

MEMO

INFORMATION, MINERALS PROGRAM

TO: Whom It May Concern

FROM: The Division of Reclamation, Mining and Safety

DATE: October 2, 2001
Revised October 19, 2001, August 2, 2004, and January 12, 2006

RE: Guide to Citizen Participation in the 112 Reclamation Permit Application Process for Construction Material and Hard Rock/Metal Mining Operations

Thank you for taking the time to be involved in the State of Colorado's process of reviewing applications for new mining operations or amendments to existing permits. The purpose of this memo is to explain the 112 Reclamation Permit application process for construction material and hard rock/metal mining operations, your rights as either a party or a non-party, and the jurisdiction of the Mined Land Reclamation Board (MLRB or the Board).

BACKGROUND

Authority. The Minerals Program of the Division of Reclamation, Mining and Safety (DRMS or the Division) and the Board operate under the provisions of the Construction Materials Act if the application is for the extraction of construction materials or the Colorado Mined Land Reclamation Act for non-construction materials such as gold molybdenum and others (the Acts). Construction materials include rock, clay, silt, sand, gravel, limestone, dimension stone, marble or shale extracted for use in the production of nonmetallic construction products. The Acts are available at our Web site at <http://www.mining.state.co.us/rulesandregs.htm>, or Title 34, Articles 32 and 32.5 of the Colorado Revised Statutes (CRS), which may be accessed through the state web site, www.colorado.gov (<http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>).

The Acts were passed by the Colorado Legislature, and the Board has developed rules and regulations that determine how the Division administers the Acts. The rules and regulations are also available on the Division's Web site, and are officially titled the "Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials" (Construction Materials Rules) and "Mineral Rules and Regulations of the Colorado

Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations” (Hard Rock/Metal Mines Rules).

Permit Categories. The Minerals Program of the Division issues the following categories of reclamation permits for mining operations, pursuant to and named after sections 34-32 and 34-32.5 of the Colorado Revised Statutes:

- 110 Permits, for less than 10 acres of disturbed area;
- 111 Special Operations Permits, expedited permits for construction materials only and used solely for road, utility, or similar construction purposes under a governmental contract, and disturbing less than 30 acres; and
- 112 Regular Permits, for operations disturbing 10 or more acres.

Permit Consideration and Bonding. Statutorily, if the Division or the Board determines that a reclamation permit application, including the reclamation plan, minimally meets the requirements of the Acts and its associated rules and regulations, the application “...shall not be denied.” (CRS 34-32-115(4) and 34-32.5-115(4)). A permit, however, may not be issued until the applicant posts the appropriate reclamation bond and “performance warranty” with the State of Colorado. A reclamation bond is also referred to as a “financial warranty.” The purpose of posting a bond is to ensure that the State of Colorado can hire a third party to complete reclamation if, for any reason, the permit is revoked and the bond is forfeited. For this reason, the reclamation bond must remain adequate and in good standing at all times during the life of the operation. The amount of the bond can be reduced as land is reclaimed, and it can be increased under certain circumstances.

Permit Life. If an application for a 112 Reclamation Permit is approved by the Board or the Division, the approved permit is for the life of the mining operation (life of the mine) since permits do not have an expiration date. Dependent upon the extent of the deposit mined and the rate of extraction, mining operations may last from only a few months to decades. The permit may be revoked and the reclamation bond forfeited to the State of Colorado only by an action of the Board. Revocation and forfeiture may occur due to an *uncorrected* violation of the Acts, the rules and regulations, or the terms of the approved permit.

THE ROLE OF THE MINED LAND RECLAMATION BOARD

The Mined Land Reclamation Board is a multi-interest citizen board which establishes the regulations, standards, and policies that guide the Division of Reclamation, Mining and Safety. The state governor appoints five board members from nominations submitted by each of the various constituencies represented, resulting in two members with significant experience in the mining industry, two with conservation and environmental resources experience, and one representing agriculture. A sixth board member is the Executive Director of the Department of Natural Resources, or his appointee; and the seventh is a member of the State Soil Conservation Board. The state senate must approve the board members selected by the state governor. Once appointed, each board member serves a term of four years. Board members may be reappointed after their four-year terms expire.

