner in said petition, at least four weeks before the next term of the said court. The fact of the publication and of the mailing of the copies shall be proved in the same manner as is by law required for the proof of publication of process in civil cases.

**Source: L. 11:** p. 509, § 6. **C.L.** § 3328. **CSA:** C. 110, § 221. **CRS 53:** § 92-28-6. **C.R.S. 1963:** § 92-28-6.

**Cross references:** For proof of publication, see § 24-70-105 and C.R.C.P. 4(h).

**34-51-105. Proceedings after petition is filed.** All owners of mining claims or parties interested therein, including encumbrancers, shall have the right to appear and plead to such petition, and if any material allegations of the same are traversed, the issue shall be tried to the court as in equity cases, and if default is made and no traverse or other objection to the petition filed, the court shall nevertheless require proof of all the material allegations of the petition.

**Source: L. 11:** p. 509, § 7. **C.L.** § 3329. **CSA:** C. 110, § 222. **CRS 53:** § 92-28-7. **C.R.S. 1963:** § 92-28-7.

**34-51-106. Change of boundaries.** The boundaries of the proposed district shall not necessarily be the same as those stated in the petition, and the court may diminish but shall not enlarge the same.

**Source: L. 11:** p. 510, § 8. **C.L.** § 3330. **CSA:** C. 110, § 223. **CRS 53:** § 92-28-8. **C.R.S. 1963:** § 92-28-8.

**34-51-107. Decree and plat.** Upon final hearing, if the finding is in favor of the petitioners, the court shall make a decree that the proposed mine drainage district be established, stating its boundaries and describing it as "Mine Drainage District No. ..... of the county of ....." giving it the proper number, which decree shall contain a plat of the said boundaries. A certified copy of such decree, including the plat, shall be filed with the county clerk and recorder of the county in which the district is situated, and a second copy shall be filed with the division of local government in the department of local affairs.

**Source: L. 11:** p. 510, § 9. **C.L.** § 3331. **CSA:** C. 110, § 224. **CRS 53:** § 92-28-9. **C.R.S. 1963:** § 92-28-9. **L. 76:** Entire section amended, p. 604, § 24, effective July 1.

**34-51-108. Bond for costs.** Upon the filing of said petition, the petitioners shall file a bond with sufficient sureties to be approved by the clerk of the court, conditioned for the payment of all costs which may accrue up to and including the filing of said copies of the decree. The court has power to apportion the costs between the petitioners and the parties opposing the petition in case of contest.

**Source: L. 11:** p. 510, § 12. **C.L.** § 3334. **CSA:** C. 110, § 227. **CRS 53:** § 92-28-12. **C.R.S. 1963:** § 92-28-12.

**34-51-109. Corporation name.** Upon the signing of the decree and the filing of said copies, as provided in section 34-51-107, said district shall become a municipal corporation and have and exercise all the powers necessary and requisite to carry into effect the objects for which it is formed, including the power to sue and be sued, under the name and style of "Mining Drainage District No. ..... of the county of .....", the number of the district and the name of the county both being part of its corporate name.

**Source: L. 11:** p. 510, § 10. **C.L.** § 3332. **CSA:** C. 110, § 225. **CRS 53:** § 92-28-10. **C.R.S. 1963:** § 92-28-10.

**34-51-110. Contracts - corporate power.** All contracts and conveyances of a mine drainage district shall be in its corporate name, but corporate powers shall be exercised by the board of supervisors provided for in section 34-51-111.

**Source: L. 11:** p. 510, § 11. **C.L.** § 3333. **CSA:** C. 110, § 226. **CRS 53:** § 92-28-11. **C.R.S. 1963:** § 92-28-11.

**34-51-111. Election of supervisors.** (1) The court in the decree establishing a mine drainage district shall order an election to be held under the supervision of the board of county commissioners of the county wherein said district, or the greater portion thereof, is situated, for the purpose of electing five individuals to constitute the board of supervisors for said district, and shall set the time and place of said election, and direct the clerk of said board of county

commissioners to cause notice of said election, and the time and place thereof, to be published for four successive weeks prior to the date of said election, in some newspaper published within the county. The individuals so elected shall hold office for one, two, three, four, and five years, in accordance with the number of votes received by them respectively. The individual receiving the highest number of votes is to serve for five years, the one receiving the next highest, four years, the next highest, three years, the next highest, two years, and the next highest, one year.

(2) Each year following the organization of the mine drainage district, elections shall be called by and held under the supervision of the board of county commissioners for the purpose of electing a successor to the member of the board of supervisors of the mine drainage district whose term expires, and to fill any other vacancies that may exist in said board, and at such election a new member shall be elected to said board of supervisors to hold office for five years. Notice of such subsequent elections is to be given in the same manner as provided in this section to be given in the case of the first election. At all elections for members of the board of supervisors of a mine drainage district, each person owning mining claims in the district shall be entitled to one vote for each claim or fractional claim within said district, owned by such person, and only individuals who are residents of the county wherein the mine drainage district lies, and who are owners of mining claims within said district, or officers, managers, or superintendents of corporations owning mining claims within said district shall be qualified for election as members of said board.

**Source: L. 11:** p. 510, § 13. **C.L.** § 3335. **CSA:** C. 110, § 228. **CRS 53:** § 92-28-13. **C.R.S. 1963:** § 92-28-13.

**34-51-112. Organization - records - office.** The board of county commissioners shall provide office room for said board of supervisors and a place for the deposit of their records. Said board shall organize by electing a chairman from their own number and by electing a clerk not of their own number, and the board shall require such clerk to keep regular minutes of their meetings and accounts of all receipts and expenditures. All records and accounts shall be open to public inspection, the same as the public records of the office of the county clerk and recorder. Meetings shall be at the call of the chairman or any two members of the board, and not less than three members shall constitute a quorum. All special and regular meetings of the board of supervisors shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this section governing the location of meetings may be waived only if the proposed change of location of a meeting of the board appears on the agenda of a regular or special meeting of the board and if a resolution is adopted by the board stating the reason for which a meeting of the board is to be held in a location other than under the provisions of this section and further stating the date, time, and place of such meeting.

**Source: L. 11:** p. 511, § 14. **C.L.** § 3336. **CSA:** C. 110, § 229. **CRS 53:** § 92-28-14. **C.R.S. 1963:** § 92-28-14. **L. 90:** Entire section amended, p. 1500, § 11, effective July 1.

**34-51-113. Selection of system.** Said board shall determine upon a system of mine drainage for the district, either by gravity, power, or by both combined, and to assess the cost thereof upon the property to be benefited thereby.

**Source: L. 11:** p. 512, § 15. **C.L.** § 3337. **CSA:** C. 110, § 230. **CRS 53:** § 92-28-15. **C.R.S. 1963:** § 92-28-15.

**34-51-114. Notice of selection of system.** Upon the adoption of any system of drainage, the clerk of the board shall cause to be published once a week for four successive weeks in some weekly newspaper published in the county a notice stating in general terms the system adopted and the estimated cost, and shall mail a copy of such notice to each person shown on the mine drainage district records to be a party in interest.

**Source: L. 11:** p. 512, § 16. **C.L.** § 3338. **CSA:** C. 110, § 231. **CRS 53:** § 92-28-16. **C.R.S. 1963:** § 92-28-16.

**34-51-115. Letting contracts.** The board has power to employ labor and professional services as required and to do all things necessary to carry out the details of the plan and to contract for the work to be done by a single contract or to divide it into sections and let contracts from time to time.

**Source: L. 11:** p. 512, § 17. **C.L.** § 3339. **CSA:** C. 110, § 232. **CRS 53:** § 92-28-17. **C.R.S. 1963:** § 92-28-17.

**34-51-116. Inspection.** All parties in interest shall have access to the main avenues and laterals of such drainage system, subject to such rules and regulations as are adopted by the board of supervisors.

**Source: L. 11:** p. 512, § 18. **C.L.** § 3340. **CSA:** C. 110, § 233. **CRS 53:** § 92-28-18. **C.R.S. 1963:** § 92-28-18.

**34-51-117. Board may levy tax.** (1) In order to provide for the payment of the expenses of a drainage system and for the payment of any issue of bonds, the board of supervisors has power to levy and cause to be collected a tax upon all mining claims within the district. Such tax shall be voted only at a regular meeting of the board and shall not exceed in any one year fifty mills on every dollar of valuation as shown by the assessment roll of the county assessor.

(2) The board of supervisors in lieu of said tax levy upon the valuation for assessment, or in the event such levy will not produce sufficient revenue to meet the payments from time to time accruing upon said bonds and interest thereon and the expenses of the mine drainage district, may order a levy against the net sale price of all ores produced in the mine drainage district, using either in combination, with such division or combination of the tax to be raised as to the board of supervisors seems meet and proper.

(3) Said tax levy, whether by one or both of said methods, or a combination thereof, shall be voted by said board of supervisors annually and shall be certified to the board of county

commissioners of the county wherein said mine drainage district is located on or before the first Monday in November in each year.

(4) In any mining district where there already exists a drainage tunnel which has lowered the water or drained the district to some ascertained level, there shall be no taxation on the net value of ores under the provisions of this article, in respect to any ore taken out of any portion of any mine above the level now drained by any existing tunnel.

(5) The additional levy last mentioned shall not exceed ten percent of the net sales price of such ores, and the moneys so levied and collected from said levy on said net sales price shall be used for the payment of bonds and interest thereon and other expenses of the mine drainage district the same as if it had been collected under the tax levy provided in subsection (1) of this section. Said net sales price shall be computed from the gross sales price after deducting the reasonable cost of haulage from the mine to the railroad or smelter or mill, and railroad freight and smelter or other treatment charges in mill or smelter. In order to effectuate the payment of said royalty, said board may order that all such ore so produced and sold from the mine drainage district shall be shipped under such rules and regulations as the board of supervisors may prescribe, either in the name of the board of supervisors, or with notice to the ore purchaser, smelter, or miller that the said ores are subject to the taxation provided in this section.

(6) It is the duty of the ore purchaser, smelter, or miller to deduct said tax before making settlement with the mine owner, lessee, or other shipper, and to pay the amount of said tax direct to the county treasurer of the county in which said drainage district shall be situated; and it is the duty of the county treasurer to issue proper receipts therefor to the purchaser, smelter, or miller, and to all persons interested in the net proceeds of the ore sale so taxed.

(7) The tax on the net sales price of such ores shall be levied against the mine owner or lessor, and against the lessee, sublessee, or other persons having property rights in said ore, and shall be paid by them respectively in the proportion in which they are respectively interested in the net sales price. Said persons respectively shall file with the board of supervisors proper papers to evidence their respective interest in said net sales price, and if such filings are not made then the board of supervisors shall collect said tax against the owner of the property, or against the owner and lessee as their respective interest may appear from any recorded lease or working contract which is on record in the office of the county clerk and recorder of said county at the date of said levy or tax.

(8) In the event that at the date of said tax there are any valid mining leases on property within the drainage district executed prior to January 30, 1934, said tax shall be apportioned among and paid by the owners, lessors, lessees, or sublessees or other persons in interest in the sale of said ores in the manner provided in subsection (7) of this section. Whenever any such lease or any mining lease is executed after January 30, 1934, and contains a covenant that the lessee shall pay taxes, or general taxes, such covenant shall not be construed to include any special tax authorized by this article; and in such event the mine drainage district taxes shall be apportioned as provided in this section, and said taxes shall not be chargeable against the lessee or sublessee except by express mention of mine drainage district taxes. It is lawful for the parties in interest to contract for and agree among themselves as to their respective liabilities for the mine drainage district taxes, and upon recording such contract or agreement in the office of the county clerk and recorder in the county in which the mine drainage district is situated and serving a copy of said contract or agreement upon the board of supervisors, it is the duty of the

board of supervisors to make such orders as will effectuate the division of the tax liability according to the terms of said contract or agreement.

(9) It is the duty of the county treasurer to carry all taxes collected by him under the provisions of this article in a separate fund in the name of the mine drainage district and to disburse the said funds under the provisions of this article and the orders of the board of supervisors of the mine drainage district; and said funds shall be disbursed only for the lawful purposes of the mine drainage district.

**Source: L. 11:** p. 512, § 19. **C.L.** § 3341. **L. 33-34, 2nd Ex. Sess.,** p. 63, § 1. **CSA:** C. 110, § 234. **CRS 53:** § 92-28-19. **C.R.S. 1963:** § 92-28-19.

**34-51-118. Collection of taxes.** Such levy shall be certified by the clerk under the seal of the district, to the county assessor, and shall be extended upon his books and collected in all respects as provided for the collection of other taxes in the county in which the district is situate. The general revenue laws of this state for the assessment, levying, and collection of taxes, and providing for relief to the taxpayer in cases of erroneous, double, or illegal assessments, except as modified in this section, shall be applicable for the purposes of this article, including the enforcement of penalties and forfeitures for delinquent taxes, except that the duties and functions vested by law in county boards of equalization in reference to general taxes shall be exercised in the case of all taxes levied and collected under this article by the respective boards of supervisors of the various mine drainage districts that may be authorized under this article.

**Source: L. 11:** p. 512, § 20. **C.L.** § 3342. **CSA:** C. 110, § 235. **CRS 53:** § 92-28-20. **C.R.S. 1963:** § 92-28-20.

**Cross references:** For general revenue taxation, see title 39.

**34-51-119. Bonds - sales - interest and lien.** The board has power to raise money necessary to carry out the system of drainage adopted, and to otherwise accomplish the objects and purposes of this article, by the issue and sale of bonds, bearing interest not to exceed eight percent per annum, payable at the office of the county treasurer, in even sums of not less than five hundred dollars, and such bonds shall be a lien upon all property within the boundaries of the district made taxable under this article. The board may sell bonds from time to time in such quantities as may be necessary to carry out the objects and purposes of this article. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell and shall cause such resolution to be entered in the minutes and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the city of Denver, and in any other newspaper, at its discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board in no event shall sell any of said bonds for less than ninety-five percent of the face value thereof.

**Source: L. 11:** p. 513, § 21. **C.L.** § 3343. **CSA:** C. 110, § 236. **CRS 53:** § 92-28-21. **C.R.S. 1963:** § 92-28-21.

**34-51-120. Warrants.** The county treasurer shall pay out the funds collected as taxes under sections 34-51-117 to 34-51-119, or any funds however acquired, only upon warrants drawn against the same by the mine drainage district, under its corporate seal, signed by the clerk and countersigned by the chairman of the board. Warrants drawn under this article shall be assignable, transferable, and payable in all respects the same as county warrants.

**Source: L. 11:** p. 513, § 22. **C.L.** § 3344. **CSA:** C. 110, § 237. **CRS 53:** § 92-28-22. **C.R.S. 1963:** § 92-28-22.

**34-51-121. Salaries and per diem.** The salary of the clerk shall be fixed by the board. The members of the board shall receive no compensation, except five dollars per day while in actual session, and no member shall receive in the aggregate more than two hundred dollars in any one calendar year.

**Source: L. 11:** p. 514, § 23. **C.L.** § 3345. **CSA:** C. 110, § 238. **CRS 53:** § 92-28-23. **C.R.S. 1963:** § 92-28-23.

**34-51-122. Collection of tolls.** Every mine drainage district has a right to collect tolls for the use of the right-of-way, upon terms fixed by the board, which shall be the same to all parties for like services; to accept compensation for service to adjoining mines outside the district and accept revenue from all parties benefited by any use of the property, assets, or easements of the district. All funds accruing under this section shall be used to diminish the tax rate and any excess of revenue over expenses not held as a sinking fund shall be repaid pro rata to the payers of previous taxes.

**Source: L. 11:** p. 514, § 24. **C.L.** § 3346. **CSA:** C. 110, § 239. **CRS 53:** § 92-28-24. **C.R.S. 1963:** § 92-28-24.

**34-51-123. Eminent domain.** Any mine drainage district has the right to accept deeds for rights-of-way and other easements by gift or upon compensation to be paid, and when reasonable compensation for rights-of-way or other essential easements cannot be agreed upon, the district has the power to exercise the right of eminent domain under the statutes of this state.

**Source: L. 11:** p. 514, § 25. **C.L.** § 3347. **CSA:** C. 110, § 240. **CRS 53:** § 92-28-25. **C.R.S. 1963:** § 92-28-25.

**Cross references:** For eminent domain, see articles 1 to 7 of title 38.

**34-51-124. Prior drainage statutes.** Nothing in this article shall be construed to repeal the provisions of the statutes of this state concerning drainage, but said statutes shall have no application within the limits of any mine drainage district created under the existing provisions of this article.

**Source: L. 11:** p. 514, § 26. **C.L.** § 3348. **CSA:** C. 110, § 241. **CRS 53:** § 92-28-26. **C.R.S. 1963:** § 92-28-26.

## ARTICLE 52

Ore Buyers' Licenses

**34-52-101 to 34-52-107. (Repealed)**

**Source: L. 76:** Entire article repealed, p. 746, § 1, effective February 20.

**Editor's note:** This article was numbered as article 29 of chapter 92, C.R.S. 1963. For amendments to this article prior to its repeal in 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 53

Sales of Ore

**34-53-101. Purchasing ore unlawfully - penalty.** Any person, association, or corporation, or the agent of any person, association, or corporation, who knowingly purchases, or contracts to purchase, or makes any payment for or on account of any ore which has been taken from any mine or claim, by persons who have taken or may be holding possession of any such mine or claim, contrary to any penal law in force, shall be considered as an accessory after the fact to the unlawful holding or taking of such mine or claim and, upon conviction thereof, shall be subjected to the same punishment to which the principals may be liable.

**Source: G.L.** § 1961. **G.S.** § 2510. **R.S. 08:** § 4239. **C.L.** § 3353. **CSA:** C. 110, § 246. **CRS 53:** § 92-30-1. **C.R.S. 1963:** § 92-30-1.

**34-53-102. False weights - scales - penalty.** Any person, association, or corporation, or the agent of any person, association, or corporation, engaged in the business of milling, sampling, concentrating, reducing, shipping, or purchasing ores who keeps or uses any false or fraudulent scales or weights for weighing ore, or who keeps or uses any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**Source: G.L.** § 1962. **G.S.** § 2511. **R.S. 08:** § 4240. **C.L.** § 3354. **CSA:** C. 110, § 247. **CRS 53:** § 92-30-2. **C.R.S. 1963:** § 92-30-2.

