

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215
Denver, Colorado 80203
Phone: (303) 866-3567
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April 8, 2011

Mr. Kenneth Walker
Chief, Denver Field Division
Office of Surface Mining Reclamation and Enforcement
1999 Broadway, Ste 3320
Denver, Colorado 80202-3050

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

RE: Colorado Response to Outstanding 732 Issues
Formal State Program Amendment

Dear Mr. Walker,

The Colorado Division of Reclamation, Mining and Safety is respectfully requesting a Formal State Program Amendment to the approved Colorado Regulatory Program. In this request, the Division is responding to all of the outstanding 30 CFR Part 732 and 30 CFR 906.16 issues as listed in OSM's April 4, 2008 letter, and OSM's October 2, 2009 732 letter regarding ownership and control.

The following is a list of outstanding 732 letters, by date, a description of the outstanding issues, and a reference to the proposed State rule that addresses the 732 issue.

May 7, 1986

TOPIC	ISSUE #	30 CFR	PROPOSED STATE RULE
Lands Unsuitable	L-1	761.5	1.04(149)(a)(I)
Lands Unsuitable	L-9	764.13(b)(1)(i)	7.06.3(1)
Lands Unsuitable	L-9	764.13(c)(1)(i)	7.06.3(1)

June 5, 1996

TOPIC	ISSUE #	30 CFR	PROPOSED STATE RULE
Drinking, domestic, or residential water supply	B-1	701.5	1.04(39a)

Material Damage	B-2	701.5	1.04(71b)
Noncommercial Building	B-3	701.5	1.04(77a)
Occupied residential dwelling and related structures	B-4	701.5	1.04(79)
Replacement of water supply	B-5	701.5	1.04(110a)
Survey of protected water supplies	C-2	784.20(a)	2.05.6(6)(a)
Subsidence control plan – Water supplies	C-3	784.20(b)(7)	2.05.6(6)(b)
Prompt replacement of water supply	D-1	817.41(j)	4.05.15(2)
Planned subsidence protection of structures	D-2	817.121(a)	4.20.3(1)
Bond Coverage	D-5	817.121(c)(5)	4.20.3(3)

June 19, 1997

TOPIC	ISSUE #	30 CFR	PROPOSED STATE RULE
Thin Overburden Definition	VI.A.5	816.104(a)	4.14.4
Thick Overburden Definition	VI.A.5	816.105(a)	4.14.5

April 2, 2001

TOPIC	ISSUE #	30 CFR	PROPOSED STATE RULE
Conceptual overview of VER in definition	B-1	761.5	1.04(149)
All Permits, Good Faith, Continually Created VER in definition	B-2	761.5	1.04(149)
Definition of term “need for”	B-3	761.5	1.04(149)
VER restriction on roads	B-4	761.5	1.04(149)
Inclusion of study rivers	C-1	761.11	2.07.6(2)(d)(iii)(A)
Inclusion of all federal laws	C-2	761.11	2.07.6(2)(d)(iii)(D)(II)
Limitation to lands within the permit boundary	D-1	761.12	2.07.6(2)(d)
Requirement for OSM to obtain secretarial findings	E-1	761.13	1.07 and 2.07.6(2)(d)(iii)(D)(III)

Waivers for dwellings – subsequent owners	F-1	761.14 761.15	and 2.07.6(2)(d)(v)
Establishes responsibility for VER determination/which definition	G-1	761.16	1.04(149) and 1.07
Procedures for obtaining VER determination	G-2	761.16	1.07
Provides for public participation in VER determination process	G-3	761.16	1.07
Establishes record availability requirements	G-4	761.16	1.07
Coal exploration on lands unsuitable for surface mining – requirement for permit	I-1	772.12	2.02.3, 2.02.4, and 2.02.5
Coal exploration on lands unsuitable for surface mining – application and approval requirements	I-2	772.12	2.02.3, 2.02.4, and 2.02.5

October 2, 2009

TOPIC	ISSUE #	30 CFR	PROPOSED RULE	STATE
Definition of Applicant Violator System	A.1.	701.5	1.04(11.1)	
Definition of control or controller	A.2.	701.5	1.04(30.1)	
Definition of knowing or knowingly	A.3.	701.5	1.04(70.1)	
Definition of violation	A.6.	701.5	1.04(149.1)	
Definition of violation, failure, or refusal	A.7.	701.5	1.04(149.2)	
General provisions for review of permit application information and entry of information into AVS	E.2.	773.8	2.03.4(11)	
Review of applicant and operator information	E.3.	773.9	2.03.4(12)(a)	
Review of permit history	E.4.	773.10	2.03.4(12)(b)	
Review of compliance history	E.5.	773.11	2.03.5(2)	
Permit eligibility determination	E.6.	773.12	2.07.6(1)(b)	
Initial review and finding requirements for improvidently issued permits	E.12.	773.21	2.07.8(1)	
Notice requirements for improvidently issued permits	E.13.	773.22	2.07.8(2)	
Suspension or rescission	E.14.	773.23	2.07.8(3)	

requirements for improvidently issued permits			
Who may challenge ownership or control listings and findings	F.1.	773.25	2.11.1
How to challenge an ownership or control listing or finding	F.2.	773.26	2.11.2
Burden of proof for ownership or control challenges	F.3.	773.27	2.11.3
Written agency decision on challenges to ownership or control listings or findings	F.4.	773.28	2.11.4
Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information	H.1.	774.11	2.07.9
Post-permit issuance information requirements for permittees	H.2.	774.12	2.07.10
Providing permit history information	K.3.	778.12	2.03.4(3)
Enforcement authority	L.	840.13	5.04
Alternative enforcement	O.	847	5.06
Alternative enforcement general provisions	P.1.	847.2	5.06.2
Criminal Penalties	P.2.	847.11	5.06.3
Civil actions for relief	P.3.	847.16	5.06.4

Required Program Amendments

TOPIC	ISSUE #	30 CFR	PROPOSED STATE RULE
Clarification of variance from compliance with design criteria for roads	906.16(f)	816/817.150(c)	4.03.1(1)(e), 4.03.1(3)(a), 4.03.2(1)(e), 4.03.2(3)(a)
Exemption for regulation of public roads	906.16(h)	816/817.150(c)	1.04(111)(d)

The proposed amendments to resolve these issues are set forth in the attached “Proposed Revisions to the Rules and Regulations of the Colorado Mined Land Reclamation Board” document. Also enclosed are the Division’s “Statements of Basis, Purpose, and Specific Statutory Authority” in support of the proposed revisions, and a cross reference table of the federal rules and our proposed rules.

In accordance with OSM Directive STP-1, this request will also be transmitted to your office electronically. Should you have questions or need additional information, please contact me.

Sincerely,



David A. Berry
Director, Office of Mined Land Reclamation

Enclosure

cc: Sandra Brown, DRMS
Susan Burgmaier, DRMS