The Board normally meets for one to two days every month to carry out its duties. Some of the Board's responsibilities include: promulgating rules and regulations that implement the Acts;

issuing violations, setting civil penalties, issuing cease and desist orders, and determining corrective actions for operators found in violation; conducting hearings regarding disputed applications; hearing appeals to decisions made by the Division; and ruling on declaratory order petitions. Petitioners for declaratory orders are usually individuals seeking an official determination regarding whether their proposed mineral extraction activity is exempt from the definition of mining. A copy of the Division's policy on whether an activity constitutes mining is also available on the Division's Web site.

As established by the Colorado State Legislature, the Board has exclusive jurisdiction over reclamation. Reclamation is broadly defined as the employment of procedures designed to minimize disruption from a mining operation and provide for the establishment of a post-mining land use through implementation of reclamation practices. These practices may include plant cover, soil stabilization, protection of water resources or other measures to ensure beneficial use of affected lands once the extraction of minerals is concluded. Reclamation procedures may be employed during mining, as in a phased mining operation, or after the mineral extraction operation is concluded.

There is joint agency jurisdiction over hydrologic issues and water quality impacts affected by mining and reclamation operations at a mine site. As a reclamation obligation, mine operators must "minimize disturbances to the prevailing hydrologic balance of the affected lands and of the surrounding area and to the quality and quantity of water in surface and groundwater systems." To "minimize disturbances to the hydrologic balance" means, but is not limited to, that mining and reclamation will not offend any federal or state water quality or quantity standard. Other state agencies have primary authority over water quality and water quantity (water rights) issues, but the Division and the Board still consider water quality and quantity issues in the broader context of hydrologic balance. In other words, the Board will not adjudicate water rights disputes or issue Clean Water Act violations, but it may inquire into whether a proposed mining operation impacts hydrology. Relevant impacts include impacts to quality and quantity of water in both surface and groundwater systems for the area due to mining and reclamation operations.

The Board's jurisdiction does not extend to land use decisions, visual or economic impacts, noise, traffic, dust¹ and other nuisances, or socioeconomic issues. Local government, through the local land use and planning and permitting process, handles these issues. The Board and the Division do not have authority in such matters. Likewise, impacts to air quality, threatened or endangered species, discharges into waters of the United States and historic resource protections are regulated by agencies other than the Board.

If you have specific concerns with issues not within the Board's jurisdiction, the Environmental Protection Specialist responsible for the application under consideration can provide you with the name of a contact in the responsible agency.

THE ROLE OF THE DIVISION

The Division employs specialists in mining, geology, hydrology, agronomy, wildlife biology, engineering, and other scientific disciplines, and administrative personnel charged with overseeing mining and reclamation activities in the State of Colorado.

¹ Issues related to dust caused by eroding berms or spoils piles may be within the Board's jurisdiction.

The Division serves as staff to the Board where there is a written objection to a permit application or a request for reconsideration of a Board decision. With respect to the application process, the Division is responsible for verifying that the applicant's reclamation permit application, including the reclamation plan, adequately addresses the requirements of the Acts and the applicable rules and regulations. The Division tries to ensure that the *administrative process* is explained to all participants and that the process is followed. This guide is one aid for explaining the administrative process for new or amended 112 mining applications only. A separate process is involved for 110 and 111 applications, technical revisions and bond releases.

To monitor compliance with permit requirements, the Division conducts periodic inspections of all permitted mining, exploration, and prospecting operations in the State of Colorado. If an operator fails to timely correct compliance issues, the Division is responsible for presenting these possible violations to the Board. Only the Board may find a violation.