**Cross references:** For penalty for use or possession of false weights or measures, see § 18-5-301.

**34-53-103. Altering value - certificate - penalty.** Any person, corporation, or association, or the agent of any person, corporation, or association, engaged in the milling,

sampling, concentrating, reducing, shipping, or purchasing of ores in this state who in any manner knowingly alters or changes the true value of any ores delivered to him, so as to deprive the seller of the result of the correct value of the same, or who substitutes other ores for those delivered to him, or who issues any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value, and total amount paid for any lot of ore purchased, or who, by any secret understanding or agreement with another, issues a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value, and total amount paid for any lot of ore purchased by him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

**Source: G.L.** § 1963. **G.S.** § 2512. **R.S. 08:** § 4241. **C.L.** § 3355. **CSA:** C. 110, § 248. **CRS 53:** § 92-30-3. **C.R.S. 1963:** § 92-30-3.

**34-53-104. Failure to account - penalty.** The owner, manager, or agent of any species of quartz mill, arrastra mill, furnace, or cupel, employed in extracting gold from quartz, pyrites, or other minerals, who neglects or refuses to account for, or pay over and deliver, all the proceeds thereof to the owner of such quartz, pyrites, or other mineral, excepting such portion of said proceeds as he or she is entitled to in return for his or her services, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**Source: R.S.** p. 232, § 165. **G.L.** § 765. **G.S.** § 887. **R.S. 08:** § 4242. **C.L.** § 3356. **CSA:** C. 110, § 249. **CRS 53:** § 92-30-4. **C.R.S. 1963:** § 92-30-4. **L. 77:** Entire section amended, p. 882, § 60, effective July 1, 1979. **L. 89:** Entire section amended, p. 848, § 125, effective July 1. **L. 2002:** Entire section amended, p. 1547, § 303, effective October 1.

**Editor's note:** The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 54 (1980).

**Cross references:** For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

**34-53-105. Person in possession of ore deemed owner.** Any person, association of persons, or corporation in the peaceful possession of any mining claim, under claim or color of title, and engaged in the mining and sale of ores therefrom, as to all persons purchasing such ore, in good faith and without notice, as provided in section 34-53-107, of the claim of any other person, association, or corporation to such mining claim, shall be deemed to be the owner of such ore.

**Source: L. 1889:** p. 273, § 1. **R.S. 08:** § 4244. **C.L.** § 3358. **CSA:** C. 110, § 251. **CRS 53:** § 92-30-6. **C.R.S. 1963:** § 92-30-6.

**34-53-106. Purchasing ore in good faith.** Any person who, or association or corporation which, in good faith and in the usual course of business, and without notice, as provided in section 34-53-107, purchases and obtains delivery of any ore from any person, association, or corporation in possession of any mining claim is deemed the owner of such ore, and shall not be subject to any action therefor and for the value thereof by any person, association, or corporation who may ultimately be adjudged to be the owner of such mining claim.

**Source: L. 1889:** p. 274, § 2. **R.S. 08:** § 4245. **C.L.** § 3359. **CSA:** C. 110, § 252. **CRS 53:** § 92-30-7. **C.R.S. 1963:** § 92-30-7.

**34-53-107. Notice of adverse claim - action.** If any person, association, or corporation is or claims to be the owner or entitled to the possession of any mining claim in the actual possession of some other person, association, or corporation claiming to be the owner or entitled to the possession thereof, and mining and shipping ore therefrom, if he desires to hold purchasers of such ore responsible for the value of such ore, may serve or cause to be served upon such purchaser a notice in writing, setting forth the name of the mining claim, the names of the claimants and owners thereof, the name of the person, association, or corporation mining or shipping ore therefrom, and warning such purchaser that he will be held responsible for all ores purchased and delivered from such mine by such person, association, or corporation, or his heirs and assigns subsequent to the service of such notice. Within five days from and after the service of such notice, the person, association, or corporation serving or causing the same to be served shall institute an action in some court of competent jurisdiction against the person, association, or corporation in possession of such mining claim to enjoin him from the mining or shipment or sale of ores therefrom pending such action and shall at once notify such purchaser of the pendency of such action. If the notice provided for in this section shall be served after such an action has been instituted it shall not be necessary to commence another under the provisions hereof.

**Source: L. 1889:** p. 274, § 3. **R.S. 08:** § 4246. **C.L.** § 3360. **CSA:** C. 110, § 253. **CRS 53:** § 92-30-8. **C.R.S. 1963:** § 92-30-8.

**34-53-108. Injunction - effect of denial.** The person, association, or corporation bringing or having instituted such action, within thirty days after the service of said notice, shall cause an application for an injunction against the defendant therein to be heard before the court in which the same shall be pending. If the injunction is denied or if the application therefor is not made within said period of thirty days, the notice served shall be held for naught, and all persons shall be at liberty to purchase ores from the mining claim or from the person, association, or corporation in possession of and working the same as aforesaid, as though such notice had never been served.

**Source: L. 1889:** p. 275, § 4. **R.S. 08:** § 4247. **C.L.** § 3361. **CSA:** C. 110, § 254. **CRS 53:** § 92-30-9. **C.R.S. 1963:** § 92-30-9.

**Cross references:** For injunctions generally, see C.R.C.P. 65.

**34-53-109. Dissolution of injunction.** If any injunction granted under such application therefor, as provided for in section 34-53-108, is dissolved, all persons shall be at liberty to purchase ores from the mining claims affected thereby, from any person, association, or corporation in possession thereof, and working the same under claim or color of title, and no action shall be brought or maintained against such purchaser for the value thereof, notwithstanding that the title and right of possession of and to such mining claim shall be ultimately adjudged against such person, association, or corporation in possession.

**Source: L. 1889:** p. 275, § 5. **R.S. 08:** § 4248. **C.L.** § 3362. **CSA:** C. 110, § 255. **CRS 53:** § 92-30-10. **C.R.S. 1963:** § 92-30-10.

**34-53-110. Effect of failure to institute action.** If any person, association, or corporation which has not already brought an action serves a notice upon any purchaser of ores, as provided in section 34-53-107, and fails or neglects to institute an action and apply for an injunction as required in section 34-53-108, said notice is of no effect and the purchaser shall not be bound by anything contained therein. If such an action shall be pending at the time of the giving of such notice the same shall be mentioned therein.

**Source: L. 1889:** p. 275, § 6. **R.S. 08:** § 4249. **C.L.** § 3363. **CSA:** C. 110, § 256. **CRS 53:** § 92-30-11. **C.R.S. 1963:** § 92-30-11.

**34-53-111. When purchaser held responsible.** Any purchaser of ores who has received the notice provided for in section 34-53-107 and followed or preceded by the commencement of an action and application for an injunction thereunder, as set forth in this article, who continues to purchase and receive ores from the mining claims named in such notice, shall be responsible for the value thereof to the person, association, or corporation who is adjudged to be the owner or entitled to the possession of such mining claims.

**Source: L. 1889:** p. 275, § 7. **R.S. 08:** § 4250. **C.L.** § 3364. **CSA:** C. 110, § 257. **CRS 53:** § 92-30-12. **C.R.S. 1963:** § 92-30-12.

**34-53-112. Applicability - bad faith.** Sections 34-53-105 to 34-53-112 shall not apply to any ore or ores mined, shipped, or sold in contravention of the terms of sections 34-53-101 to 34-53-103.

**Source: L. 1889:** p. 276, § 8. **R.S. 08:** § 4251. **C.L.** § 3365. **CSA:** C. 110, § 258. **CRS 53:** § 92-30-13. **C.R.S. 1963:** § 92-30-13.

## ARTICLE 54

Memoranda of Ore Sales

**34-54-101. Definitions.** As used in this article, unless the context otherwise requires:
(1) "Person" means any person, partnership, association, or corporation.

**Source: L. 17:** p. 403, § 6. **C.L.** § 3381. **CSA:** C. 110, § 273. **CRS 53:** § 92-31-6. **C.R.S. 1963:** § 92-31-6.

**34-54-102. Sale of ores and minerals.** It is unlawful for any person, whether acting for himself or as agent for another, to sell or to purchase any ores, concentrates, or amalgams bearing gold, silver, tungsten, vanadium, uranium, molybdenum, or other rare minerals, or to sell or purchase gold dust, gold or silver bullion, nuggets, or specimens of a value of ten dollars or more, unless at the time of the sale the vendor shall sign with his true name and deliver to the purchaser a memorandum in which he shall state the date of the sale, his residence, the nature and amount of the article sold, the source from which the vendor obtained the same, and the consideration actually paid.

**Source: L. 17:** p. 401, § 1. **C.L.** § 3376. **CSA:** C. 110, § 268. **CRS 53:** § 92-31-1. **C.R.S. 1963:** § 92-31-1.

**34-54-103. Signed memorandum.** It is unlawful for any person, whether acting for himself or as agent for another, to deliver any of the property specified in section 34-54-102 of the value of ten dollars or more, to any other person as agent, broker, or bailee, unless he, at the time of such delivery, delivers to such agent, broker, or vendor a memorandum signed with his true name in which he shall state the date of the transaction, his residence, the nature and quantity of the property delivered, the source from which he obtained such property, and the purpose for which the delivery is made.

**Source: L. 17:** p. 402, § 2. **C.L.** § 3377. **CSA:** C. 110, § 269. **CRS 53:** § 92-31-2. **C.R.S. 1963:** § 92-31-2.

**34-54-104. Preservation of memorandum.** Every person required to receive a memorandum under the provisions of this article shall carefully preserve the same for a period of at least twelve months.

**Source: L. 17:** p. 402, § 3. **C.L.** § 3378. **CSA:** C. 110, § 270. **CRS 53:** § 92-31-3. **C.R.S. 1963:** § 92-31-3. **L. 84:** Entire section amended, p. 933, § 1, effective February 23.

**34-54-105. Fictitious statement.** If any person required to execute a memorandum under the provisions of this article signs the same with any other than his true name, or makes any false statement whatsoever therein, he shall be deemed guilty of a violation of the provisions of this article. If any person required by the provisions of this article to receive a memorandum receives the memorandum knowing the same not to be signed with the true name of the person delivering such memorandum, or knowing any statement therein contained to be false, he shall be deemed guilty of a violation of the provisions of this article.

**Source: L. 17:** p. 402, § 4. **C.L.** § 3379. **CSA:** C. 110, § 271. **CRS 53:** § 92-31-4. **C.R.S. 1963:** § 92-31-4.

**34-54-106. Penalty.** Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a term of not more than six months, or by both such fine and imprisonment.

**Source: L. 17:** p. 402, § 5. **C.L.** § 3380. **CSA:** C. 110, § 272. **CRS 53:** § 92-31-5. **C.R.S. 1963:** § 92-31-5.

**34-54-107. Application of article. (Repealed)**

**Source: L. 17:** p. 403, § 6. **C.L.** § 3381. **CSA:** C. 110, § 273. **CRS 53:** § 92-31-6. **C.R.S. 1963:** § 92-31-6. **L. 76:** Entire section repealed, p. 746, § 1, effective February 20.

## OIL AND NATURAL GAS

## Conservation and Regulation

## ARTICLE 60

Oil and Gas Conservation

**34-60-101. Short title.** This article shall be known and may be cited as the "Oil and Gas Conservation Act".

**Source: L. 51:** p. 662, § 16. **CSA:** C. 118, § 68(15). **CRS 53:** § 100-6-19. **C.R.S. 1963:** § 100-6-19.

**34-60-102. Legislative declaration.** (1) (a) It is declared to be in the public interest to:

(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources;

(II) Protect the public and private interests against waste in the production and utilization of oil and gas;

(III) Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and

(IV) Plan and manage oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources and the hunting, fishing, and recreation traditions they support, which are an important part of Colorado's economy and culture. Pursuant to section 33-1-101, C.R.S., it is the policy of the state of Colorado that wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.

(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production therefrom.

(2) It is further declared to be in the public interest to assure that producers and consumers of natural gas are afforded the protection and benefits of those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. 3301, and particularly that the oil and gas conservation commission, established by section 34-60-104, be empowered to exercise such powers and authorities as may be delegated to it by the laws or regulations of the United States, including said "Natural Gas Policy Act of 1978", and, in the exercise of such powers and authorities, to make such rules and regulations and to execute such agreements and waivers as are reasonably required to implement such power and authority.

**Source: L. 55:** p. 656, § 10. **CRS 53:** § 100-6-22. **C.R.S. 1963:** § 100-6-22. **L. 79:** Entire section amended, p. 1319, § 1, effective February 16. **L. 94:** (1) amended, p. 1978, § 2, effective June 2. **L. 2007:** (1) amended, p. 1357, § 2, effective May 29; (1) amended, p. 1328, § 1, effective July 1.

**Editor's note:** Amendments to subsection (1) by House Bill 07-1341 and House Bill 07-1298 were harmonized.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (1), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (1), see section 1 of chapter 320, Session Laws of Colorado 2007.

**34-60-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "And" includes the word "or" and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

(2) "Commission" means the oil and gas conservation commission.

(3) "Common source of supply" is synonymous with "pool" as defined in this section.

(4) "Correlative rights" means that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply.

(4.3) "Division of parks and wildlife" means the division of parks and wildlife identified in article 9 of title 33, C.R.S.

(4.5) "Exploration and production waste" means those wastes that are generated during the drilling of and production from oil and gas wells or during primary field operations and that

are exempt from regulation as hazardous wastes under subtitle c of the federal "Resource Conservation and Recovery Act of 1976", 42 U.S.C. sec. 6901 to 6934, as amended.

(5) "Gas" means all natural gases and all hydrocarbons not defined in this section as oil.

(5.5) "Minimize adverse impacts" means to, wherever reasonably practicable:

(a) Avoid adverse impacts from oil and gas operations on wildlife resources;

(b) Minimize the extent and severity of those impacts that cannot be avoided;

(c) Mitigate the effects of unavoidable remaining impacts; and

(d) Take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources.

(6) "Oil" means crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(6.5) "Oil and gas operations" means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

(6.8) "Operator" means any person who exercises the right to control the conduct of oil and gas operations.

(7) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, including the owner of a well capable of producing oil or gas, or both.

(7.1) "Parks and wildlife commission" means the parks and wildlife commission created in section 33-9-101, C.R.S.

(7.5) "Permit" means any permit, sundry notice, notice of intention, or other approval, including any conditions of approval, which is granted, issued, or approved by the commission.

(8) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or any governmental subdivision thereof.

(9) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a general structure, which zone is completely separated from any other zone in the structure, is covered by the word "pool" as used in this article.

(10) "Producer" means the owner of a well capable of producing oil or gas, or both.

(10.5) "Surface owner" means any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

(10.7) "Underground natural gas storage cavern" means a facility that stored natural gas in an underground cavern or abandoned mine on or before January 1, 2000. An underground natural gas storage cavern includes all surface or subsurface rights and appurtenances associated with the underground injection, storage, and withdrawal of natural gas, but does not include any compressor stations or pipeline facilities subject to regulation by the public utilities commission or the United States department of transportation.

(11) "Waste", as applied to gas, includes the escape, blowing, or releasing, directly or indirectly into the open air, of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil, or both oil and gas; and the production of gas in quantities or in such manner as unreasonably reduces reservoir pressure or unreasonably diminishes the quantity of oil or gas that ultimately may be produced; excepting gas that is reasonably necessary in the drilling, completing, testing, and in furnishing power for the production of wells.

(12) "Waste", as applied to oil, includes underground waste; inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste; open-pit storage; and waste incident to the production of oil in excess of the producer's aboveground storage facilities and lease and contractual requirements, but excluding storage, other than open-pit storage, reasonably necessary for building up or maintaining crude stocks and products thereof for consumption, use, and sale.

(13) "Waste", in addition to the meanings as set forth in subsections (11) and (12) of this section, means:

(a) Physical waste, as that term is generally understood in the oil and gas industry;

(b) The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

(c) Abuse of the correlative rights of any owner in a pool due to nonuniform, disproportionate, unratable, or excessive withdrawals of oil or gas therefrom, causing reasonably avoidable drainage between tracts of land or resulting in one or more producers or owners in such pool producing more than his equitable share of the oil or gas from such pool.

(14) Repealed.

(15) "Wildlife resources" means fish, wildlife, and their aquatic and terrestrial habitats.

**Source: L. 51:** pp. 652, 653, §§ 3, 4, 5. **CSA:** C. 118, §§ 68(3), 68(4), 68(5). **L. 52:** p. 132, § 1. **CRS 53:** § 100-6-3. **L. 55:** p. 649, § 2. **C.R.S. 1963:** § 100-6-3. **L. 94:** (4.5), (6.5), (6.8), (7.5), and (10.5) added, p. 1979, § 3, effective June 2. **L. 2001:** (10.7) added, p. 1303, § 1, effective June 5. **L. 2007:** (4.3), (5.5), (14), and (15) added, p. 1329, § 2, effective July 1. **L. 2011:** (4.3) and (14) amended and (7.1) added, (SB 11-208), ch. 293, p. 1394, § 27, effective July 1. **L. 2012:** (7.1) amended and (14) repealed, (HB 12-1317), ch. 248, p. 1235, § 89, effective June 4.

**Editor's note:** Subsection (7.1) was numbered as (1.5) in Senate Bill 11-208 but has been renumbered on revision for ease of location.

**Cross references:** For the legislative declaration contained in the 1994 act enacting subsections (4.5), (6.5), (6.8), (7.5), and (10.5), see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-104. Oil and gas conservation commission - report - publication.** (1) There is hereby created, in the department of natural resources, the oil and gas conservation commission of the state of Colorado.

(2) (a) (I) Effective July 1, 2007, the commission shall consist of nine members, seven of whom shall be appointed by the governor with the consent of the senate and two of whom, the executive director of the department of natural resources and the executive director of the department of public health and environment, shall be ex officio voting members. At least two members shall be appointed from west of the continental divide, and, to the extent possible, consistent with this paragraph (a), the other members shall be appointed taking into account the need for geographical representation of other areas of the state with high levels of oil and gas activity or employment. Three members shall be individuals with substantial experience in the oil and gas industry, and at least two of said three members shall have a college degree in petroleum geology or petroleum engineering; one member shall be a local government official; one member shall have formal training or substantial experience in environmental or wildlife protection; one member shall have formal training or substantial experience in soil conservation or reclamation; and one member shall be actively engaged in agricultural production and also be a royalty owner. Excluding the executive directors from consideration, no more than four members of the commission shall be members of the same political party.

