

**TITLE 34
MINERAL RESOURCES**

**ARTICLE 32
Colorado Mined Land Reclamation Act**

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

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.

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.

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.

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.

34-32-106. Duties of the 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 outdoor recreation, the division of 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.

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.

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.

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 post-mining land use.

(II) The board may, where good cause is shown, determine that certain regulations not in effect at the time a permit is given should be applicable to such existing permits or to any specified class or category of existing permits, if:

(A) The board or office provides individual notice of the subject matter of the proposed rule in such manner as the board may require and the time, date, and place of the rule-making hearing to operators with existing permits who may be affected by such rule;

(B) The board finds during the rule-making hearing that a failure to apply such proposed rule to existing permits or to an affected class or category of existing permits would pose a reasonable potential for danger to persons or property or the environment; and

(C) The board sets a schedule for existing permit-holding operators to comply which is reasonable in light of the gravity of the risk to be avoided, any technical considerations, the cost of compliance, and any other relevant factors.

(III) If the board makes a good faith effort to comply with the requirements of sub-subparagraph (B) of subparagraph (II) of this paragraph (b) and complies with the applicable provisions of article 4 of title 24, C.R.S., the adopted rule shall not be deemed invalid on the ground that notice to the affected parties was inadequate.

(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.

34-32-110. Limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations pursuant to an application submitted prior to July 1, 1993, on less than two acres which mining operations will result in the extraction of less than seventy thousand tons per year of mineral or overburden may apply for the expedited processing of such person's permit. On and after July 1, 1993, all applications for permits pursuant to this section shall be submitted in accordance with subsection (2) of this section.

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

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

(II) This paragraph (d) shall be applicable to financial warranties provided for permits applied for pursuant to this subsection (1) before July 1, 1993.

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

(2) (a) Any person desiring to conduct mining operations on less than ten acres, which mining operations will result in the extraction of less than seventy thousand tons of mineral or overburden per calendar year, prior to commencement of mining, shall file with the office, on a form approved by the board, an application for a permit to conduct mining operations; except that applications for in situ leach mining shall be filed pursuant to section 34-32-112.5 (3) (d). This application shall contain the following:

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

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

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

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

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

mining operation;

(VI) The approximate size of the affected land;

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

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

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

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

(7) (a) Any operator conducting an operation under a permit issued under this section who has held the permit for two consecutive years or more and who subsequently desires to expand it to a size in excess of the limitation set forth in 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) Applications for conversion of a permit under this subsection (7) shall be

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

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

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 ground-water-containing minerals, radionuclides, or other constituents mobilized, liberated, or introduced by the in situ leach mining process into any ground water 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.

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 "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 ground water. 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 ground water. 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 ground water, 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 ground water containing chemicals used in or mobilized by in situ leach mining during the mining operations; and
- (III) Evaluate the effectiveness of postmining reclamation and ground water 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 ground water 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 ground water outside of the affected land containing chemicals used in or mobilized by in situ leach mining during the mining operations or ground water 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 ground water 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 ground water reclamation should commence, it shall so order.

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 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 web site.

34-32-114. Protests and petitions for a 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.

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

(g) The proposed reclamation plan 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 ground water 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 ground water 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 ground water 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 ground water 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 ground water, whether classified or unclassified pursuant to section 25-8-203, C.R.S., includes domestic or agricultural uses, and the board determines the in situ leach mining will adversely affect the suitability of the ground water 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).

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 article 33 of title 23, C.R.S., and experienced reclamation personnel of the operator, after considering other research or successful experience with range seeding. No grazing shall be permitted on reclaimed land until the planting is firmly established. The board, in consultation with the landowner and the local 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 ground water 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 ground water 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 ground water as established by the Colorado water quality control commission. In establishing, designing, and implementing a ground water 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 ground water uses during the prospecting, development, extraction, and reclamation phases of the operation.

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 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.

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.

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.

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.

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.

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.

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 ground water; 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.

34-32-122. Fees, civil penalties, and forfeitures - deposit - emergency response cash fund - created. (1) (a) All fees and assessments collected pursuant to this article and five percent of the proceeds of any financial warranty forfeited pursuant to section 34-32-118 shall be deposited in the mined land reclamation fund for administrative costs associated with reclaiming sites for which the financial warranty has been revoked. All civil penalties collected under the provisions of this article shall be deposited in the general fund. Ninety-five percent of the proceeds of all financial warranties forfeited under the provisions of section 34-32-118 shall be deposited in a special account in the general fund established by the board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such financial warranties have been forfeited.

(b) Repealed.

(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 shall be available for use by the executive director to conduct emergency responses or to perform emergency reclamation activities at mining operations subject to this article.

(III) An amount equal to the civil penalties collected pursuant to section 34-32-123 shall be subject to appropriation by the general assembly for purposes of responding to emergencies as set forth in this subsection (3), if the general assembly determines that funds in the emergency response cash fund are inadequate to adequately respond to an emergency.

(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.

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.

34-32-124. Failure to comply with the conditions of an 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.

34-32-124.5. Emergencies endangering public health or the environment.

(1) Following an investigation, an emergency response shall be justified pursuant to section 34-32-122 (3), if the board or office determines that any person is:

(a) Engaging in any activity not sanctioned by, or which constitutes a material violation of, a permit for a mining operation, if such activity constitutes an immediate, undue, and unwarranted risk of serious harm to persons or property or to the environment; or

(b) An operator with a permit who is failing or refusing to respond to a board order requiring corrective actions for:

(I) Any failure or imminent failure of any impoundment, embankment, or slope identified in such permit; or

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

(III) Any other measure identified in such permit or as provided for in this article or any rule promulgated pursuant to this article, which is intended to protect human health or property or the environment.

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.

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

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) 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:

(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 2007-08 and for each subsequent year for operations pursuant to:

- (A) Section 34-32-110 (1) (excluding designated mining operations). \$ 86
- (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.

(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.