The Division also determines the dollar amount of the reclamation bond that the operator must post prior to mining. The reclamation bond calculated by the Division for a permitted mining or exploration operation is based on the approved reclamation plan. The amount of the reclamation bond is determined by the site-specific application of a software program. The Division may occasionally recalculate the bond to update costs or to reflect the stage of the operation or reclamation. The reclamation bond is posted by the operator with the State of Colorado and held until reclamation is completed. The operator is also required to submit a "performance warranty," which is a written promise to the Board to comply with all requirements of the Acts.

The Acts and the rules and regulations delineate the steps to obtain bond release. The operator must notify the Division of reclamation completion in writing. The Division then notifies landowners, the county and other state agencies, and conducts an inspection. The Division considers all objections, then issues a decision on the bond release request. Once the Division has determined that a site has been reclaimed according to the terms of the Acts, the rules and regulations, and the approved reclamation plan, the bond can be released back to the operator and the permit can be terminated.

THE ROLE OF THE APPLICANT

During the application process, the applicant has the burden of proving that the application submitted to the Division minimally meets the requirements of the Acts and the rules and regulations including evidence that all required notices have been posted or delivered within required timeframes.

Applicants for 112 Reclamation Permits or Amendments must place a copy of the application at the county clerk's office in counties containing the lands to be affected by mining. The applicant must notify the local board of county commissioners, all land and mineral rights owners of record for the site, all owners of record of land (including all recorded easements) within 200 feet of the *affected* lands (as defined in Rule 1.1(3) of the Construction Materials Rules and 1.1(4) of the Hard Rock/Metal Mining Rules), and the board of supervisors of the relevant soil conservation service. The applicant must also notify the public via signs posted at the proposed

or subject mine site and by publishing a public notice in a local newspaper once weekly for four consecutive weeks.

For 112 applications, the public comment period ends 20 days after the final public notice is published. This is an important date for those who want to object to an application because it serves as the cutoff date for a party's participation in the administrative process. If no objection is received before the 20-day period expires, the Division may act on the application without a formal Board hearing. Letters of objection will be forwarded to the applicant within 10-days of receipt.

THE ROLE OF THE CITIZEN

Any citizen may become involved in the reclamation permit application process either as a party or a non-party. According to Rule 1.1(34.1) of the Construction Materials Rules and Rule 1.1(38.1) of the Hard Rock/Metal Mining Rules, "party" means "a person or entity who demonstrates that they are directly and adversely affected or aggrieved by the conduct of a mining operation, proposed mining operation, or an order of the Board and whose interest is entitled to legal protection under the Act." Under the rules, "aggrieved" is defined as "suffering actual loss or injury, or being exposed to potential loss or injury, to legitimate interests. Such interests include, but are not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests."

A non-party is anyone who does not meet the statutory definition of a party, or who submits written statements supporting or objecting to an application during the public notice period but requests to remain a non-party or fails to fulfill party requirements (2) and (3) listed below. A non-party may participate in the process by speaking during the public comment period of a Formal Board Hearing or through commenting on an application, as noted above.

To participate as a party at a Formal Board Hearing, a person must:

- (1) Submit a letter of objection or protest to the Division within twenty (20) calendar days after the last date for the newspaper publication of notice of the application pursuant to Section 34-32-114 and 34-32.5-114 of the Acts. Note that this letter must be received by the Division within twenty (20) calendar days of the last date of the newspaper publication. In that letter, the interested parties should provide the name, mailing address and telephone number and explain how they are aggrieved by the proposed mining activity. Although neither the Acts nor the rules requires a potential party to establish *in writing* that they are aggrieved by a mining operation, a person may lose their party status at any time if they are challenged on this issue and cannot prove that they comply with the definition contained in Construction Materials Rule 1.1(4). It is therefore recommended that before preparing for a hearing, parties first explain in their objection letter how they are aggrieved by the mining operation.
- (2) Attend the Pre-hearing Conference or execute a proxy, as required by Rule 2.7.3(4);
and
- (3) Attend the Formal Public Hearing, as required by Rule 2.8.1(1).