(II) Subject to paragraph (b) of this subsection (2), nothing in this paragraph (a) shall be construed to require a holdover member of the commission holding office on July 1, 2007, to comply with the provisions of this paragraph (a), as amended, unless such person is reappointed to the commission for another term of office. Nothing in this subparagraph (II) shall alter, impair, or negate the authority of the governor to remove or appoint members of the commission pursuant to paragraph (b) of this subsection (2).

(III) Repealed.

(b) Members of the commission shall be appointed for terms of four years each. The governor may at any time remove any member of the commission, and by appointment the governor shall fill any vacancy on the commission. In case one or more vacancies occur on the same day, the governor shall designate the order of filling vacancies. The members of the commission shall receive a per diem allowance of fifty dollars for each day spent in attendance at commission meetings or hearings and shall be reimbursed for their actual expenses.

(3) The commission shall report to the executive director of the department of natural resources at such times and on such matters as the executive director may require.

(4) Publications of the commission circulated in quantity outside the executive branch are subject to the approval and control of the executive director of the department of natural resources.

**Source: L. 51:** p. 651, § 2. **CSA:** C. 118, §68(2). **L. 52:** p. 130, § 1. **CRS 53:** § 100-6-2. **L. 55:** p. 648, § 1. **C.R.S. 1963:** § 100-6-2. **L. 64:** p. 158, § 109. **L. 68:** p. 130, § 146. **L. 72:** p. 550, § 15. **L. 82:** (2)(a) and (2)(b) amended, p. 358, § 20, effective April 30. **L. 85:** (2)(a) amended, p. 1128, § 1, effective July 1. **L. 87:** (2)(b) amended, p. 912, § 26, effective June 15. **L. 90:** (2)(a) amended, p. 1545, § 1, effective May 8. **L. 91:** (2)(a) amended, p. 1415, § 2, effective April 19. **L. 94:** (2)(a) amended, p. 1979, § 4, effective June 2. **L. 2000:** (2) amended, p. 754, § 1, effective July 1. **L. 2007:** (2)(a) amended, p. 1358, § 3, effective May 29. **L. 2012:** (2)(b) amended, (HB 12-1317), ch. 248, p. 1235, § 90, effective June 4.

**Editor's note:** Subsection (2)(a)(III)(B) provided for the repeal of subsection (2)(a)(III), effective July 1, 2010. (See L. 2007, p. 1358.)

**Cross references:** (1) For additional requirements to which publications circulated outside the executive branch are subject, see § 24-1-136.

(2) For the legislative declaration contained in the 1994 act amending subsection (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsection (2)(a), see section 1 of chapter 320, Session Laws of Colorado 2007.

**34-60-104.5. Director of commission - duties.** (1) Pursuant to section 13 of article XII of the state constitution, the executive director of the department of natural resources shall appoint a director of the commission who shall possess such qualifications as may be established by the executive director, the commission, and the state personnel board.

(2) The director of the commission shall:

(a) Administer the provisions of this article;

(b) Enforce the rules and regulations adopted by the commission;

(c) Implement and administer orders issued by the commission;

(d) Appoint, pursuant to section 13 of article XII of the state constitution, such clerical and professional staff and consultants as may be necessary for the efficient and effective operation of the commission and shall exercise general supervisory control over said staff; and

(e) Perform such other functions as may be assigned to him by the commission, including that of appointment as a hearing officer in accordance with section 34-60-106.

**Source: L. 84:** Entire section added, p. 934, § 1, effective March 26. **L. 94:** (2)(d) amended, p. 1980, § 5, effective June 2.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (2)(d), see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-105. Powers of commission.** (1) The commission has jurisdiction over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article. Any delegation of authority to any other state officer, board, or commission to administer any other laws of this state relating to the conservation of oil or gas, or either of them, is hereby rescinded and withdrawn and such authority is unqualifiedly conferred upon the commission, as provided in this section. Any person, or the attorney general on behalf of the state, may apply for any hearing before the commission, or the commission may initiate proceedings upon any question relating to the administration of this article, and jurisdiction is conferred upon the commission to hear and determine the same and enter its rule, regulation, or order with respect thereto.

(2) Repealed.

(3) The attorney general is the legal advisor of the commission, and it is his or her duty to represent the commission in all court proceedings and in all proceedings before it and in any proceedings to which the commission may be a party before any department of the federal government.

**Source: L. 51:** p. 655, § 7. **CSA:** C. 118, § 68(7). **CRS 53:** § 100-6-5. **C.R.S. 1963:** § 100-6-5. **L. 81:** (2) repealed, p. 1690, § 3, effective May 21. **L. 2016:** (3) amended, (HB 16-1094), ch. 94, p. 268, § 18, effective August 10.

**34-60-106. Additional powers of commission - rules.** (1) The commission also has authority to require:

(a) Identification of ownership of oil and gas wells, producing leases, tanks, plants, and structures;

(b) The making and filing with the commission of copies of well logs, directional surveys, and reports on well location, drilling, and production; except that logs of exploratory or wildcat wells marked "confidential" shall be kept confidential for six months after the filing thereof, unless the operator gives written permission to release such logs at an earlier date;

(c) The drilling, casing, operation, and plugging of seismic holes or exploratory wells in such manner as to prevent the escape of oil or gas from one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, salt water, or brackish water; and measures to prevent blowouts, explosions, cave-ins, seepage, and fires;

(d) (Deleted by amendment, L. 94, p. 1980, § 6, effective June 2, 1994.)

(e) That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes oil or gas in this state shall keep and maintain within this state, for a period of five years, complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission, or its agents, at all reasonable times within said period and that every such person shall file with the commission such reasonable reports as it may prescribe with respect to such oil or gas or the products thereof;

(f) That no operations for the drilling of a well for oil and gas shall be commenced without first giving to the commission notice of intention to drill and without first obtaining a permit from the commission, under such rules and regulations as may be prescribed by the commission, and paying to the commission a filing and service fee to be established by the commission for the purpose of paying the expense of administering this article as provided in section 34-60-122, which fee may be transferable or refundable, at the option of the commission, if such permit is not used; but no such fee shall exceed two hundred dollars;

(g) That the production from wells be separated into gaseous and liquid hydrocarbons and that each be accurately measured by such means and standards as prescribed by the commission;

(h) The operation of wells with efficient gas-oil and water-oil ratios, the establishment of these ratios, and the limitation of the production from wells with inefficient ratios;

(i) Certificates of clearance in connection with the transportation and delivery of oil and gas or any product; and

(j) Metering or other measuring of oil, gas, or product in pipelines, gathering systems, loading racks, refineries, or other places.

(2) The commission has the authority to regulate:

(a) The drilling, producing, and plugging of wells and all other operations for the production of oil or gas;

(b) The shooting and chemical treatment of wells;

(c) The spacing of wells; and

(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

(3) The commission also has the authority to:

(a) Limit the production of oil or gas, or both, from any pool or field for the prevention of waste, and to limit and to allocate the production from such pool or field among or between tracts of land having separate ownerships therein, on a fair and equitable basis so that each such tract will be permitted to produce no more than its just and equitable share from the pool and so as to prevent, insofar as is practicable, reasonably avoidable drainage from each such tract which is not equalized by counter-drainage; and

(b) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this article.

(3.5) The commission shall require the furnishing of reasonable security with the commission by lessees of land for the drilling of oil and gas wells, in instances in which the owner of the surface of lands so leased was not a party to such lease, to protect such owner from unreasonable crop losses or land damage from the use of the premises by said lessee. The commission shall require the furnishing of reasonable security with the commission, to restore the condition of the land as nearly as is possible to its condition at the beginning of the lease and in accordance with the owner of the surface of lands so leased.

(4) The grant of any specific power or authority to the commission shall not be construed in this article to be in derogation of any of the general powers and authority granted under this article.

(5) The commission shall also have power to make determinations, execute waivers and agreements, grant consent to delegations, and take other actions required or authorized for state agencies by those laws and regulations of the United States which affect the price and allocation of natural gas and crude oil, including the federal "Natural Gas Policy Act of 1978", 15 U.S.C. sec. 3301 et seq., including the power to give written notice of administratively final determinations.

(6) The commission has the authority, as it deems necessary and convenient, to conduct any hearings or to make any determinations it is otherwise empowered to conduct or make by means of an appointed hearing officer, but recommended findings, determinations, or orders of any hearing officer shall not become final until adopted by the commission. Upon appointment by the commission, a member of the commission may act as a hearing officer.

(7) The commission has the authority to establish, charge, and collect docket fees for the filing of applications, petitions, protests, responses, and other pleadings. No such fees shall exceed two hundred dollars for any application, petition, or other pleading initiating a proceeding nor one hundred dollars for any protest or other responsive pleadings, and any party to any commission proceeding shall pay no more than one such fee for each proceeding in which it is a party. All such fees shall be deposited in the oil and gas conservation and environmental response fund established by section 34-60-122 and shall be subject to appropriations by the general assembly for the purposes of this article.

(8) The commission shall prescribe special rules and regulations governing the exercise of functions delegated to or specified for it under the federal "Natural Gas Policy Act of 1978",

15 U.S.C. sec. 3301 et seq., or such other laws or regulations of the United States which affect the price and allocation of natural gas and crude oil in accordance with the provisions of this article.

(9) Notwithstanding the provisions of section 34-60-120 or any other provision of law, the commission, as to class II injection wells defined in 40 CFR 144.6b, shall also have the power to perform all acts for the purpose of protecting underground sources of drinking water in accordance with state programs authorized by 42 U.S.C. sec. 300f et seq. and regulations thereunder in effect or as may be amended.

(10) The commission shall promulgate rules and regulations to protect the health, safety, and welfare of any person at an oil or gas well; except that the commission shall not adopt such rules and regulations with regard to parties or requirements regulated under the federal "Occupational Safety and Health Act of 1970".

(11) (a) By July 16, 2008, the commission shall:

(I) (A) Promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.

(B) Repealed.

(II) Promulgate rules, in consultation with the department of public health and environment, to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations. The rules shall provide a timely and efficient procedure in which the department has an opportunity to provide comments during the commission's decision-making process. This rule-making shall be coordinated with the rule-making required in section 34-60-128 (3)(d) so that the timely and efficient procedure established pursuant to this subsection (11) is applicable to the department and to the division of parks and wildlife.

(b) (I) The general assembly shall review the rules promulgated pursuant to paragraph (a) of this subsection (11) acting by bill pursuant to section 24-4-103, C.R.S., and reserves the right to alter or repeal such rules.

(II) By January 1, 2008, the commission shall promulgate rules to ensure the accuracy of oil and gas production reporting by establishing standards for wellhead oil and gas measurement and reporting. At a minimum, the rules shall address engineering standards, heating value, specific gravity, pressure, temperature, meter certification and calibration, and methodology for sales reconciliation to wellhead meters. The rules shall be consistent with standards established by the American society for testing and materials, the American petroleum institute, the gas processors association, or other applicable standards-setting organizations, and shall not affect contractual rights or obligations.

(12) The commission, in consultation with the state agricultural commission and the commissioner of agriculture, shall promulgate rules to ensure proper reclamation of the land and soil affected by oil and gas operations and to ensure the protection of the topsoil of said land during such operations.

(13) The commission shall require every operator to provide assurance that it is financially capable of fulfilling any obligation imposed under subsections (11), (12), and (17) of this section. For purposes of this subsection (13), references to "operator" shall include an operator of an underground natural gas storage cavern and an applicant for a certificate of closure under subsection (17) of this section. In complying with this requirement, an operator may submit for commission approval, without limitation, one or more of the following:

(a) A guarantee of performance where the operator can demonstrate to the commission's satisfaction that it has sufficient net worth to guarantee performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section. Such guarantee and demonstration of net worth shall be annually reviewed by the commission.

(b) A certificate of general liability insurance in a form acceptable to the commission which names the state as an additional insured and which covers occurrences during the policy period of a nature relevant to an obligation imposed by rule under subsections (11), (12), and (17) of this section;

(c) A bond or other surety instrument;

(d) A letter of credit, certificate of deposit, or other financial instrument;

(e) An escrow account or sinking fund dedicated to the performance of any obligation imposed by rule under subsections (11), (12), and (17) of this section;

(f) A lien or other security interest in real or personal property of the operator. Such lien or security interest shall be in a form and priority acceptable to the commission in its sole discretion and shall be reviewed annually by the commission.

(14) Before an operator commences operations for the drilling of any oil or gas well, such operator shall evidence its intention to conduct such operations by giving the surface owner written notice describing the expected date of commencement, the location of the well, and any associated roads and production facilities. Unless excepted by the commission due to exigent circumstances or waived by the surface owner, such notice of drilling shall be mailed or delivered to the surface owner not less than thirty days prior to the date of estimated commencement of operations with heavy equipment. The notice of drilling shall also be provided to the local government in whose jurisdiction the well is located if such local government has registered with the commission for receipt thereof.

(15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract; except that no such assignment shall allow for the imposition of any new tax or fee by the assignee in order to conduct such assigned inspection and monitoring, and no such assignment shall provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee. No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission. Nothing in this subsection (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes.

(15.5) The commission shall use a risk-based strategy for inspecting oil and gas locations that targets the operational phases that are most likely to experience spills, excess emissions, and other types of violations and that prioritizes more in-depth inspections. The commission shall:

(a) Repealed.

(b) Implement the systematic risk-based strategy by July 1, 2014. The commission may use a pilot project to test the risk-based strategy.

(16) The commission has the authority to establish, charge, and collect fees for services it provides, including but not limited to the sale of computer disks and tapes.

(17) (a) The commission has exclusive authority to regulate the public health, safety, and welfare aspects, including protection of the environment, of the termination of operations and permanent closure, referred to in this subsection (17) collectively as "closure", of an underground natural gas storage cavern.

(b) No underground natural gas storage cavern may be closed unless the operator has secured a certificate of closure from the commission. The commission shall issue a certificate of closure if the applicant demonstrates that its closure plan protects public health, safety, and welfare, including protection of the environment.

(c) Before submitting its application, an applicant for a certificate of closure must, to the extent such owners are reasonably identifiable from public records, notify all owners of property, both surface and subsurface, occupied by and immediately adjacent to the underground natural gas storage cavern of the applicant's intent to submit a closure plan. "Immediately adjacent to" means contiguous to the boundaries of the underground natural gas storage cavern. The notice shall advise the owners of a location where a full copy of the closure plan may be inspected, that written comments may be submitted to the commission, and that they may participate in the public hearing required by this subsection (17). The applicant shall notify the owners of the date, time, and place of the public hearing. Contemporaneously with notifying the owners, the applicant shall send a copy of the notice to registered homeowners' associations that have submitted a written request for such notice prior to the filing of the application with the commission and the board of county commissioners in the county where the underground natural gas storage cavern is located.

(d) The commission shall provide the public with notice and an opportunity to comment on an application filed under this subsection (17) for a certificate of closure pursuant to the procedures set forth in section 34-60-108 (7). The applicant shall attend the public hearing and shall be available at other reasonable times as the director may request to respond to comments and questions.

(e) The director may consult with other state agencies possessing expertise in matters related to closure of underground natural gas storage caverns in the areas of the jurisdiction of such agencies, including, but not limited to, safety, environmental protection, public health, water resources, and geology. Agencies consulted under this subsection (17) may include, but are not limited to, the public utilities commission, the division of reclamation, mining, and safety, the Colorado geological survey, the division of water resources, and the department of public health and environment. Any agency consulted shall provide advice and assistance with respect to matters within its expertise.

(f) The commission may attach conditions to its certificate of closure, including requiring reasonable recovery of residual natural gas, if the commission determines that such conditions are technically feasible and necessary to ensure compliance with the requirements of this subsection (17), taking into consideration cost-effectiveness. If the closure application requires the abandonment of wells and reclamation of well sites associated with the underground natural gas storage cavern, the commission shall attach conditions to its certificate of closure requiring that such well abandonment and reclamation occur in a manner consistent with applicable commission rules.

(g) The commission may, subject to the limitations contained in paragraph (f) of this subsection (17), attach conditions to its certificate of closure requiring:

(I) Reasonable post-closure monitoring and site security at a closed underground natural gas storage cavern; and

(II) That the applicant for the certificate of closure will perform post-closure corrective actions consistent with this subsection (17), including, but not limited to, the limitations contained in paragraph (f) of this subsection (17) if any such post-closure monitoring establishes that the closure does not protect public health, safety, or welfare, including protection of the environment.

(h) The commission shall require that the applicant for a certificate of closure provide reasonable assurance that it is financially capable of fulfilling any obligation imposed under this subsection (17) including, but not limited to, post-closure corrective action required by paragraph (g) of this subsection (17), in accordance with subsection (13) of this section.

(i) The applicant for a certificate of closure under this subsection (17) shall reimburse the commission's reasonable and necessary costs of reviewing and acting on the application. Such reimbursement shall include:

(I) Reimbursement to the commission, its staff, and any agencies consulted under this subsection (17) for the reasonable cost of the time required to review the application, at a rate commensurate with the hourly compensation of the staff employee performing the actual work, but not to exceed the hourly compensation of the highest paid commission staff employee, based on the employee's annual salary divided by two thousand eighty hours; and

(II) Reimbursement of the reasonable cost to the commission of hiring one or more private consultants to review the application and provide advice to the commission as a result of such review, if the applicant consents in writing to the scope and expected range of costs of the activities to be undertaken by each such private consultant. If the commission and applicant cannot agree on the scope or expected range of costs and if the commission determines a private consultant is necessary in the review of the application, then the commission may hire a private consultant at its own expense.

