

DIVISION OF RECLAMATION, MINING AND SAFETY

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Implementation Procedures **For Senate Bill 228, Effective June 2, 2008**

The New Law:

Senate Bill (SB) 228 became law on June 2, 2008.

SB 228 revised portions of C.R.S. 34-32-113 pertaining to confidentiality and filing requirements of Prospecting Notices (Notice of Intent to Conduct Prospecting or NOI).

Certain aspects of Prospecting Notices will no longer be confidential.

As revised, C.R.S. 34-32-113 (3) now requires, in part, that "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". If the Board determines that information is not confidential, the Division shall treat it as public information thirty (30) days from the Board's written order.

C.R.S. 34-32-113 (9) now requires that the applicant provide the NOI in an electronic version in addition to the paper form and that DRMS post on the Division's website the NOI upon submittal. Specifically, this subsection states: "Upon the submittal of a notice of intent to conduct prospecting 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".

Please note that under SB 228, all information provided to the Board in an NOI or a modification of an NOI is a matter of public record including, in the case of a modification, the original notice of intent, unless that information relates to the mineral deposit location, size, or nature or is designated by the Prospector as proprietary or trade secrets or that would cause substantial harm to the competitive position of the Prospector. Accordingly, the Prospector should also designate the information in the original NOI that it believes is confidential if it has not already done so.

The new requirements apply to NOIs or modifications thereto submitted or approved on or after June 2, 2008.

The New NOI Filing Requirements:

1. Applicants of NOIs must now specifically designate each portion of the submittal that the applicant believes should be confidential. This designation must comply with the provisions of SB228 as discussed above and should include not only information relating to the mineral deposit location, size, or nature but also other information the applicant believes is proprietary or trade secrets or that would cause substantial harm to the competitive position of the applicant. The applicant should distinguish in the submittal between those portions of the NOI that are confidential because they relate to the mineral deposit and those portions that the applicant believes are proprietary, trade secret or harmful to its competitive position. Those portions of the submittal that are not designated as confidential will be available as public record.

2. The applicant must now submit two separate forms. One form will contain all information, including both public and confidential information (with the confidential information designated as such). This complete form will be used by the DRMS for review and will be held as confidential.

The second form will contain only the information the applicant believes is public with the applicant redacting all information to be held as confidential.

3. The two forms must be provided in both paper and electronic format. 4. All public portions of the submittal will be made available on the Division website and in the Division's public files

5. All portions of the submittal that are confidential by law, or as designated by the prospector, will remain secured from public access, *i.e.*, not on the website and not in the Division's public files. Thus, there may be two files pertaining to one NOI: one file that contains public information and a separate file that contains confidential information. If

the Board rules that some portion of the file should be public, then that portion will be made available and no longer held from public view.

The New Review Process:

Hard Rock Rule 5.1.3 (Office Review) will apply. This rule will guide office review as has occurred in the past, but will also be applicable to determinations regarding confidentiality designations. The Division will review the submittal for technical adequacy, including the review of the submittal in regard to information the applicant has designated as confidential. If the Division identifies any deficiencies in the submittal including any disagreement regarding the designation of confidential materials, then the prospector will be notified by the Division within 20 working days of NOI receipt.

Disputes relating to designation of confidentiality may be resolved by removal of the confidentiality designation by the Prospector or by Board determination. If the Prospector chooses to request a Board determination regarding confidentiality, then the Prospector must request a Board hearing and determination within the 30 days following Division notification of the Division's disagreement as to any confidentiality designation. The request for determination will follow the procedures of Rule 1.4.11, and any Board hearing will be held in Executive Session since issues of confidentiality will be at issue. The DRMS will not issue an approval decision and the applicant is not authorized to commence prospecting operations until all deficiencies, including confidentiality issues, are resolved.