RIGHTS AND RESPONSIBILITIES OF A PARTY

A party to an application under review has certain rights and responsibilities not afforded a non-party. For example, a party may present evidence at a hearing, call witnesses, and cross-examine other parties' witnesses. A party also has the right to sue or be sued in district court on matters surrounding an application's review and the Board's decision on the application. For a complete list of a party's rights and responsibilities, please see Rules 1.4.9, 2.6, 2.7.3, 2.8, and 2.9. Also refer to the State Administrative Procedures Act, Title 24, Article 4, Sections 101, et. seq., especially Sections 105 and 106.

Per Rule 2.7.3(3), if, for any reason, you want to withdraw as a party, you are requested to do so in writing prior to the commencement of or on the record during the Formal Board Hearing on the matter. A party withdraw form is attached to this document if you choose to withdraw an objection to the application.

All parties are entitled to be represented by an attorney, or may designate a proxy, by way of a written proxy authorization, to attend the Pre-hearing Conference on behalf of the party. The proxy must be on the Board's authorized form and presented to the Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference. A copy of the proxy form is attached to this document.

*Any party who does not attend the Pre-hearing Conference forfeits his or her party status and all associated rights and privileges. Please see Rule 2.7.3(4). The rule also describes how you may preserve your party status if you are not able to attend the Pre-hearing Conference in person. You *must* attend the Formal Board Hearing to preserve your party status and all your associated rights and privileges (See Rule 2.8.1(1)).*

The Board's decision to approve or deny an application is based on whether the application minimally meets the technical and engineering requirements of the Act and Rules 3.1 and 6. Therefore, to the extent possible, your comments and presentations to the Board should be technically based. It is also helpful if you can provide the Board with possible solutions or suggestions as to how the application may be conditioned to solve or mitigate your concerns. However, any recommendations must be within the Board's jurisdiction.

In order to review the requirements of Rules 3.1 and 6, you may obtain a copy of the rules and regulations from the Division for a small fee. They are also available on the Internet at <http://www.mining.state.co.us/rulesandregs.htm>.

Even if you choose not to be a party or to withdraw your party status, as a non-party you may still address the Board on matters of concern during the public comment portion of the Formal Board Hearing. However, in this case, you will not preserve or be entitled to the rights of a party as detailed in Rules 1.4.9, 2.6, 2.7.3, 2.8, and 2.9. *(In the event all objecting parties withdraw prior to the Formal Board Hearing, the Division is authorized to approve or deny the application. No Formal Board Hearing is held. Therefore, in this instance, there is no opportunity for a party to provide public comment at a Board hearing.)*

THE ROLE OF OTHER GOVERNMENTAL AGENCIES

As part of the adequacy review process, once an application is received and considered filed, the Division sends a notice of the filing of the application to various local, state, and federal agencies, as warranted. These include the county commissioners and planning and zoning departments, the Colorado Division of Wildlife, the Colorado Department of Public Health and Environment, the Office of the State Engineer, the Bureau of Land Management and United States Forest Service (if on federal land), and the U. S. Army Corps of Engineers. These and other governmental agencies are contacted on a case-by-case basis for comments on the application as may be appropriate.

THE 112 RECLAMATION PERMIT PROCESS

Upon receipt of an application, the Division makes an administrative determination that the application contains sufficient information for the application to be considered *filed*, as defined by the Rules. Once a 112 Reclamation Permit application is considered *filed*, the Division has 90 days to complete its adequacy review of the application and to make its *decision*, or recommendation to the Board, to approve or deny the application. Only the applicant may extend the application review process beyond the Division's 90 day *decision date*.

During the adequacy review process, the Division examines each exhibit in the application to verify that it meets all the requirements for the exhibit, pursuant to the Acts and the Rules, especially Rule 6. If exhibits are inadequate, the Division sends an adequacy letter to the applicant delineating these inadequacies, which the applicant must address.