**Source: L. 51:** p. 660, § 11. **CSA:** C. 118, § 68(11). **CRS 53:** § 100-6-15. **L. 55:** p. 654, § 8. **C.R.S. 1963:** § 100-6-15. **L. 64:** p. 509, § 1. **L. 73:** p. 1071, § 1. **L. 77:** (3.5) added, p. 1565, § 1, effective July 1. **L. 79:** (5) to (8) added, p. 1320, § 2, February 16. **L. 81:** (9) added, p. 1339, § 4, effective July 1; (9) amended, p. 2034, § 53, effective July 14. **L. 85:** (10) and (11) added, p. 1129, § 1, effective July 1. **L. 86:** (12) added, p. 1073, § 1, effective April 3. **L. 91:** (1)(f) and (9) amended, p. 1415, § 3, effective April 19. **L. 94:** (1)(d), (2)(d), (11), and (12) amended and (13), (14), (15), and (16) added, p. 1980, § 6, effective June 2. **L. 96:** (15) amended, p. 346, § 1, effective April 17. **L. 2001:** IP(13), (13)(a), (13)(b), and (13)(e) amended and (17) added, pp. 1303, 1304, §§ 2, 3, effective June 5; (14) amended, p. 491, § 6, effective July 1. **L. 2005:** (7) amended, p. 733, § 3, effective July 1. **L. 2006:** (17)(e) amended, p. 218, § 16, effective August 7. **L. 2007:** (2)(d) and (11) amended, pp. 1358, 1359, §§ 4, 6, effective May 29; (11) amended, p. 1344, § 1, effective May 29. **L. 2008:** IP(11)(a), (11)(a)(II), and (11)(b)(I) amended, p. 1033, § 1, effective May 21; (11)(a)(II) amended, p. 1912, § 122, effective August 5. **L. 2013:** (15.5) added, (SB 13-202), ch. 274, p. 1437, § 2, effective May 24.

**Editor's note:** (1) Amendments to subsection (11)(a)(II) by House Bill 08-1379 and House Bill 08-1412 were harmonized.

(2) Subsection (11)(a)(I)(B) provided for the repeal of subsection (11)(a)(I)(B), effective July 1, 2010. (See L. 2007, p. 1359.)

(3) Subsection (15.5)(a)(II) provided for the repeal of subsection (15.5)(a), effective September 1, 2014. (See L. 2013, p. 1437.)

**Cross references:** (1) For the legislative declaration contained in the 1994 act amending subsections (1)(d), (2)(d), (11), and (12) and enacting subsections (13), (14), (15), and (16), see section 1 of chapter 317, Session Laws of Colorado 1994. For the legislative declaration contained in the 2007 act amending subsections (2)(d) and (11), see section 1 of chapter 320, Session Laws of Colorado 2007. For the legislative declaration in the 2013 act adding subsection (15.5), see section 1 of chapter 274, Session Laws of Colorado 2013.

(2) For the federal "Occupational Safety and Health Act of 1970", see 29 U.S.C. § 651 et seq.

**34-60-107. Waste of oil or gas prohibited.** The waste of oil and gas in the state of Colorado is prohibited by this article.

**Source: L. 51:** p. 651, § 1. **CSA:** C. 118, § 68(1). **CRS 53:** § 100-6-1. **C.R.S. 1963:** § 100-6-1.

**34-60-108. Rules - hearings - process.** (1) The commission shall prescribe rules and regulations governing the practice and procedure before it.

(2) No rule, regulation, or order, or amendment thereof, shall be made by the commission without a hearing upon at least twenty days' notice, except as provided in this section. The hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard.

(3) When an emergency requiring immediate action is found by the commission to exist, it is authorized to issue an emergency order without notice of hearing, which shall be effective upon promulgation, but no such order shall remain effective for more than fifteen days.

(4) Any notice required by this article, except as provided in this section, shall be given by the commission either by mailing a copy thereof, postage prepaid, to the last known mailing address of the person to be given notice, or by personal service. In addition, the commission shall cause one publication of such notice, at least ten days prior to the hearing, in a newspaper of general circulation in the city and county of Denver and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice shall issue in the name of the state, shall be signed by the commission or the secretary of the commission, shall specify the style and number of the proceeding and the time and place at which the hearing will be held, shall state the time within which protests to the granting of a petition shall be filed if a petition has been filed, and shall briefly state the purpose of the proceeding. Should the commission elect or be required to give notice by personal service, such service may be made by any officer authorized to serve summons or by any agent of the commission in the same manner and extent as is provided by law for the service of summons in civil actions in the district courts of this state. Proof of service by such agent shall be by his affidavit, and proof of service by an officer shall be in the form required by law with respect to service of process in civil actions. In all cases where there is an application for the entry of a pooling order or unitization order, or an

application for an exception from an established well spacing pattern, or a complaint is made by the commission or any party that any provision of this article, or any rule, regulation, or order of the commission, is being violated, notice of the hearing to be held on such application or complaint shall be served on the interested parties either by mail as provided in this subsection (4) or in the same manner as is provided in the Colorado rules of civil procedure for the service of process in civil actions in the district courts of this state.

(5) Any person who believes that he may be an interested party in any proceeding before the commission may file with the commission a request for notices, and thereafter for a period as determined by the commission, not to exceed three years, such person shall be entitled to receive notice by mail of the filing of all petitions upon which a hearing may be held. The filing of a request for notices by a person shall be deemed to be a consent by that person to service of notice by mail at the address shown on the request filed by him in those proceedings in which notice by mail may be given. A request for notices filed under provisions of this subsection (5) may be withdrawn or a new request filed at any time by the person filing the same.

(6) All rules, regulations, and orders issued by the commission shall be in writing, shall be entered in full in books kept by the commission for that purpose, shall be indexed, shall show the date on which such entry was made in the books, which date shall be the date of entry for the purpose of section 34-60-111, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the commission shall include or be based upon written findings of fact, which said findings of fact shall be entered and indexed as public records in the manner provided by this section. A copy of any rule, regulation, finding of fact, or order, certified by the commission or by its secretary, shall be received in evidence in all courts of this state with the same effect as the original.

(7) The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, it shall promptly fix a date for a hearing thereon and shall cause notice of the filing of the petition and of the date for the hearing thereon to be given. Any interested party desiring to protest the granting of the petition shall, at least three days prior to the date of the hearing, file a written protest with the commission, which shall briefly state the basis of the protest. Upon a showing that all interested parties have consented in writing to the granting of the petition without a hearing, the commission may enter an order granting the petition forthwith and without a hearing. In all other cases, the hearing shall be held at the time and place specified in the notice, and all persons who have filed a timely protest shall be given full opportunity to be heard. If no protest to the granting of the petition has been made, the commission may enter an order based upon the facts stated in the verified petition, without the necessity of taking testimony or the making of a record. The commission shall enter its order within thirty days after the hearing. Any person affected by any order of the commission shall have the right at any time to apply to the commission to repeal, amend, modify, or supplement the same.

(8) Any person who files a protest with the commission pursuant to the provisions of subsection (7) of this section shall at the same time serve a copy thereof on the person filing the petition. Such service shall be made by mailing a copy of the protest, postage prepaid, to the petitioner.

**Source: L. 51:** p. 655, § 8. **CSA:** C. 118, § 68(8). **CRS 53:** § 100-6-7. **L. 55:** p. 653, § 5. **C.R.S. 1963:** § 100-6-7. **L. 65:** p. 898, § 2. **L. 69:** p. 874, § 1. **L. 77:** (4) amended, p. 1566, § 1, effective May 24. **L. 94:** (2) amended, p. 1982, § 7, effective June 2.

**Cross references:** (1) For rule-making procedures, see article 4 of title 24; for rules concerning service of summons and proof thereof, see C.R.C.P. 4.

(2) For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-109. Commission may bring suit.** If it appears that any person fails to comply with an order issued pursuant to section 34-60-121, the commission, through the attorney general, shall bring suit in the name of the state against such person in the district court in the county of the residence of the defendant, or in the county of the residence of any defendant if there is more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the court may grant injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions. Proceedings for appellate review or any other proceedings for review may be taken from any judgment, decree, or order in any action under this article as provided by law and the Colorado appellate rules, and all proceedings in the trial and appellate court shall have precedence over any other proceedings then pending in such courts. No bonds shall be required of the commission in any such proceeding or review.

**Source: L. 51:** p. 657, § 9(c). **CSA:** C. 118, § 68(9)(c). **CRS 53:** § 100-6-9. **L. 55:** p. 654, § 6. **C.R.S. 1963:** § 100-6-9. **L. 94:** Entire section amended, p. 1982, § 8, effective June 2.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-110. Witnesses - suits for violations.** (1) The commission has the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the commission or a court, or from obedience to the subpoena of the commission or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. Nothing in this section shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the commission or court for determination. No natural person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his objection, he may be required to testify or produce evidence, documentary or otherwise, before the commission or court, or in obedience to a subpoena; but no person testifying shall be exempted from prosecution and punishment for perjury in the first degree committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of the refusal of any witness to testify as to any matter

regarding which he may be interrogated, any district court in the state, upon the application of the commission, may issue an order for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court has the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

**Source: L. 51:** p. 657, § 9. **CSA:** C. 118, § 68(9). **CRS 53:** § 100-6-8. **C.R.S. 1963:** § 100-6-8. **L. 72:** p. 564, § 37.

**34-60-111. Judicial review.** Any rule, regulation, or final order of the commission shall be subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S. The commission shall not be required to post bond in any proceeding for judicial review.

**Source: L. 51:** p. 659, § 10. **CSA:** C. 118, § 68(10). **CRS 53:** § 100-6-11. **L. 55:** p. 654, § 7. **C.R.S. 1963:** § 100-6-11. **L. 81:** Entire section R&RE, p. 1689, § 1, effective May 21.

**34-60-112. Plaintiff post bond.** No temporary restraining order or injunction of any kind against the commission or its agents, employees, or representatives, or the attorney general, shall become effective until the plaintiff shall execute a bond in such amount and upon such conditions as the court may direct, and such bond is approved by the judge of the court and filed with the clerk of the court. The bond shall be made payable to the state of Colorado, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the restraining order or injunction, if the rule, regulation, or order is upheld. No suit on the bond may be brought after six months from the date of the final determination of the suit in which the restraining order or injunction was issued.

**Source: L. 51:** p. 659, § 10(b). **CSA:** C. 118, § 68(10)(b). **CRS 53:** § 100-6-12. **C.R.S. 1963:** § 100-6-12.

**34-60-113. Trial to be advanced.** An action, appellate review as provided by law and the Colorado appellate rules, or other proceeding involving a test of the validity of any provision of this article or of a rule, regulation, or order shall be advanced for trial and be determined as expeditiously as feasible, and no postponement or continuance thereof shall be granted unless deemed imperative by the court.

**Source: L. 51:** p. 659, § 10(c). **CSA:** C. 118, § 68(10)(c). **CRS 53:** § 100-6-13. **C.R.S. 1963:** § 100-6-13. **L. 81:** Entire section amended, p. 1689, § 2, effective May 21.

**34-60-114. Action for damages.** Nothing in this article, and no suit by or against the commission, and no violation charged or asserted against any person under any provisions of this article, or any rule, regulation, or order issued under this article, shall impair, abridge, or delay any cause of action for damages which any person may have or assert against any person violating any provision of this article, or any rule, regulation, or order issued under this article. Any person so damaged by the violation may sue for and recover such damages as he otherwise may be entitled to receive. In the event the commission fails to bring suit to enjoin any actual or

threatened violation of this article, or of any rule, regulation, or order made under this article, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party.

**Source: L. 51:** p. 657, § 9(d). **CSA:** C. 118, § 68(9)(d). **CRS 53:** § 100-6-10. **C.R.S. 1963:** § 100-6-10.

**34-60-115. Limitation on actions.** No action or other proceeding based upon a violation of this article or any rule, regulation, or order of the commission shall be commenced or maintained unless it has been commenced within one year from the date of the alleged violation.

**Source: L. 51:** p. 660, § 10(d). **CSA:** C. 118, § 68(10)(d). **CRS 53:** § 100-6-14. **C.R.S. 1963:** § 100-6-14.

**34-60-116. Drilling units - pooling interests.** (1) To prevent or to assist in preventing waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission, upon its own motion or on a proper application of an interested party, but after notice and hearing as provided in this section, may establish one or more drilling units of specified size and shape covering any pool or portion of a pool.

(2) In establishing a drilling unit, the acreage to be embraced within each unit and the shape thereof shall be determined by the commission from the evidence introduced at the hearing; except that, when found to be necessary for any of the purposes mentioned in subsection (1) of this section, the commission is authorized to divide any pool into zones and establish drilling units for each zone, which units may differ in size and shape from those established in any other zone, so that the pool as a whole will be efficiently and economically developed, but no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well. If the commission is unable to determine, based on the evidence introduced at the hearing, the existence of a pool and the appropriate acreage to be embraced within a drilling unit and the shape thereof, the commission is authorized to establish exploratory drilling units for the purpose of obtaining evidence as to the existence of a pool and the appropriate size and shape of the drilling unit to be applied thereto. In establishing the size and shape of the exploratory drilling unit, the commission may consider, but is not limited to, the size and shape of drilling units previously established by the commission for the same formation in other areas of the same geologic basin. Any spacing regulation made by the commission shall apply to each individual pool separately and not to all units on a statewide basis.

(3) The order establishing a drilling unit may authorize one or more wells to be drilled and produced from the common source of supply on a drilling unit.

(4) The commission, upon application, notice, and hearing, may decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units in order to prevent or assist in preventing waste or to avoid the drilling of unnecessary wells, or to

protect correlative rights, and the commission may enlarge the area covered by the order fixing drilling units, if the commission determines that the common source of supply underlies an area not covered by the order.

(5) After an order fixing drilling units has been entered by the commission, the commencement of drilling of any well into any common source of supply for the purpose of producing oil or gas therefrom, at a location other than authorized by the order, is prohibited. The operation of any well drilled in violation of an order fixing drilling units is prohibited.

(6) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share. Operations incident to the drilling of a well upon any portion of a unit covered by a pooling order shall be deemed for all purposes to be the conduct of such operations upon each separately owned tract in the unit by the several owners thereof. That portion of the production allocated or applicable to each tract included in a unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(7) (a) Each pooling order must:

(I) Make provision for the drilling of one or more wells on the drilling unit, if not already drilled, for the operation of the wells, and for the payment of the reasonable actual cost of the wells, including a reasonable charge for supervision and storage. Except as provided in subsection (7)(c) of this section, as to each nonconsenting owner who refuses to agree to bear a proportionate share of the costs and risks of drilling and operating the wells, the order must provide for reimbursement to the consenting owners who pay the costs of the nonconsenting owner's proportionate share of the costs and risks out of, and only out of, production from the unit representing the owner's interest, excluding royalty or other interest not obligated to pay any part of the cost thereof, if and to the extent that the royalty is consistent with the lease terms prevailing in the area and is not designed to avoid the recovery of costs provided for in subsection (7)(b) of this section. In the event of any dispute as to the costs, the commission shall determine the proper costs as specified in subsection (7)(b) of this section.

(II) Determine the interest of each owner in the unit and provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production from the wells applicable to the owner's interest in the wells and, unless the owner has agreed otherwise, a proportionate part of the nonconsenting owner's share of the production until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to the owner's interest in the unit after the consenting owners have recovered the nonconsenting owner's share of the costs out of production; and

(III) Specify that a nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling unit.

(b) Upon the determination of the commission, proper costs recovered by the consenting owners of a drilling unit from the nonconsenting owner's share of production from such a unit shall be as follows:

(I) One hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well or wells commencing with first production and continuing until the consenting owners have recovered such costs. It is the intent that the nonconsenting owner's share of these costs of equipment and operation will be that interest that would have been chargeable to the nonconsenting owner had the owner initially agreed to pay the owner's share of the costs of the well or wells from the beginning of the operation.

(II) Two hundred percent of that portion of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A nonconsenting owner of a tract in a drilling unit that is not subject to any lease or other contract for the development thereof for oil and gas shall be deemed to have a landowner's proportionate royalty of twelve and one-half percent until such time as the consenting owners recover, only out of the nonconsenting owner's proportionate seven-eighths share of production, the costs specified in subsection (7)(b) of this section. After recovery of the costs, the nonconsenting owner then owns his or her full proportionate share of the wells, surface facilities, and production and then is liable for further costs as if the owner had originally agreed to drilling of the wells.

(d) (I) An order pooling an unleased nonconsenting mineral owner shall not be entered by the commission under subsection (6) of this section over protest of the owner unless the commission has received evidence that the unleased mineral owner has been tendered, no less than sixty days before the hearing, a reasonable offer to lease upon terms no less favorable than those currently prevailing in the area at the time application for the order is made and that such unleased mineral owner has been furnished in writing the owner's share of the estimated drilling and completion cost of the wells, the location and objective depth of the wells, and the estimated spud date for the wells or range of time within which spudding is to occur. The offer must include a copy of or link to a brochure supplied by the commission that clearly and concisely describes the pooling procedures specified in this section and the mineral owner's options pursuant to those procedures.

(II) During the period of cost recovery provided in this subsection (7), the commission retains jurisdiction to determine the reasonableness of costs of operation of the wells attributable to the interest of the nonconsenting owner.

(8) The operator of wells under a pooling order in which there is a nonconsenting owner shall furnish the nonconsenting owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of production during the preceding month. If the consenting owners recover the costs specified in subsection (7) of this section, the nonconsenting owner shall own the same interest in the wells and the production therefrom, and be liable for the further costs of the operation, as if the owner had participated in the initial drilling operations.

**Source: L. 51:** p. 653, § 6. **CSA:** C. 118, § 68(6). **L. 52:** p. 130, §§ 2, 3. **L. 53:** p. 443, §§ 1, 2. **CRS 53:** § 100-6-4. **L. 55:** p. 651, § 4. **C.R.S. 1963:** § 100-6-4. **L. 77:** (7) and (8) amended, p. 1568, § 1, effective June 1. **L. 81:** (7)(c) R&RE, p. 1691, § 1, effective July 1. **L. 88:** (7)(d) added, p. 1216, § 1, effective April 4. **L. 91:** (2) amended, p. 1414, § 1, effective April 19. **L. 2018:** (1), (3), (7), and (8) amended, (SB 18-230), ch. 361, p. 2155, § 1, effective July 1.

**Editor's note:** Section 2 of chapter 361 (SB 18-230), Session Laws of Colorado 2018, provides that the act changing this section applies to conduct occurring on or after July 1, 2018.

**34-60-117. Prevention of waste - protection of correlative rights.** (1) The commission has authority to prevent waste and protect correlative rights of all owners in every field or pool, and when necessary shall limit the production of oil and gas in any field or pool in the exercise of this authority.

(2) If the commission limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, the commission shall allocate or distribute the allowable production among the several wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonably avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

(3) The commission shall give due regard to the fact that gas produced from oil pools is to be regulated and restricted in a manner as will protect the reasonable use of its energy for oil production.

(4) Each person purchasing or taking for transportation oil or gas from any owner or producer shall purchase or take ratably, without discrimination in favor of any owner or producer over any other owner or producer in the same common source of supply offering to sell his oil or gas produced therefrom to such person. If two or more persons purchase or take for transportation oil or gas from any common source of supply in quantities such that any tract of land of separate ownership is not producing its just and equitable share from the pool, the person purchasing or taking from the tract producing more than its just and equitable share shall, upon the proper offer to sell being made, reduce the amount purchased or taken from such tract and purchase from each tract not producing its just and equitable share so that each tract of land may produce its just and equitable share of production from the pool. In the event that any such purchaser or person taking oil or gas for transportation is likewise a producer or owner, he is prohibited from discriminating in favor of his own production or storage, or production or storage in which he may be interested, and his own production and storage shall be treated as that of any other producer or owner; but no owner or producer, who is also a purchaser of oil and gas, or who has a market for his oil and gas or either thereof, has the right to invoke the benefits of this section.

**Source: L. 51:** p. 655, § 7. **CSA:** C. 118, § 68(7). **L. 52:** p. 131, § 4. **CRS 53:** § 100-6-6. **L. 55:** p. 650, § 3. **C.R.S. 1963:** § 100-6-6.

**34-60-118. Agreements for development and unit operations.** (1) An agreement for repressuring or pressure maintenance operations, cycling or recycling operations, including the

extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or for carrying on any other methods of unit or cooperative development or operation of a field or pool or a part of either, is authorized and may be performed, and shall not be held or construed to violate any statutes relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the commission as being in the public interest for conservation or is reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. Any such agreement entered into prior to July 1, 1951, for any such purpose is approved.

(2) The commission upon the application of any interested person shall hold a hearing to consider the need for the operation as a unit of one or more pools or parts thereof in a field.

(3) The commission shall make an order providing for the unit operation of a pool or part thereof if it finds that:

(a) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas; and

(b) The value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operations.

(4) The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(a) A description of the pool, or parts thereof, to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the commission shall determine the relative value, from evidence introduced at the hearing, of the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations. The commission shall require the production of or may itself produce such geological, engineering, or other evidence, at the hearing or at any continuance thereof, as may be required to protect the interests of all interested persons. The production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

(d) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations;

(e) A provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how said costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operations charged to such owner, or the interest of such owner, may be sold and the proceeds applied to the payment of such costs;

(f) A provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for such service payable out of such person's share of the production;

(g) A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such person;

(h) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(i) Such additional provisions that are found to be appropriate for carrying on the unit operations, and for the protection of correlative rights.

(5) No order of the commission providing for unit operations shall become effective unless the plan for unit operations prescribed by the commission has been approved in writing by those persons who, under the commission's order, will be required to pay at least eighty percent of the costs of the unit operation, and also by the owners of at least eighty percent of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the commission has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the commission shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall be ineffective and shall be revoked by the commission unless for good cause shown the commission extends said time.

(6) An order providing for unit operations may be amended by an order made by the commission in the same manner and subject to the same conditions as an original order providing for unit operations; but if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payment, and other such interests which are free of costs shall not be required. No such order of amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for the allocation of cost as established for any separately owned tract by the original order, except with the consent of all owners in such tract.

(7) The commission, by an order, may provide for the unit operation of a pool, or parts thereof, that embraces a unit area established by a previous order of the commission. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

(8) An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

(9) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portion of the unit production allocated to a separately owned tract in a unit

area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the commission.

(10) The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

(12) Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations under this article, shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

**Source: L. 51:** p. 660, § 12. **CSA:** C. 118, § 68(12). **CRS 53:** § 100-6-16. **C.R.S. 1963:** § 100-6-16. **L. 65:** p. 894, § 1.

**34-60-118.5. Payment of proceeds - definitions.** (1) As used in this section, unless the context otherwise requires:

(a) "Payee" means any person or persons legally entitled to payment from proceeds derived from the sale of oil, gas, or associated products from a well in Colorado, but shall not include those interests owned by the state of Colorado.

(b) "Payer" means the first purchaser of oil, gas, or associated products from a well in Colorado unless the first purchaser has entered into an agreement under which the operator of a well has accepted responsibility for making payments to payees, in which case such operator shall be the payer.

(2) (a) Unless otherwise agreed pursuant to paragraph (b) of this subsection (2), payments of proceeds derived from the sale of oil, gas, or associated products shall be paid by a payer to a payee commencing not later than six months after the end of the month in which production is first sold. Thereafter, such payments shall be made on a monthly basis not later than sixty days for oil and ninety days for gas and associated products following the end of the calendar month in which subsequent production is sold. Payments may be made annually if the aggregate sum due a payee for twelve consecutive months is one hundred dollars or less.

(b) The payer and payee may provide, in a valid lease or other agreement, for terms or arrangements for payment that differ from those set forth in paragraph (a) of this subsection (2).

(2.3) Notwithstanding any other applicable terms or arrangements, every payment of proceeds derived from the sale of oil, gas, or associated products shall be accompanied by information that includes, at a minimum:

(a) A name, number, or combination of name and number that identifies the lease, property, unit, or well or wells for which payment is being made;

(b) The month and year during which the sale occurred for which payment is being made;

(c) The total quantity of product sold attributable to such payment, including the units of measurement for the sale of such product;

(d) The price received per unit of measurement, which shall be the price per barrel in the case of oil and the price per thousand cubic feet ("MCF") or per million British thermal units ("MMBTU") in the case of gas;

(e) The total amount of severance taxes and any other production taxes or levies applied to the sale;

(f) The payee's interest in the sale, expressed as a decimal and calculated to at least the sixth decimal place;

(g) The payee's share of the sale before any deductions or adjustments made by the payer or identified with the payment;

(h) The payee's share of the sale after any deductions or adjustments made by the payer or identified with the payment;

(i) An address and telephone number from which additional information may be obtained and questions answered.

(2.5) Upon written request by the payee, submitted to the payer by certified mail, the payer shall provide to the payee within sixty days a written explanation of those deductions or adjustments over which the payer has control and for which the payer has information, whether or not identified with the payment, and, if requested by the payee, such meter calibration testing and production reporting records that are required to be maintained by the payer in accordance with section 34-60-106 (1)(e). The requirement to provide a written explanation of deductions or adjustments shall not preclude the payer from answering the inquiry by referring the payee to the royalty clause or payment provision in a lease or other agreement.

(2.7) A payer who fails to provide information required or requested in accordance with subsection (2.3) or (2.5) of this section shall be subject to penalties as provided in section 34-60-121.

(3) (a) Compliance with the payment deadlines set forth in subsection (2) of this section shall be suspended when payments are withheld for a period of time due to any of the following reasons:

(I) A failure or delay by the payee to confirm in writing the payee's fractional interest in the proceeds after a reasonable request in writing by the payer for such confirmation;

(II) A reasonable doubt by the payer as to the payee's identity, whereabouts, or clear title to an interest in proceeds; or

(III) Litigation that would affect the distribution of payments to a payee.

(b) Any delay in determining whether or not a payee is entitled to an interest in proceeds shall not affect payments to all other payees so entitled.

(4) If a payer does not make payment within the time frames specified in subsection (2) of this section and such delay in payment was not caused by any of the reasons specified in subsection (3) of this section, the payer shall pay such payee simple interest on the amount of the proceeds withheld, which interest shall be calculated from the date of each sale at a rate equal to two times the discount rate at the federal reserve bank of Kansas City as such rate existed on the first day of the calendar year or years in which proceeds were withheld.

(5) Absent a bona fide dispute over the interpretation of a contract for payment, the oil and gas conservation commission shall have jurisdiction to determine the following:

(a) The date on which payment of proceeds is due a payee under subsection (2) of this section;

(b) The existence or nonexistence of an occurrence pursuant to subsection (3) of this section which would justifiably cause a delay in payment; and

(c) The amount of the proceeds plus interest, if any, due a payee by a payer.

(5.5) Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the oil and gas conservation commission shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the commission finds that such a dispute exists, the commission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court.

(6) The commission may assign to the parties the costs of any administrative proceeding pursuant to this section in such proportions as it deems appropriate and may award reasonable attorney fees and costs to the prevailing party. The moneys received by the commission to cover the costs of such administrative proceedings shall be transmitted to the state treasurer, who shall credit such moneys to the oil and gas conservation and environmental response fund created in section 34-60-122.

(7) As a prerequisite to seeking relief under this section for the failure of a payer to make timely payment, a payee shall give the payer written notice by certified mail of such failure and the payer shall have twenty days after receipt of the required notice in which to pay the proceeds, plus any interest due thereon, in accordance with the provisions of this section or to respond in writing explaining the reason for nonpayment.

(8) (a) Nothing in this section shall be construed to alter existing substantive rights or obligations nor to impose upon the oil and gas conservation commission any duty to interpret a contract from which the obligation to pay proceeds arises.

(b) Subsections (2.3), (2.5), and (2.7) of this section shall apply to payments of proceeds derived from sales occurring on or after July 1, 1998.

**Source: L. 89:** Entire section added, p. 1374, § 1, effective July 1, 1990. **L. 98:** (2) and IP(5) amended and (2.3), (2.5), (2.7), (5.5), and (8) added, p. 636, § 1, effective July 1. **L. 2005:** (6) amended, p. 733, § 4, effective July 1. **L. 2007:** (2.5) amended, p. 1344, § 2, effective May 29.

**34-60-119. Production - limitation.** This article shall never be construed to require, permit, or authorize the commission or any court to make, enter, or enforce any order, rule, or judgment that prorates production by requiring restriction of production of any pool or of any well, except a well or wells drilled in violation of section 34-60-116, to an amount less than the well or pool can produce without waste.

**Source: L. 51:** p. 661, § 14. **CSA:** C. 118, § 68(14). **CRS 53:** § 100-6-18. **L. 55:** p. 658, 11. **C.R.S. 1963:** § 100-6-18. **L. 2007:** Entire section amended, p. 1360, § 7, effective May 29.

**Cross references:** For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 320, Session Laws of Colorado 2007.

**34-60-120. Application of article.** (1) This article shall apply to all lands within the state of Colorado, except as follows:

(a) As to lands of the United States or lands which are subject to its supervision, this article shall apply only to the extent necessary to permit the commission to protect the correlative rights of each owner and producer within a pool and to carry out the provisions of sections 34-60-106, 34-60-117 (4), 34-60-118, and 34-60-122; but the other provisions of this article shall also apply to such lands only if the officer of the United States having jurisdiction approves the order of the commission which purports to affect such lands.

(b) This article shall not in any case apply to any lands committed to any unit or cooperative agreement approved by the department of interior, except as provided in sections 34-60-106, 34-60-117 (4), and 34-60-118, and except as to privately owned or state lands; except that section 34-60-122 shall apply to all lands and to all production from all lands within the state of Colorado.

**Source: L. 51:** p. 661, § 13. **CSA:** C. 118, § 68(13). **L. 52:** p. 132, § 2. **CRS 53:** § 100-6-17. **L. 55:** p. 656, § 9. **C.R.S. 1963:** § 100-6-17. **L. 71:** p. 1050, § 1.

**34-60-121. Violations - penalties - rules - legislative declaration.** (1) (a) Any operator that violates this article, any rule or order of the commission, or any permit is subject to a penalty of not more than fifteen thousand dollars for each act of violation per day that such violation continues.

(b) The commission may impose a penalty by order only after a hearing in accordance with section 34-60-108 or by an administrative order by consent entered into by the commission and the operator.

(c) The commission shall:

(I) Promulgate rules that establish a penalty schedule appropriate to the nature of the violation and provide for the consideration of any aggravating or mitigating circumstances. The rules must establish the basis for determining the duration of a violation for purposes of imposing the applicable penalty and include presumptions that:

(A) A reporting or other minor operational violation: Begins on the day that the report should have been made or other corrective action should have been taken; and ends when the required report is submitted or other corrective action is commenced;

(B) Any other violation: Begins on the date the violation was discovered or should have been discovered through the exercise of reasonable care; and ends when corrective action is commenced;

(C) The failure to diligently implement corrective action pursuant to a schedule embodied in an administrative order on consent, order finding violation, or other order of the commission constitutes an independent violation for which the operator may be subject to additional penalties or corrective action orders imposed by the commission; and

(D) The number of days of violation does not include any period necessary to allow the operator to engage in good faith negotiation with the commission regarding an alleged violation if the operator demonstrates a prompt, effective, and prudent response to the violation.

(II) Publish a quarterly report on its website that specifies, for each penalty assessed in the previous quarter:

(A) The actual penalty assessed, including the number of days for which the penalty was assessed and the amount of the penalty per day of violation;

(B) The aggravating or mitigating circumstances from the penalty schedule that applied;

(C) Whether the violation was part of a pattern of violations;

(D) Whether an egregious violation resulted from gross negligence or knowing and willful misconduct;

(E) Whether the penalty was assessed after a hearing or by an administrative order by consent; and

(F) Any other rationale used in determining the amount of the per-day penalty, duration of the violation, or amount of the penalty actually assessed; and

(III) Ensure that the reports prepared pursuant to subparagraph (II) of this paragraph (c) are discussed at the annual departmental presentations made pursuant to section 2-7-203, C.R.S.

(d) An operator subject to a penalty order shall pay the amount due within thirty days after its imposition unless the operator files a judicial appeal. The commission may recover penalties owed under this section in a civil action brought by the attorney general at the request of the commission in the second judicial district. Moneys collected through the imposition of penalties shall be credited first to any legal costs and attorney fees incurred by the attorney general in the recovery action and then to the environmental response account in the oil and gas conservation and environmental response fund created in section 34-60-122.

(e) The general assembly hereby declares that the purposes of this subsection (1) are to deter noncompliance and to encourage any out-of-compliance operators to come into compliance as soon as possible and to those ends intends that, in determining the amount of a penalty, the commission should not reduce the number of days of violation for which a penalty is assessed below that number which the evidence supports.

(2) If any person, for the purpose of evading this article or any rule, regulation, or order of the commission, makes or causes to be made any false entry or statement in a report required by this article or by any such rule, regulation, or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this article or by any such rule, regulation, or order, or omits or causes to be omitted from any such record, account, or memorandum full, true, and correct entries as required by this article or by any such rule, regulation, or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(3) Any person knowingly aiding or abetting any other person in the violation of any provision of this article or any rule, regulation, or order of the commission shall be subject to the same penalty as that prescribed by this article for the violation by such other person.

(4) Whenever the commission or the director has reasonable cause to believe a violation of any provision of this article, any rule, regulation, or order of the commission, or any permit has occurred, written notice shall be given to the operator whose act or omission allegedly resulted in such violation. The notice shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, and any

corrective action and abatement deadlines the commission or director elects to require of the operator.

(5) (a) If an operator fails to take corrective action required pursuant to subsection (4) of this section, or whenever the commission or the director has evidence that a violation of any provision of this article, or of any rule, regulation, or order of the commission, or of any permit has occurred, under circumstances deemed to constitute an emergency situation, the commission or the director may issue a cease-and-desist order to the operator whose act or omission allegedly resulted in such violation. Such cease-and-desist order shall require such action by the operator as the commission or director deems appropriate. The order shall be served personally or by certified mail, return receipt requested, to the operator or the operator's agent for service of process and shall state the provision alleged to have been violated, the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the commission or the director elects to require of the operator.

(b) The commission or the director may require an operator to appear for a hearing before the commission no sooner than fifteen days after the issuance of a cease-and-desist order; except that the operator may request an earlier hearing. At any hearing concerning a cease-and-desist order, the commission shall permit all interested parties and any complaining parties to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts.

(c) In the event an operator fails to comply with a cease-and-desist order, the commission may request the attorney general to bring suit pursuant to section 34-60-109.

(6) If the commission determines, after a hearing conducted in accordance with section 34-60-108, that an operator has failed to perform any corrective action imposed under subsection (4) of this section or failed to comply with a cease-and-desist order issued under subsection (5) of this section with regard to a violation of a permit provision, the commission may issue an order suspending, modifying, or revoking such permit or may take other appropriate action. An operator subject to an order that suspends, modifies, or revokes a permit shall continue the affected operations only for the purpose of bringing them into compliance with the permit or modified permit and shall do so under the supervision of the commission. Once the affected operations are in compliance to the satisfaction of the commission and any penalty not subject to judicial review or appeal has been paid, the commission shall reinstate the permit.

(7) (a) The commission or the director shall issue an order to an operator to appear for a hearing before the commission in accordance with section 34-60-108 whenever the commission or the director has evidence that an operator is responsible for:

(I) Gross negligence or knowing and willful misconduct that results in an egregious violation; or

(II) A pattern of violation of this article, any rule or order of the commission, or any permit.

(b) If the commission finds, after such hearing, that the operator is responsible under the legal standards specified in paragraph (a) of this subsection (7), it may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both. When the operator demonstrates to the satisfaction of the commission that it has brought each of the violations into compliance and that any penalty not subject to judicial review or appeal has been paid, the commission may vacate the order.

**Source: L. 55:** p. 656, § 10. **CRS 53:** § 100-6-21. **C.R.S. 1963:** § 100-6-21. **L. 94:** (1) amended and (4) to (7) added, p. 1982, § 9, effective June 2. **L. 2005:** (1) amended, p. 734, § 5, effective July 1. **L. 2014:** (1) and (7) amended, (HB 14-1356), ch. 372, p. 1767, § 1, effective June 6.

**Cross references:** For the legislative declaration contained in the 1994 act amending subsection (1) and enacting subsections (4) to (7), see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-122. Expenses - fund created.** (1) (a) In addition to the filing and service fee required to be paid under section 34-60-106 (1)(f) and the fees authorized for other services provided by the commission by section 34-60-106 (16), there is imposed on the market value at the well of all oil and natural gas produced, saved, and sold or transported from the field where produced in this state a charge not to exceed one and seven-tenths mills on the dollar. The commission shall, by order, fix the amount of such charge in the first instance and may, from time to time, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation and environmental response fund specified in subsection (5) of this section may require.

(b) On and after July 1, 2014, the commission shall ensure that the two-year average of the unobligated portion of the fund does not exceed six million dollars and that there is an adequate balance in the environmental response account created pursuant to subsection (5) of this section to address environmental response needs.