If at the decision date, an application still has unresolved adequacy issues, and the applicant has not waived the decision date, the Division may deny the application. Extensions beyond the 90th day *decision date* may not exceed 365 days from the date the application was considered *filed* unless the Division determines that an additional extension is justifiable. If an application reaches the 365th day and adequacy issues remain, the application may be scheduled for a hearing for the Board to approve or deny the application.

If no objections are received and the Division determines that the application and its exhibits minimally meets the requirements of the Acts and the rules and regulations, the Division may approve the application and, once the required performance and financial warranties are received, issue the permit.

If the Division denies an application or receives a timely and sufficient objection to an application, the application is automatically set for a board hearing. When a board hearing is scheduled due to an objection, the Division will make its *recommendation* (not decision) to the Board to approve or deny the application on or before the 90th day after the *filing* of the application with the Division. The Board must make its *decision* to approve or deny the application within 120 days of application *filing*, unless the applicant extends the *decision date*. Again, the applicant may extend or waive the 90 or 120 day deadlines to up to 365 days from the time the application is filed. Extensions may not exceed 365 days beyond the filing date without acceptable justification.

Provisions of the Acts mandate automatic approval of an application if the Division does not make a *decision* on the application by the 90th day. Likewise, where an objection has

been received, an application will be automatically approved if the Board fails to hold a hearing and decide on an application within 120 days of an application's filing date. The only exception is where the applicant waives the 90- or 120-day deadlines.

If an application is set for a board hearing because of a written objection, the Division must hold a Pre-hearing Conference. The Pre-hearing Conference must occur after the Division has issued its written recommendation and at least ten (10) calendar days prior to the Formal Board Hearing. (We recommend that you review Rules 2.6 and 2.7 which explain the Pre-hearing Conference and process, and Rule 2.8 which describes board hearings.)

At least three (3) working days prior to the Pre-hearing Conference, the Division is required to mail all parties its recommendation and rationale for approval or denial of the application. Upon request, the Division will also send its recommendation and rationale to a party by facsimile or electronic mail. Copies of the Division's recommendation and rationale will also be available at the Pre-hearing Conference.

The purpose of the Pre-hearing Conference is to explain the application review and board hearing processes, identify issues within and outside of the Board's jurisdiction, recognize the parties, and encourage the resolution of issues, whenever possible. Following the Pre-hearing Conference, the Pre-hearing Conference officer drafts a proposed Pre-hearing Order. This Order recommends a list of parties, identifies issues within the Board's jurisdiction to be considered at the Formal Board Hearing, and proposes a hearing schedule with time allotments. *Please note that parties are required to present their list of potential witnesses and exhibits at the Pre-hearing Conference per Rule 2.6(2).*

At the Formal Board Hearing, the Board may adopt the Pre-hearing Order as is, amend it, or reject it. In addition to the information provided at the Pre-hearing Conference, Rule 2.8 further describes Formal Board Hearings. Unless the hearing is continued to a future board meeting, the Board will publicly deliberate, vote, and enter its decision on the application directly following closing testimony in the case. The Board's written decision will be mailed to each party as soon as possible. Any decision by the Board is considered final agency action for purposes of appeal.

Per Rule 2.9, within twenty (20) days of the effective date of the Board's written decision, any party to the hearing may petition the Board to reconsider its decision, citing in the petition specific reasons justifying reconsideration. A petition for reconsideration must set forth a clear explanation of the grounds justifying reconsideration, including facts not known at the time of the original hearing and an explanation of why those facts were not then known. Unless the Board acts upon the petition within sixty (60) days of receipt, it is automatically deemed denied.

If the reclamation permit or amendment application is approved by the Board, as with applications approved by the Division, once the Division receives any compulsory performance and financial warranties from the applicant, the permit will be granted.