(2) (a) On or before March 1, June 1, September 1, and December 1 of each year, every producer or purchaser, whichever disburses funds directly to each and every person owning a working interest, a royalty interest, an overriding royalty interest, a production payment and other similar interests from the sale of oil or natural gas subject to the charge imposed by subsection (1) of this section, shall file a return with the commission showing the volume of oil, gas, or condensate produced or purchased during the preceding calendar quarter, and the actual sales value of such oil, gas, or condensate, including the total consideration due or received at the point of delivery. Such return shall be accompanied by the total amount of the charges due on all interests in the oil or gas except those interests exempted under the provisions of subsection (4) of this section.

(b) Each producer shall advise the commission whether he or the purchaser will be responsible for reporting and remitting the levy under the provisions of paragraph (a) of this subsection (2). If the return is filed by the producer, the producer shall maintain at his place of business for three years the invoice or statement issued by each purchaser showing the amount of oil or gas purchased, the producing lease from which such purchase was made, and the total sales price paid. Such purchaser invoice or statement may be requested periodically by the commission with the quarterly report.

(3) Any producer or purchaser who files a return pursuant to subsection (2) of this section shall pay any such charge or any interest other than his own, and such producer or purchaser is authorized to deduct the amount of such payment from any amount owed by him to the person for whom such charge was paid. Any such charge not paid when required by subsection (2) of this section shall bear interest at the rate of three percent per month, from the date of delinquency until paid.

(4) The charge imposed by subsection (1) of this section shall not apply to the interest in any oil or gas or the proceeds therefrom of the following:

(a) The United States;

(b) The state of Colorado or any of its political subdivisions;

(c) Any Indian or Indian tribe on production from land subject to the supervision of the United States.

(5) (a) The commission shall collect all charges and penalties under this article 60 and remit them to the state treasurer for deposit in the oil and gas conservation and environmental response fund, which fund is hereby created in the state treasury.

(b) There is hereby created in the fund the environmental response account, into which shall be deposited penalties pursuant to section 34-60-121 (1). Expenditures authorized pursuant to section 34-60-124 (4) shall be paid in the first instance from the account, and expenditures authorized pursuant to section 34-60-124 (10) shall not be paid from the account. The year-end balance of the account remains in the account.

(c) The general assembly shall annually make appropriations for the purposes authorized by section 34-60-124, and warrants shall be drawn against the appropriations as provided by law.

**Source: L. 51:** p. 662, § 18. **CSA:** C. 118, § 68(16). **L. 53:** p. 444, § 3. **CRS 53:** § 100-6-20. **L. 59:** p. 606, § 1. **C.R.S. 1963:** § 100-6-20. **L. 65:** p. 900, § 1. **L. 71:** p. 1051, § 1. **L. 77:** (1) and (5) amended, p. 1570, § 2, effective June 1; (2) and (3) amended, p. 1769, § 9, effective January 1, 1978. **L. 78:** (5) amended, p. 273, § 96, effective May 23. **L. 84:** (2) R&RE and (3) and (5) amended, pp. 936, 937, §§ 1, 2, effective April 27. **L. 86:** (1) and (5) amended, p. 1073, § 2, effective April 3. **L. 87:** (1) amended, p. 1274, § 1, effective May 8. **L. 88:** (5) amended, p. 1217, § 1, effective April 14. **L. 90:** (1) R&RE, p. 1545, § 2, effective May 8. **L. 91:** (2)(a) and (5) amended, pp. 1415, 1416, §§ 4, 5, effective April 19. **L. 94:** (1)(b) and (2)(a) amended, p. 1984, § 10, effective June 2. **L. 2005:** (1)(a), (1)(b), and (5) amended, p. 731, § 1, effective July 1; (1)(b) amended, p. 542, § 3, effective July 1. **L. 2006:** (1)(b) amended, p. 220, § 1, effective March 31. **L. 2014:** (1)(b) amended, (HB14-1077), ch. 79, p. 319, § 1, effective March 27. **L. 2018:** (5) amended, (HB 18-1098), ch. 107, p. 796, § 1, effective April 9.

**Editor's note:** Amendments to subsection (1)(b) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

**Cross references:** (1) For disposition of moneys collected by state agencies or instrumentalities, see § 24-36-103.

(2) For the legislative declaration contained in the 1994 act amending subsections (1)(b) and (2)(a), see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-123. Interstate compact to conserve oil and gas.** The governor may execute agreements with other member states for expiration date extensions or other modifications of the terms of the interstate compact to conserve oil and gas. The governor may further take all steps necessary to effect withdrawal of this state from the compact upon his determination that withdrawal is in the best interests of the state of Colorado.

**Source: L. 73:** p. 1411, § 73. **C.R.S. 1963:** § 100-6-23.

**34-60-124. Oil and gas conservation and environmental response fund.** (1) The following moneys shall be credited to the oil and gas conservation and environmental response fund:

(a) The revenues from the surcharge imposed by the commission pursuant to section 34-60-122 (1)(a);

(b) Moneys reimbursed to or recovered by the commission in payment for fund expenditures;

(c) Any moneys appropriated to such fund by the general assembly;

(d) Any moneys granted to the commission from any federal agency for the purposes outlined under subsection (4) of this section;

(e) Prepayments by operators, in situations where a responsible party cannot be identified, as a credit against the surcharge imposed by section 34-60-122 (1)(a), whether in cash or through the provision of services or equipment, in order that the commission may conduct the activities provided for in subsection (4) of this section;

(f) Moneys recovered from the sale of salvaged equipment, as provided for in paragraph (c) of subsection (6) of this section.

(2) The moneys in the oil and gas conservation and environmental response fund shall not revert to the general fund at the end of any fiscal year.

(3) The moneys in the oil and gas conservation and environmental response fund shall be subject to annual appropriation by the general assembly; except that moneys deposited in the fund constituting forfeited security or other financial assurance provided by operators in accordance with section 34-60-106 (3.5) and (13) shall be continuously appropriated to the commission for the purpose of fulfilling obligations under this article upon which an operator has defaulted.

(4) The oil and gas conservation and environmental response fund may be expended:

(a) By the commission, or by the director at the commission's direction, prior to, during, or after the conduct of oil and gas operations to:

(I) Investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, a significant adverse environmental impact on any air, water, soil, or biological resource;

(II) Gather background or baseline data on any air, water, soil, or biological resource that the commission determines may be so impacted by the conduct of oil and gas operations; and

(III) Investigate alleged violations of any provision of this article, any rule or order of the commission, or any permit where the alleged violation threatens to cause or actually causes a significant adverse environmental impact;

(b) For purposes authorized by section 23-41-114 (4), C.R.S.;

(c) Repealed.

(5) The director of the oil and gas conservation commission shall prepare an annual report for the executive director of the department of natural resources and the governor regarding the operations of and disbursements from the fund.

(6) For the purposes provided for in subsection (4) of this section, the commission is authorized to:

(a) Enter onto any lands or waters, public or private; and, except in emergency situations, the commission shall provide reasonable notice prior to such entry in order to allow a

surface owner, local government designee, operator, or responsible party to be present and to obtain duplicate samples and copies of analytical reports;

(b) Require responsible parties to conduct investigation or monitoring activities and to provide the commission with the results;

(c) Confiscate and sell for salvage any equipment abandoned by a responsible party at a location where the conduct of oil and gas operations has resulted in a significant adverse environmental impact; except that this authority shall be subject to and secondary to any valid liens, security interests, or other legal interests in such equipment asserted by any taxing authority or by any creditor of the responsible party.

(7) If the commission determines that mitigation of a significant adverse environmental impact on any air, water, soil, or biological resource is necessary as a result of the conduct of oil and gas operations, the commission shall issue an order requiring the responsible party to perform such mitigation. If the responsible party cannot be identified or refuses to comply with such order, the commission shall authorize the necessary expenditures from the fund. The commission shall bring suit in the second judicial district to recover such expenditures from any responsible party who refuses to perform such mitigation or any responsible party who is subsequently identified, such action to be brought within a two-year period from the date that final expenditures were authorized. Moneys recovered as a result of such suit shall first be applied to the commission's legal costs and attorney fees and shall then be credited to the fund.

(8) (a) For purposes of this section, "responsible party" means any person who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision of this article, or of any rule, regulation, or order of the commission, or of any permit that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource. "Responsible party" includes any person who disposes of any other waste by mixing it with exploration and production waste that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource.

(b) Except as otherwise provided in paragraph (a) of this subsection (8), "responsible party" does not include any landowner, whether of the surface estate, mineral estate, or both, who does not engage in, or assume responsibility for, the conduct of oil and gas operations.

(9) For purposes of this section, any person who is found to be a responsible party shall be deemed to have consented to the jurisdiction of the commission and the courts of the state of Colorado. Each responsible party shall be liable only for a proportionate share of any costs imposed under this section and shall not be held jointly and severally liable for such costs.

(10) The fund shall be expended by the commission or by the director for the purposes of administering the provisions of this article, including staffing, overhead, enforcement, and the payment of environmental responses costs, and for paying expenses in connection with the interstate oil and gas compact commission.

**Source: L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (4) amended, p. 1416, § 6, effective April 19. **L. 94:** Entire section amended, p. 1985, § 11, effective June 2. **L. 2000:** (3) amended, p. 826, § 1, effective May 24. **L. 2002:** (5) amended, p. 878, § 8, effective August 7. **L. 2005:** IP(1), (1)(a), (1)(e), (2), (3), and (4) amended and (10) added, p. 732, § 2, effective July 1; (4) amended, p. 541, § 2, effective July 1. **L. 2007:** IP(4) amended and (4)(c)

added, p. 1587, § 2, effective May 31. **L. 2011:** (4)(c) repealed, (HB 11-1303), ch. 264, p. 1173, § 86, effective August 10.

**Editor's note:** Amendments to subsection (4) by House Bill 05-1285 and Senate Bill 05-066 were harmonized.

**Cross references:** For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-125. Mitigation of adverse environmental impacts. (Repealed)**

**Source: L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (1) amended, p. 1416, § 7, effective April 19. **L. 94:** Entire section repealed, p. 1987, § 12, effective June 2.

**Cross references:** For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-126. Credit allowed for prior payment for mitigation of environmental impacts. (Repealed)**

**Source: L. 90:** Entire section added, p. 1546, § 3, effective May 8. **L. 91:** (2) and (3) amended, p. 1417, § 8, effective April 19. **L. 94:** Entire section repealed, p. 1989, § 13, effective June 2.

**Cross references:** For the legislative declaration contained in the 1994 act repealing this section, see section 1 of chapter 317, Session Laws of Colorado 1994.

**34-60-127. Reasonable accommodation.** (1) (a) An operator shall conduct oil and gas operations in a manner that accommodates the surface owner by minimizing intrusion upon and damage to the surface of the land.

(b) As used in this section, "minimizing intrusion upon and damage to the surface" means selecting alternative locations for wells, roads, pipelines, or production facilities, or employing alternative means of operation, that prevent, reduce, or mitigate the impacts of the oil and gas operations on the surface, where such alternatives are technologically sound, economically practicable, and reasonably available to the operator.

(c) The standard of conduct set forth in this section shall not be construed to prevent an operator from entering upon and using that amount of the surface as is reasonable and necessary to explore for, develop, and produce oil and gas.

(d) The standard of conduct set forth in this section shall not be construed to abrogate or impair a contractual provision binding on the parties that expressly provides for the use of the surface for the conduct of oil and gas operations or that releases the operator from liability for the use of the surface.

(2) An operator's failure to meet the requirements set forth in this section shall give rise to a cause of action by the surface owner. Upon a determination by the trier of fact that such

failure has occurred, a surface owner may seek compensatory damages or such equitable relief as is consistent with subsection (1) of this section.

(3) (a) In any litigation or arbitration based upon this section, the surface owner shall present evidence that the operator's use of the surface materially interfered with the surface owner's use of the surface of the land. After such showing, the operator shall bear the burden of proof of showing that it met the standard set out in subsection (1) of this section. If an operator makes that showing, the surface owner may present rebuttal evidence.

(b) An operator may assert, as an affirmative defense, that it has conducted oil and gas operations in accordance with a regulatory requirement, contractual obligation, or land use plan provision, that is specifically applicable to the alleged intrusion or damage.

(4) Nothing in this section shall:

(a) Preclude or impair any person from obtaining any and all other remedies allowed by law;

(b) Prevent an operator and a surface owner from addressing the use of the surface for oil and gas operations in a lease, surface use agreement, or other written contract; or

(c) Establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.

**Source: L. 2007:** Entire section added, p. 1335, § 2, effective September 1.

**Cross references:** For the legislative declaration contained in the 2007 act enacting this section, see section 1 of chapter 314, Session Laws of Colorado 2007.

**34-60-128. Habitat stewardship - rules.** (1) This section shall be known and may be cited as the "Colorado Habitat Stewardship Act of 2007".

(2) The commission shall administer this article so as to minimize adverse impacts to wildlife resources affected by oil and gas operations.

(3) In order to minimize adverse impacts to wildlife resources, the commission shall:

(a) Establish a timely and efficient procedure for consultation with the parks and wildlife commission and division of parks and wildlife on decision-making that impacts wildlife resources;

(b) Provide for commission consultation and consent of the affected surface owner, or the surface owner's appointed tenant, on permit-specific conditions for wildlife habitat protection. Such conditions shall be discontinued when final reclamation has occurred.

(c) Implement, whenever reasonably practicable, best management practices and other reasonable measures to conserve wildlife resources;

(d) Promulgate rules, by July 16, 2008, in consultation with the parks and wildlife commission, to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations. At a minimum, the rules shall address:

(I) Developing a timely and efficient consultation process with the division of parks and wildlife governing notification and consultation on minimizing adverse impacts, and other issues relating to wildlife resources;

(II) Encouraging operators to utilize comprehensive drilling plans and geographic area analysis strategies to provide for orderly development of oil and gas fields;

(III) Minimizing surface disturbance and fragmentation in important wildlife habitat by incorporating appropriate best management practices:

(A) In orders or rules establishing drilling units or allowing the drilling of additional wells in drilling units pursuant to section 34-60-116;

(B) In orders approving agreements for development or unit operations pursuant to section 34-60-118; and

(C) On a site-specific basis, as conditions of approval to a permit to drill pursuant to section 34-60-106 (1)(f).

(4) Nothing in this section shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations.

**Source: L. 2007:** Entire section added, p. 1329, § 3, effective July 1. **L. 2008:** IP(3)(d) amended, p. 1034, § 2, effective May 21. **L. 2012:** (3)(a) and IP(3)(d) amended, (HB 12-1317), ch. 248, p. 1235, § 91, effective June 4.

**34-60-129. Coalbed methane seepage - fund created - repeal. (Repealed)**

**Source: L. 2007:** Entire section added, p. 1586, § 1, effective May 31.

**Editor's note:** Subsection (5) provided for the repeal of this section, effective July 1, 2010. (See L. 2007, p. 1586.)

**34-60-130. Reporting of spills - rules.** (1) If one barrel or more of oil or exploration and production waste is spilled outside of berms or other secondary containment, the spill shall be reported within twenty-four hours after the discovery of the spill, to:

(a) The commission; and

(b) The entity with jurisdiction over emergency response within the local municipality, if the spill occurred within a municipality, or the local county if the spill did not occur within a municipality.

(2) The spill report must include any available information concerning the type of waste involved in the spill.

(3) The commission may promulgate rules to implement this section.

**Source: L. 2013:** Entire section added, (HB 13-1278), ch. 188, p. 759, § 1, effective August 7.

## ARTICLE 61

Oil Wells and Boreholes

**34-61-101. Boreholes penetrating coal seams.** It is the duty of the owner, or person in charge of any borehole which penetrates any workable coal seam or any accessible or inaccessible coal mine excavation, to notify the state oil and gas conservation commission of the location of such borehole by designating the particular five-acre subdivision of the land section on which such borehole is situated, and the depth and thickness of every workable coal seam or

accessible or inaccessible coal mine excavation penetrated by such borehole. On receipt of such notification, the state oil and gas conservation commission shall at once notify the chief inspector of coal mines.

**Source: L. 15:** p. 373, § 28. **C.L.** § 3641. **CSA:** C. 118, § 38. **CRS 53:** § 100-3-1. **C.R.S. 1963:** § 100-3-1.

**34-61-102. Location of borehole restricted.** No borehole penetrating a gas-bearing or oil-bearing formation shall be located within two hundred feet of a shaft or entrance to a coal mine not definitely abandoned or sealed. No such borehole shall be located within one hundred feet of any mine shaft house, mine boiler house, mine engine house, or mine fan. The location of any proposed borehole must insure that when drilled it will be at least fifteen feet from any mine haulage or airway.

**Source: L. 15:** p. 375, § 32. **C.L.** § 3645. **CSA:** C. 118, § 45. **CRS 53:** § 100-3-2. **C.R.S. 1963:** § 100-3-2.

**34-61-103. Casing of borehole penetrating coal.** Any borehole penetrating any workable seam of coal shall be cased by the owner of such borehole with a suitable casing, conductor, or drive pipe, so as to shut off all surface water from entering said workable coal seam.

**Source: L. 15:** p. 375, § 33. **C.L.** § 3646. **CSA:** C. 118, § 46. **CRS 53:** § 100-3-3. **C.R.S. 1963:** § 100-3-3.

**34-61-104. Oil or gas entering coal seams.** When boreholes for gas or oil are drilled in the coal measures and pass through workable seams, if gas or oil is encountered in such borehole, the coal seams or worked out coal seams shall be sufficiently protected by casing so that the gas or oil shall not come in contact with the coal seams or enter the excavations of worked out seams. When no oil or gas is located and the borehole has been abandoned, a solid cement plug shall be placed extending from fifty feet below each coal seam to fifty feet above the top of each coal seam and at the surface to a depth of twenty feet.

**Source: L. 15:** p. 376, § 34. **C.L.** § 3647. **CSA:** C. 118, § 47. **CRS 53:** § 100-3-4. **C.R.S. 1963:** § 100-3-4. **L. 77:** Entire section amended, p. 1571, § 1, effective June 1.

**34-61-105. Casing to exclude water.** When a water-bearing formation is encountered in the drilling of any borehole for natural gas or oil, casing shall be set upon the next formation encountered which is of such a nature that it will sustain the casing and exclude all water from the lower borehole.

**Source: L. 15:** p. 376, § 35. **C.L.** § 3648. **CSA:** C. 118, § 48. **CRS 53:** § 100-3-5. **C.R.S. 1963:** § 100-3-5.

**34-61-106. Application of article.** This article shall apply only to wells or boreholes which may be drilled through workable coal seams.

**Source: L. 15:** p. 376, § 38. **C.L.** § 3651. **CSA:** C. 118, § 51. **CRS 53:** § 100-3-6. **C.R.S. 1963:** § 100-3-6.

**34-61-107. Enforcement of law.** It is the duty of the district attorneys in their districts, and the attorney general in cases where the district attorney refuses to act, to enforce the provisions of this article by appropriate actions in courts of competent jurisdiction.

**Source: L. 55:** p. 646, § 1. **CRS 53:** § 100-3-7. **C.R.S. 1963:** § 100-3-7.

**34-61-108. Violation - penalty - disposition of fines.** Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months in the county jail, or by both such fine and imprisonment. In all cases where fines are collected, one-half of the amount shall be paid to the treasury department and be placed to the credit of the general fund.

**Source: L. 55:** p. 646, § 1. **CRS 53:** § 100-3-8. **C.R.S. 1963:** § 100-3-8.

## ARTICLE 62

Inspection of Oil Wells

**34-62-101 to 34-62-110. (Repealed)**

**Source: L. 85:** Entire article repealed, p. 1129, § 2, effective July 1.

**Editor's note:** This article was numbered as article 7 of chapter 100, C.R.S. 1963. For amendments to this article prior to its repeal in 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

## ARTICLE 63

Royalties Under Federal Leasing

**34-63-101. State treasurer to receive and distribute mineral leasing payments.** In accordance with the provisions of section 35 of the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, the state treasurer is directed to deposit and distribute any moneys now held or to be received by the state of Colorado from the United States as the state's share of sales, bonuses, royalties, and rentals of public lands within this state, for the benefit of the public schools and political subdivisions of this state and for other purposes in accordance with the provisions of sections 34-63-102 and 34-63-103.

**Source: L. 53:** Ex. Sess., p. 23, § 1. **CRS 53:** § 100-8-1. **C.R.S. 1963:** § 100-8-1. **L. 77:** Entire section R&RE, p. 1572, § 1, effective June 19.

**Cross references:** For the "Mineral Lands Leasing Act" of February 25, 1920, see 30 U.S.C. § 181 et seq.

**34-63-102. Creation of mineral leasing fund - distribution - advisory committee - local government permanent fund created - definitions - transfer of money - repeal.**

(1) (a) (I) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(II) On and after July 1, 2008, all moneys, including any interest and income derived therefrom, received by the state treasurer pursuant to the provisions of the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, except those moneys described in section 34-63-104, shall be deposited by the state treasurer into the mineral leasing fund, which fund is hereby created, for use by state agencies, public schools, and political subdivisions of the state as described in subsections (5.3) and (5.4) of this section and for transfer to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1)(a), C.R.S., and the local government permanent fund created in sub-subparagraph (A) of subparagraph (I) of paragraph (a) of subsection (5.3) of this section, as required by this section and section 23-19.9-102, C.R.S.

(b) In the appropriation and use of such moneys, priority shall be given to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under said federal mineral lands leasing act.

(c) (I) For the fiscal year 2015-16, and for each of the next two fiscal years thereafter, when the state treasurer receives documentation from the office of natural resources revenue in the United States department of the interior that moneys received for the fiscal year by the state treasurer and deposited into the mineral leasing fund pursuant to subparagraph (II) of paragraph (a) of this subsection (1) have been offset by a recoupment, then on the date of the first quarterly distribution for the fiscal year required under subsection (5.4) of this section, the state treasurer shall transfer seven million seven hundred eighty-eight thousand eight hundred sixty-six dollars from the general fund to the state public school fund to be used for the support of the public schools of the state. Simultaneous with this transfer, the state treasurer shall transfer four million twenty-six thousand eight hundred forty-four dollars from the federal moneys in the state public school fund that were transferred from the mineral leasing fund as follows:

(A) Three million one hundred fifteen thousand five hundred forty-six dollars to the local government mineral impact fund to be distributed in accordance with subparagraph (I) of paragraph (b) of subsection (5.4) of this section;

(B) Seven hundred seventy-eight thousand eight hundred eighty-seven dollars to the Colorado water conservation board construction fund to be distributed in accordance with subparagraph (II) of paragraph (d) of subsection (5.4) of this section; and

(C) One hundred thirty-two thousand four hundred eleven dollars to the local government mineral impact fund to be distributed in accordance with subparagraph (II) of paragraph (e) of subsection (5.4) of this section.

(II) If the federal moneys in the state public school fund that the state treasurer is required to transfer under subparagraph (I) of this paragraph (c) are less than four million

twenty-six thousand eight hundred forty-four dollars, then the state treasurer shall proportionally reduce the transfers to the cash funds. Thereafter, the state treasurer shall transfer the remainder to the cash funds at the same time the subsequent quarterly distributions for the fiscal year are made until the required total, or so much thereof as is possible based on the amount of available federal moneys, is transferred.

(III) Three million seven hundred sixty-two thousand twenty-two dollars of the general fund money transferred to the state public school fund and all of the amounts transferred to other cash funds in accordance with this paragraph (c) are added to the amount distributed to the same cash funds pursuant to subsection (5.4) of this section for the purpose of determining whether the maximum allowable distribution to the funds has been exceeded and whether paragraph (a) of subsection (5.5) of this section applies.

(IV) This paragraph (c) is repealed, effective July 1, 2019.

(2) to (4) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(5) (a) (I) On and after July 1, 2008, moneys shall be paid into the local government mineral impact fund, which is hereby created, as specified in paragraph (b) of subsection (5.4) of this section and distributed as specified in paragraphs (b) and (c) of said subsection.

(II) On and after July 1, 2001, all income derived from the deposit and investment of the moneys in the local government mineral impact fund shall be credited to the fund.

(III) to (V) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(b) (I) There is hereby created within the department of local affairs an energy impact assistance advisory committee. The committee shall be composed of the executive director of the department of local affairs, the executive director of the department of natural resources, the commissioner of education, the executive director of the department of public health and environment, the executive director of the department of transportation, and seven residents of areas impacted by energy conversion or mineral resource development. The seven residents shall be appointed by the governor, with the consent of the senate, for terms not exceeding four years to serve at the pleasure of the governor. The executive director of the department of local affairs shall act as chairperson of the committee. Members of the committee shall serve without additional compensation; except that the seven members appointed from energy impact areas shall be entitled to reimbursement for actual and necessary expenses. Any member of the committee who is a state official may designate representatives of his or her agency to serve on the committee in his or her absence. The chairperson shall convene the advisory committee from time to time as he or she deems necessary. The advisory committee shall continuously review the existing and potential impact of the development, processing, or energy conversion of mineral and fuel resources on various areas of the state, including those areas indirectly affected, and shall make continuing recommendations to the department of local affairs, including, but not limited to, those actions deemed reasonably necessary and practicable to assist impacted areas with the problems occasioned by such development, processing, or energy conversion, the immediate and projected problems which the local governments are experiencing in providing governmental services, the extent of local tax resources available to each unit of local government, the extent of local tax effort in solving energy impacted problems, and other problems which the areas have experienced, such as housing and environmental considerations, which have developed as a direct result of energy impact. In furtherance thereof, the committee

shall make continuing specific recommendations regarding any discretionary distributions by the executive director of the department of local affairs authorized pursuant to this section and section 39-29-110, C.R.S. With respect to recommendations for the distribution of moneys made pursuant to this section, the committee shall give priority and preference to those public schools and political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended. With respect to recommendations for the distribution of moneys made pursuant to section 39-29-110, C.R.S., the committee shall recommend distributions to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels subject to taxation under article 29 of title 39, C.R.S.

(II) Repealed.

(c) Notwithstanding section 24-1-136 (11)(a)(I), the executive director of the department of local affairs shall deliver to the state auditor and file with the general assembly annually before February 1 a detailed report accounting for the distribution of all funds for the previous year. The energy impact assistance advisory committee shall review the report prior to it being delivered and filed.

(5.3) (a) Bonus payments credited to the mineral leasing fund created in subparagraph (II) of paragraph (a) of subsection (1) of this section shall be distributed on a quarterly basis for each quarter commencing on July 1, October 1, January 1, or April 1 of any state fiscal year as follows:

(I) (A) Fifty percent of the bonus payments shall be transferred to the local government permanent fund, which is hereby created in the state treasury. Interest and income derived from the deposit and investment of moneys in the local government permanent fund shall be credited to the permanent fund and shall not be transferred to the general fund or any other fund at the end of any fiscal year. Except as otherwise provided in sub-subparagraph (B) of this subparagraph (I), moneys in the permanent fund shall not be expended for any purpose. The state treasurer may invest moneys in the local government permanent fund in any investment in which the board of trustees of the public employees' retirement association may invest the funds of the association pursuant to section 24-51-206, C.R.S.

(B) If, based on the revenue estimate prepared by the staff of the legislative council in December of any fiscal year, it is anticipated that the total amount of moneys that will be deposited into the mineral leasing fund pursuant to subparagraph (II) of paragraph (a) of subsection (1) of this section during the fiscal year will be at least ten percent less than the amount of moneys so deposited during the immediately preceding fiscal year, the general assembly may appropriate moneys from the local government permanent fund to the department of local affairs for the current or next fiscal year. The maximum amount that the general assembly may appropriate for the current or next fiscal year pursuant to this sub-subparagraph (B) is an amount equal to the difference between the total amount of moneys credited to the local government mineral impact fund and directly distributed by the executive director of the department pursuant to paragraph (c) of subsection (5.4) of this section during the immediately preceding fiscal year and the estimated total amount of moneys to be so credited and distributed for the current fiscal year. The executive director of the department shall distribute all moneys appropriated pursuant to this sub-subparagraph (B) directly to counties and municipalities in

combination with and using the methodology set forth in subparagraphs (I) to (IV) of paragraph (c) of subsection (5.4) of this section.

(C) and (D) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(E) Notwithstanding any provision of this subsection (5.3) to the contrary, on June 30, 2011, the state treasurer shall deduct four million eight hundred thousand dollars from the local government permanent fund and transfer such sum to the general fund.

(II) Fifty percent of the bonus payments shall be transferred to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1)(a), C.R.S.

(b) For purposes of this subsection (5.3), "bonus payments" means the portion of the compensation paid to the federal government as consideration for the granting of a federal mineral lease that is payable regardless of the extent of use of the mineral interest and is fixed and certain in amount, whether or not payable in one or more periodic increments over a fixed period, that is subsequently received by the state treasurer pursuant to the provisions of the federal "Mineral Lands Leasing Act" of February 20, 1920, as amended, and that is not comprised of moneys described in section 34-63-104. "Bonus payments" do not include any compensation paid to the federal government that varies in amount based on the amount of mineral production of the payer.

(5.4) Except as otherwise provided in subsection (5.5) of this section, on and after July 1, 2008, all moneys other than bonus payments, as defined in paragraph (b) of subsection (5.3) of this section, credited to the mineral leasing fund created in subparagraph (II) of paragraph (a) of subsection (1) of this section shall be distributed on a quarterly basis for quarters beginning on July 1, October 1, January 1, and April 1 of each state fiscal year as follows:

(a) (I) For each quarter commencing during the 2008-09, 2009-10, and 2010-11 fiscal years, forty-eight and three-tenths percent of the moneys shall be transferred to the state public school fund to be used for the support of the public schools of the state; except that the total amount of moneys transferred during each of said fiscal years shall not exceed sixty-five million dollars.

(II) For each quarter commencing during the 2011-12 fiscal year or during any succeeding fiscal year, forty-eight and three-tenths percent of the moneys shall be paid into the state public school fund to be used for the support of the public schools of the state; except that the maximum amount of moneys transferred during any fiscal year shall not exceed the maximum amount of moneys allowed to be transferred during the 2010-11 fiscal year multiplied by one hundred four percent per year for each succeeding fiscal year.

(b) (I) For each quarter commencing during the 2008-09 fiscal year or during any succeeding fiscal year, forty percent of the moneys shall be credited to the local government mineral impact fund. Fifty percent of the moneys so credited shall be distributed by the executive director of the department of local affairs in accordance with the purposes and priorities described in subsection (1) of this section, and for planning, analyses, public engagement, and coordination and collaboration with federal land managers and stakeholders, or for similar or related local government processes needed by local governments for engagement in federal land management decision-making. In distributing the moneys, the executive director shall give priority to those communities most directly and substantially impacted by production of energy resources on federal mineral lands and to grant applications that:

(A) Are submitted jointly by multiple local governments; or

(B) Seek funding for a project that is a multi-jurisdictional project or that requires a substantial amount of funding.

(II) Repealed.

(b.5) (Deleted by amendment, L. 2011, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011.)

(b.7) and (b.8) Repealed.

(c) The executive director of the department of local affairs shall annually directly distribute the remaining fifty percent of the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4) and any moneys appropriated by the general assembly from the local government permanent fund to the department pursuant to sub-subparagraph (B) of subparagraph (I) of paragraph (a) of subsection (5.3) of this section to counties, federal mineral lease districts, and municipalities as follows:

(I) Except as otherwise provided in subparagraph (III) of this paragraph (c), moneys shall be allocated to counties for each fiscal year by August 31 of the following fiscal year among those respective counties of the state from which the moneys are derived based upon the following factors:

(A) The proportion of the total amount of moneys credited to the mineral leasing fund that is derived from each of the respective counties; and

(B) On the basis of the report required by section 39-29-110 (1)(d), C.R.S., the proportion of employees of mines or related facilities or crude oil, natural gas, or oil and gas operations who reside in a county to the total number of employees of mines and related facilities or crude oil, natural gas, or oil and gas operations who reside in the state.

(II) Except as otherwise specified in subparagraph (IV) of this paragraph (c), the moneys allocated to each county pursuant to subparagraph (I) of this paragraph (c) shall be further distributed to the county or the federal mineral lease district and to each municipality within the county based upon the following factors:

(A) The proportion of employees reported as residents pursuant to section 39-29-110 (1)(d), C.R.S., in the county's unincorporated area or in any municipality within the county to the total number of employees reported as residents in the county as a whole pursuant to said section;

(B) The proportion of the population in any such county's unincorporated area or in any such municipality within the county to the total population in the county, as such population is reported in the most recently published population estimate from the state demographer appointed by the executive director of the department of local affairs; and

(C) The proportion of road miles in any such county's unincorporated area or in any such municipality within the county to the total road miles in the county, as such miles are certified by the department of transportation to the state treasurer pursuant to sections 43-4-207 (2)(d) and 43-4-208 (3), C.R.S.

(III) With respect to the distribution made pursuant to subparagraph (I) of this paragraph (c), the executive director of the department of local affairs shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (c) shall be given, subject to the limitation that the factor described in said sub-subparagraph (B) shall not be weighted more than thirty-five percent. In establishing the guidelines, the executive director shall weigh the factors in a manner that most accurately estimates the absolute and relative impacts of production of energy resources on federal mineral

lands for each impacted county so that the counties most substantially and directly impacted by such production each receive a sufficient allocation and no county receives an excessive allocation.

(IV) With respect to the distribution made pursuant to subparagraph (II) of this paragraph (c), the executive director of the department of local affairs, in consultation with the energy impact assistance advisory committee established pursuant to subparagraph (I) of paragraph (b) of subsection (5) of this section, shall establish guidelines that set forth the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (II) of this paragraph (c) shall be given. In establishing the guidelines, the executive director and the committee shall weigh the factors in a manner that most accurately estimates the absolute and relative impacts of production of energy resources on federal mineral lands for each impacted county and municipality so that the counties and municipalities most substantially and directly impacted by such production each receive a sufficient allocation and no county or municipality receives an excessive allocation. These guidelines shall apply uniformly across the state; except that the executive director may:

(A) Accept a memorandum of understanding from a county and all municipalities contained therein that establishes an alternative distribution that shall be effective within the county; and

(B) After consultation with the energy impact assistance advisory committee, vary the weight that each of the factors in sub-subparagraphs (A) to (C) of subparagraph (II) of this paragraph (c) receives in an individual county in order to more fairly distribute the gross receipts among the county and all municipalities contained therein.

(d) (I) For each quarter commencing during the 2008-09 fiscal year, ten percent of the moneys shall be paid into the Colorado water conservation board construction fund created in section 37-60-121 (1), C.R.S., for appropriation by the general assembly pursuant to the provisions of section 37-60-122, C.R.S., and for use in accordance with the purposes and priorities described in subsection (1) of this section; except that the maximum amount of moneys transferred during the 2008-09 fiscal year shall not exceed fourteen million dollars.

(II) For each quarter commencing during the 2009-10 fiscal year or during any succeeding fiscal year, an amount equal to ten percent of the moneys shall be paid into the Colorado water conservation board construction fund created in section 37-60-121 (1), C.R.S., for appropriation by the general assembly pursuant to the provisions of section 37-60-122, C.R.S., and for use in accordance with the purposes and priorities described in subsection (1) of this section; except that the maximum amount of moneys transferred during a single fiscal year shall not exceed the maximum amount of moneys allowed to be transferred during the 2008-09 fiscal year multiplied by one hundred four percent per year for each succeeding fiscal year.

(e) (I) In addition to the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4), for the 2008-09 fiscal year, one and seven-tenths percent of the moneys shall be credited to the local government mineral impact fund and distributed to school districts within the counties that receive distributions pursuant to paragraph (c) of this subsection (5.4); except that the maximum amount of moneys credited and distributed shall not exceed three million three hundred thousand dollars. The executive director of the department of local affairs shall distribute the moneys to the school districts as specified in subparagraph (III) of this paragraph (e).

(II) In addition to the moneys credited to the local government mineral impact fund pursuant to paragraph (b) of this subsection (5.4), for the 2009-10 fiscal year and for each succeeding fiscal year, one and seven-tenths percent of the moneys shall be credited to the local government mineral impact fund and distributed to school districts within the counties that receive distributions pursuant to paragraph (c) of this subsection (5.4); except that the maximum amount of moneys credited and distributed for a fiscal year shall not exceed the maximum amount of moneys allowed to be credited and distributed for the 2008-09 fiscal year multiplied by one hundred four percent for each succeeding fiscal year. The executive director of the department of local affairs shall distribute the moneys to the school districts as specified in subparagraph (III) of this paragraph (e).