If you have any questions about the application process and your role, please do not hesitate to call the Division at (303) 866-3567. You should ask to speak to the Environmental Protection Specialist in charge of the application review, or the Specialist's supervisor.

RESOURCE SUMMARY

1. *Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and the Construction Materials Act:* <http://www.mining.state.co.us/rulesandregs.htm>, under the heading "Aggregates/Sand and Gravel."
2. *Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal Mining and Designated Mining Operations:* <http://www.mining.state.co.us/rulesandregs.htm>, under the heading "Hard Rock/Metal Mines."
3. Colorado Revised Statutes can be searched through the state web site, Colorado.gov (or <http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>)
 - For the "Hard Rock Act" and the "Construction Materials Act", see Title 34, Articles 32 and 32.5 of the Colorado Revised Statutes, respectively
 - For the State Administrative Procedures Act, see Title 24, Article 4, Sections 101, et. seq.
4. The Colorado Division of Reclamation, Mining and Safety is located at 1313 Sherman St., Rm. 215, Denver, CO 80203; phone: (303)866-3567; fax: (303)832-8106.

How A Party May Designate A Representative To A Pre-Hearing Conference

INSTRUCTIONS

If, as a party, you will not be able to attend a Pre-hearing Conference you may designate another person, such as an attorney or a consultant, to appear on your behalf without losing your party status. However, in order for the Pre-hearing Conference Officer to recognize your representative, ***you must complete the attached form***. The form must include your notarized signature and you must sign in blue ink. For items that do not apply, please write N/A in the blank space.

Your representative must present the original notarized form to the Pre-hearing Conference Officer at the time of the pre-hearing conference.

Please note that you must appear in person to maintain your party status for a hearing. You may designate a representative to represent you at the Pre-hearing Conference only, but you must attend the formal Board hearing or lose your party status pursuant to Construction Materials Rule 2.8.1(1).

AUTHORIZATION TO APPEAR ON BEHALF OF A PARTY

(Please Type Or Print the Requested Information)

SIGNATURES MUST BE IN BLUE INK

I _____ (person's name) _____ (title, if applicable)

of _____ (name of company, association, organization, etc. if applicable)

hereby delegate to _____, (person or entity's name)

the right to appear on behalf of _____ at the Pre-hearing conference. (company, association, organization, etc.)

SIGNED AND DATED THIS _____ DAY OF _____, _____.

_____ If corporate attest (seal)
Authorized Signature **(must be signed in blue ink)**

Title: _____

State of _____)

_____)

County of _____)

The forgoing instrument was acknowledged before me this _____ day of _____, _____ by _____ as _____ of _____.

Notary Public
My commission expires: _____

SIGNATURE MUST BE IN BLUE INK

**STATE OF COLORADO
MINED LAND RECLAMATION BOARD**

PARTY STATUS WITHDRAWAL FORM

In the matter of File No. M-_____ - _____, Permit/Permit Amendment Application.

Name of Operator/Applicant and Site: _____

_____ I hereby withdraw as a party to this matter.

_____ I hereby withdraw as a party to this matter and, if the Board holds a hearing, I wish to address the Board at the formal hearing, if held, as a non-party.

(Please note that if all objecting parties withdraw prior to the date set for the Board's consideration of the application, the application may be approved by the Office without the Board holding a hearing. In that event, there will be no opportunity to address the Board on any issues related to the application. Also, the Board is not obligated to consider any issues raised by a person or an entity that has withdrawn as a party.)

Regardless of a party status, the Division thoughtfully considers each issue submitted in writing to the Division and provides a response to those issues within its jurisdiction in the Division's "Rationale for Recommendation." The Rationale is available to any person by contacting the Division. For persons who do not wish to become a party or withdraw as a party in this matter, please contact the Division for information on application status.

_____	() _____	
Printed Name	Home Phone #	
_____	() _____	
Address	Work Phone #	
_____	() _____	
City, State	Zip Code	FAX #
_____	_____	_____
E-Mail Address	Date	

Signature		