(III) The executive director of the department of local affairs shall make the distributions required by subparagraphs (I) and (II) of this paragraph (e) at the same time as the executive director makes distributions to counties pursuant to paragraph (c) of this subsection (5.4), and the total amount of the distributions made to all school districts within a single county shall be in proportion to the amount of the moneys distributed directly to the county pursuant to said paragraph (c). Where more than one school district exists within a county, the distribution to each school district shall be the percentage that the most recent funded pupil count, as determined pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S., for pupils enrolled in the county attributable to that school district bears to the most recent total funded pupil count for all pupils attributable to the county.

(5.5) (a) (I) On and after July 1, 2008, but before April 14, 2016, all moneys other than bonus payments, as defined in paragraph (b) of subsection (5.3) of this section, credited to the mineral leasing fund in excess of the amounts distributed pursuant to subsection (5.4) of this section shall be transferred on a quarterly basis for each quarter commencing on July 1, October 1, January 1, or April 1 of any state fiscal year to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1)(a), C.R.S., and the higher education maintenance and reserve fund created in section 23-19.9-102 (2)(a), C.R.S., as specified in said section as that section existed prior to its repeal.

(II) On and after April 14, 2016, all moneys other than bonus payments, as defined in paragraph (b) of subsection (5.3) of this section, credited to the mineral leasing fund in excess of the amounts distributed pursuant to subsection (5.4) of this section shall be transferred on a quarterly basis for each quarter commencing on July 1, October 1, January 1, or April 1 of any state fiscal year to the higher education federal mineral lease revenues fund created in section 23-19.9-102 (1)(a), C.R.S., as specified in said section.

(b) Notwithstanding the provisions of paragraph (a) of subsection (5.4) of this section, if the amount of moneys in the higher education federal mineral lease revenues fund, established pursuant to section 23-19.9-102 (1), C.R.S., is insufficient to cover the full amount of the payments due to be made under lease-purchase agreements authorized pursuant to section 23-1-106.3 (3), C.R.S., the general assembly may reduce the transfer to the state public school fund by the amount needed to cover the full amount of payments and transfer that amount to the higher education federal mineral lease revenues fund.

(6) Repealed.

(7) (a) No state agency or office shall expend any moneys received from the local government mineral impact fund unless such expenditure is authorized by legislative appropriation separate from the provisions of this section; except that, if the executive director of

the department of local affairs with the concurrence of the governor determines that a local government emergency exists, the state agency or office may expend any moneys received from the local government mineral impact fund without further appropriation. In the event moneys are expended based on a determination that a local government emergency exists, the department of local affairs shall notify the legislative council of the expenditure.

(b) The provisions of paragraph (a) of this subsection (7) shall not apply to any moneys received by a state-supported institution of higher education that provides job training or facilities related to energy development for counties or communities with energy impacts. Such a state-supported institution of higher education may accept and expend moneys from the local government mineral impact fund.

**Source: L. 53:** Ex. Sess., p. 23, § 2. **CRS 53:** § 100-8-2. **C.R.S. 1963:** § 100-8-2. **L. 77:** Entire section R&RE, p. 1572, § 2, effective June 19. **L. 79:** (2) amended, p. 1663, § 131, effective July 19. **L. 81:** (2), (3), and (5)(a) amended, p. 1692, § 1, effective June 19. **L. 82:** (3)(a) and (3)(c) amended, pp. 522, 523, §§ 1, 2, effective January 1, 1983. **L. 84:** (3)(a) amended, p. 703, § 3, effective April 5. **L. 86:** (5)(b) amended, p. 424, § 56, effective March 26. **L. 87:** (3)(b)(II) amended and (3)(b)(IV) and (6) repealed, p. 1275, §§ 1, 2, effective April 6. **L. 88:** (5)(b)(I) and (5)(b)(II)(A) amended, p. 318, § 16, effective April 14. **L. 90:** (5)(b)(II) repealed, p. 334, § 24, effective April 3. **L. 91:** (5)(b)(I) amended, p. 1073, § 55, effective July 1. **L. 93:** (5)(a) amended, p. 448, § 4, effective April 19. **L. 94:** (7) added, p. 682, § 1, effective April 19. **L. 97:** (3)(a), (3)(c), and (5)(a) amended, p. 1145, § 1, effective May 28. **L. 2000:** (5)(a) amended, p. 276, § 1, effective August 2. **L. 2002:** (2) amended, p. 1784, § 48, effective June 7. **L. 2006:** (5)(a)(I) amended, p. 984, § 3, effective May 18. **L. 2007:** (7) amended, p. 472, § 1, effective April 11; (5)(a)(I) amended, p. 549, § 5, effective August 3. **L. 2008:** (5.5) amended, p. 717, § 3, effective May 12; (5)(a)(III) added, p. 981, § 2, effective May 21; (1)(a), (2)(a), (3)(a), (3)(c)(II)(A), (4), and (5)(a)(I) amended and (5.3), (5.4), and (5.5) added, p. 2149, § 1, effective June 4; (3)(b)(I), (3)(b)(II), (5)(b)(I), and (5)(c) amended, p. 1678, § 1, effective August 5. **L. 2009:** (5)(a)(V) and (5.4)(b.5) added, (SB 09-279), ch. 367, pp. 1930, 1933, §§ 20, 27, effective June 1; (5)(a)(I) and (5.3)(a)(I) amended and (5)(a)(IV) added, (SB 09-232), ch. 435, p. 2420, § 1, effective June 4. **L. 2010:** (5.3)(a)(I)(A) amended and (5.3)(a)(I)(D) added, (HB 10-1327), ch. 135, p. 450, § 7, effective April 15. **L. 2011:** (5.3)(a)(I)(E) and (5.4)(b.7) added, (SB 11-164), ch. 33, p. 93, §§ 6, 7, effective March 18; IP(5.4)(c) and IP(5.4)(c)(II) amended, (HB 11-1218), ch. 169, p. 584, § 2, effective May 9; (5.4)(b.8) added, (SB 11-226), ch. 190, p. 734, § 5, effective May 19; (1)(a)(I), (2) to (4), (5)(a)(I), (5)(a)(III) to (5)(a)(V), (5.3)(a)(I)(C), (5.3)(a)(I)(D), (5.4)(b), and (5.4)(b.5) amended, (SB 11-238), ch. 300, p. 1441, § 1, effective June 8, 2011. **L. 2013:** (5.4)(b)(II) amended, (SB 13-270), ch. 250, p. 1318, § 9, effective May 23; (1)(a)(II), IP(5.3)(a), and IP(5.4) amended, (HB 13-1300), ch. 316, p. 1696, § 104, effective August 7. **L. 2014:** (5.3)(a)(I)(B) amended, (SB 14-106), ch. 75, p. 307, § 1, effective March 27; (5.4)(b)(II) amended, (SB 14-046), ch. 210, p. 784, § 1, effective May 15; (7)(b) amended, (HB 14-1363), ch. 302, p. 1272, § 40, effective May 31. **L. 2015:** (1)(c) added, (SB 15-244), ch. 132, p. 408, § 2, effective May 1; IP(5.4)(b)(I) amended, (HB 15-1225), ch. 187, p. 622, § 4, effective May 13; (5.3)(a)(I)(A) and (5.3)(a)(I)(B) amended and (5.4)(b.7) and (5.4)(b.8) repealed, (SB 15-264), ch. 259, p. 965, § 85, effective August 5. **L. 2016:** (1)(a)(II), (5.3)(a)(II), (5.5)(a), and (5.5)(b) amended, (HB 16-1229), ch. 84, p. 239, § 4, effective April 14. **L. 2017:** (5)(c) amended, (HB 17-1047), ch. 26, p. 79, § 3, effective August 9.

**Editor's note:** Subsection (5.4)(b)(II) provided for the repeal of subsection (5.4)(b)(II), effective July 1, 2017. (See L. 2014, p. 784.)

**Cross references:** (1) For the "Mineral Lands Leasing Act" of February 25, 1920, see 30 U.S.C. § 181 et seq.; for the state public school fund, see article 41 of title 22.

(2) For the legislative declaration in SB 15-244, see section 1 of chapter 132, Session Laws of Colorado 2015. For the legislative declaration in HB 15-1225, see section 1 of chapter 187, Session Laws of Colorado 2015.

**34-63-103. Method of payment.** Warrants in payment of the amounts due the several counties of the state shall be issued and paid pursuant to the provisions of law.

**Source: L. 53:** Ex. Sess., p. 23, § 3. **CRS 53:** § 100-8-3. **C.R.S. 1963:** § 100-8-3.

**34-63-104. Special funds relating to oil shale lands - naval oil shale reserves - distribution to local governments - legislative declaration.** (1) All moneys from sales, bonuses, royalties, leases, and rentals related to oil shale production on oil shale lands received by the state pursuant to section 35 of the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, shall be deposited by the state treasurer into a special fund for appropriation by the general assembly to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production and secondarily for other state purposes.

(2) All moneys earned from the investment of the oil shale special fund established by subsection (1) of this section shall be deposited by the state treasurer into a separate special fund and shall be appropriated by the general assembly primarily to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands for planning and, in the form of grants and loans, for providing facilities and services necessitated by such development and production and secondarily for other state purposes.

(3) (a) The general assembly hereby finds and declares that:

(I) Colorado is the location of two federal naval oil shale reserves (NOSR), numbers 1 and 3;

(II) Congress passed the federal "Transfer Act", codified at 10 U.S.C. sec. 7439, as amended, which transferred administrative jurisdiction over NOSR 1 and 3 from the United States secretary of energy to the United States secretary of the interior and requires the secretary of the interior to manage the transferred lands through the federal bureau of land management;

(III) The federal "Transfer Act" further specified that royalties collected from NOSR 1 and 3 would be placed in the United States treasury and not distributed to the state until there was enough money in the treasury to reimburse the United States for previous costs incurred relating to the transferred lands and to provide for cleanup of the anvil points site at NOSR 3;

(IV) As a result, more than one hundred thirteen million dollars was withheld from distribution to the state from 1997 to 2008, and this amount far exceeded the amount needed for the reimbursement and the cleanup;

(V) Approximately eighty million dollars of these funds has been spent;

(VI) It is anticipated that a portion of the withheld money may soon be disbursed to the state;

(VII) Garfield, Rio Blanco, Mesa, and Moffat counties made significant expenditures to address the impacts of the operation of the anvil points site and the mineral extraction from which the withheld money was derived, but have not received any state or federal money as reimbursement; and

(VIII) The counties have been instrumental in the release of the withheld money.

(b) If the state receives any money in accordance with the federal "Mineral Lands Leasing Act" of February 25, 1920, as amended, that was set aside prior to January 1, 2009, and withheld by the federal government in accordance with 10 U.S.C. sec. 7439, as amended, then the state treasurer shall distribute the money to the following counties or related federal mineral lease districts, if applicable:

(I) Forty percent to Garfield county;

(II) Forty percent to Rio Blanco county;

(III) Ten percent to Mesa county; and

(IV) Ten percent to Moffat county.

(c) The state treasurer shall consult with the department of local affairs to determine whether a county identified in subsection (3)(b) of this section has created a federal mineral lease district in accordance with the "Federal Mineral Lease District Act", part 13 of article 20 of title 30. If a county has created a district, the state treasurer shall distribute any money in accordance with subsection (3)(b) of this section directly to the district.

**Source: L. 74:** Entire section added, p. 308, § 1, effective March 12. **L. 75:** Entire section amended, p. 1338, § 1, effective July 1. **L. 2008:** (1) amended, p. 2158, § 3, effective June 4. **L. 2018:** (3) added, (HB 18-1249), ch. 51, p. 491, § 3, effective March 22.

**Cross references:** For the "Mineral Lands Leasing Act" of February 25, 1920, see 30 U.S.C. § 181 et seq.

**34-63-105. Geothermal resource leasing fund.** (1) The state treasurer shall deposit all revenues from sales, bonuses, royalties, leases, and rentals related to geothermal resources, as that term is defined in section 37-90.5-103, C.R.S., received by the state pursuant to 30 U.S.C. sec. 1019, as amended, and all moneys earned from the investment of such revenues, into the geothermal resource leasing fund, which fund is hereby created in the state treasury, for appropriation by the general assembly to the department of local affairs for grants to state agencies, school districts, and political subdivisions of the state affected by the development and production of geothermal resources or other entities authorized by federal law:

(a) Primarily for use by such entities in planning for and providing facilities and services necessitated by such development and production; and

(b) Secondarily to the entities listed in the introductory portion of this subsection (1) for other state purposes as specified in subsection (2) of this section.

(2) After the executive director of the department of local affairs has allocated sufficient revenues from the fund to adequately address the needs specified in paragraph (a) of subsection (1) of this section, the executive director shall, in consultation with the governor's energy office

created in section 24-38.5-101, C.R.S., allocate revenues from the fund by competitive grants for the promotion of the development of geothermal energy resources.

**Source: L. 2010:** Entire section added, (SB 10-174), ch. 189, p. 810, § 3, effective August 11.

## ARTICLE 64

Underground Storage

**34-64-101. Legislative declaration.** Underground storage of natural gas is found and declared to be in the public interest because it will promote the conservation of natural gas, make natural gas more readily available to the domestic, commercial, and industrial consumers of this state, and permit the building of natural gas reserves and orderly withdrawal thereof in periods of peak demand.

**Source: L. 53:** p. 440, § 2. **CRS 53:** § 100-9-2. **C.R.S. 1963:** § 100-9-2.

**34-64-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Commission" means the oil and gas conservation commission of the state of Colorado.

(2) "Natural gas" means gas which has been produced from the earth in its original state or such gas after the same has been processed or treated.

(3) "Natural gas public utility" means any person, partnership, corporation, or association engaged in the business of transporting, distributing, or storing natural gas within this state for ultimate public consumption and either authorized to do business in this state as a public utility or authorized to do business in this state as a natural gas company as defined in the federal "Natural Gas Act", and subject to regulations by the federal power commission.

(4) "Underground reservoir" means any subsurface sand, stratum, or formation suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom.

(5) "Underground storage" means the right to inject and store natural gas within and to withdraw natural gas from an underground reservoir.

**Source: L. 53:** p. 439, § 1. **CRS 53:** § 100-9-1. **C.R.S. 1963:** § 100-9-1. **L. 73:** p. 1072, § 1.

**Cross references:** For the "Natural Gas Act", see 15 U.S.C. § 717 et seq.

**34-64-103. Condemnation - public use.** Any natural gas public utility which is engaged in the distribution, transportation, or storage of natural gas, which gas, in whole or in part, is intended for ultimate distribution to the public, has the right to enter upon, take, or use property or any interest therein which is necessary for the injection, storage, and withdrawal of natural gas in the manner provided for by this article, and by the eminent domain law of the state of Colorado, all of which property to be used is hereby recognized and declared to be devoted to public use.

**Source: L. 53:** p. 440, § 3. **CRS 53:** § 100-9-3. **C.R.S. 1963:** § 100-9-3.

**Cross references:** For eminent domain, see articles 1 to 7 of title 38.

**34-64-104. Application to commission - order.** Before the right of condemnation may be exercised for the acquisition of property or any interest therein for underground storage of natural gas, said natural gas public utility shall make application to the commission for an order approving the proposed storage project. No such order shall be issued by the commission unless it shall be based upon substantial evidence and shall contain findings that the underground storage of natural gas in the land sought to be condemned is in the public interest and welfare, and that the storage reservoir is suitable and practicable, and that the formation or formations sought to be condemned are nonproductive of oil or gas in commercial quantities under either primary or secondary recovery methods.

**Source: L. 53:** p. 440, § 4. **CRS 53:** § 100-9-4. **C.R.S. 1963:** § 100-9-4.

**34-64-105. Hearing - notice - review.** (1) Upon the filing of the application as specified in section 34-64-104, the commission shall set a date for hearing and give notice thereof as for proceedings in rem, in accordance with the Colorado rules of civil procedure, and shall conduct said hearing in the manner provided for in sections 34-60-108 to 34-60-110 and 34-60-114.

(2) Review of or relief from such order shall be as provided for in sections 34-60-111 to 34-60-113 and 34-60-115.

**Source: L. 53:** p. 440, § 5. **CRS 53:** § 100-9-5. **C.R.S. 1963:** § 100-9-5.

**34-64-106. Petition to district court - procedure.** Any natural gas public utility, having first obtained an order from the commission which has become final, desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas, shall do so in the manner provided in this article. Such natural gas public utility shall present to the district court of the county wherein the land or some portion thereof is situated a petition setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated, and the names of the owners of the property as shown by the records of such county. The petitioner shall file the order of the commission as a part of its petition, and no decree or rule by the court granting said petition shall be entered without such order having been filed therewith. The court shall examine said petition and determine whether the petitioner has the power of eminent domain and whether said property is necessary for its lawful purposes, and if found in the affirmative such findings shall be entered in the record. All proceedings under this section shall follow the procedure then in force and effect pertaining to eminent domain.

**Source: L. 53:** p. 440, § 6. **CRS 53:** § 100-9-6. **C.R.S. 1963:** § 100-9-6.

**34-64-107. Property rights.** All natural gas in said underground reservoir, and the rights reasonably necessary for the injection and storage in and withdrawal from said underground reservoir of said natural gas, as defined and limited by the decree of the district court, shall be

the property of said natural gas public utility. In no event shall such gas be subject to the right of the owner of the surface of said lands or of any mineral interest therein or of any person other than the public utility, its successors, or its assigns, to produce, take, reduce to possession, or otherwise interfere with or exercise any control over the gas. The right of condemnation granted by this article shall be without prejudice to the rights of the owner of said land or of other rights and interests therein to drill or bore through the underground stratum or formation so appropriated in such manner as to comply with orders, rules, and regulations of the commission issued for the purpose of protecting underground storage, strata, or formations against pollution or against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with such regulations or orders in order to protect the storage shall be paid by the public utility.

**Source: L. 53:** p. 441, § 7. **CRS 53:** § 100-9-7. **C.R.S. 1963:** § 100-9-7.

## Geothermal Resources

## ARTICLE 70

Geothermal Resources

**34-70-101 to 34-70-110. (Repealed)**

**Source: L. 83:** Entire article repealed, p. 1424, § 5, effective June 10.

**Editor's note:** This article was added in 1974. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

**Cross references:** For provisions relating to geothermal resources, as adopted in 1983, see article 90.5 of title 37.