

**Policies
of
The Mined Land Reclamation Board**

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10.0 – Abbreviations and Definitions. As used in these policies:

10.1 – Abbreviations

CDOT – Colorado Department of Transportation

CDPHE – Colorado Department of Public Health and Environment

DMO – Designated Mining Operation, as defined by section 34-32-103(3.5)(a), C.R.S.

NOI – Notice of Intent to Conduct Prospecting Operations

SPCC – Spill Prevention Control and Countermeasure

WQCD – Water Quality Control Division of the Colorado Department of Public Health and Environment

10.2 – Definitions

Construction Materials Act means the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S.

Construction Materials Rules means the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 C.C.R. 407-4.

Department means the Colorado Department of Natural Resources.

Director means the Director of the Division of Reclamation, Mining and Safety in the Department of Natural Resources. Where used herein, the term “Director” shall mean the Director or the Director’s designee.

Division means the Division of Reclamation, Mining and Safety, Department of Natural Resources.

Hard Rock Act means the Colorado Mined Land Reclamation Act, Article 32 of Title 34, C.R.S.

Hard Rock Rules means the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 C.C.R. 407-1.

Tourist mine means any mine whose primary purpose is for tours open to the public rather than the development of minerals, which the owner/operator does not have the intent to produce and sell a product which significantly affects commerce.

Mining operation shall have the same meaning as set forth in sections 34-32-103(8) and 34-32.5-103(13), C.R.S.

Prospecting shall have the same meaning as set forth in section 34-32-103(12), C.R.S.

20.0 – Division Administrative Procedures.

20.1 – Financial Warranties

20.1.1 – Irrevocable Letters of Credit from Qualified Non-Traditional Banks.

The Board authorizes the Director to accept qualified financial warranty letters of credit issued by non-traditional bank financial institutions that are in good financial standing as evidenced by an approved rating system and otherwise comply with the requirements of the Hard Rock Act and the Hard Rock Rules or the Construction Materials Act and the Construction Materials Rules, including Rules 4.3.4 and 4.7, as applicable, and verified by the Director.

20.2 – Tourist Mines

20.2.1 – Concurrent Active Mining/Prospecting and Tourist Operations.

Operating a tourist mine concurrently with a mining or prospecting operation is not in the interest of protecting and promoting the health, safety, and welfare of the citizens of this state. Therefore, operators or mine owners who wish to conduct both active mining and/or prospecting and provide mine tours may be allowed to do so only under the following restrictions:

(a) Mining or prospecting activities and tourist mine activities must either be conducted at separate locations, at separate times, or both at separate locations and at separate times (*i.e.*, mining or prospecting conducted in one section of the mine and mine tours conducted in a separate location; or limiting mining or prospecting activities to the weekends and mine tours to weekdays);

(b) Operators or prospectors who apply for a dual tourist mine/mining or prospecting use permit must provide a detailed plan describing when, where, and how mining or prospecting will occur and when, where, and how mine tours will be conducted. All operations approved for a dual use permit will be subject to inspections prior to the tourist season to ensure tourists will be protected from mining or prospecting operations.

(c) Current operators of tourist mines who wish to conduct mining or prospecting must apply and receive approval from the Division or the Board for a reclamation permit or NOI that complies with this policy prior to conducting mining or prospecting activities.

20.3 – Oil and Fuel Spill Containment Structures

Structures for the containment of petroleum products shall be designed and located to minimize the loss of petroleum products, including oils and fuels, to groundwater systems in the event of tank, drum, or delivery system failure, or spillage from any source in excess of reporting amounts set by federal, state, or local governments

with authority for such matters. Even though a SPCC plan may be required at a mining or prospecting site for the protection of surface water quality by the WQCD, the Division should only consider such structures where there is a need to protect groundwater quality. A spill containment structure's capacity shall be sufficient to contain oils and fuels with sufficient freeboard to contain a precipitation event, as specified by applicable federal, state or local government regulations.

20.3.1 – Application and Permit Revisions

For storage of oils and fuels in regulated quantities (*i.e.*, more than 1,320 gallons of oil, or fuel in containers with a capacity of at least 55 gallons) within the permit boundary area at a mine or the area encompassed by a NOI, the Division shall require applicants and operators to submit documentation, in a form acceptable to the Division, that they have a SPCC plan and that plan has or will be implemented prior to storage of fuel or oil products. The Division may require an operator to submit a letter, on company letterhead, affirmatively stating that the SPCC plan has been implemented. The Division shall not require a copy of the SPCC plan, but may require the opportunity to review it during a Division inspection.

If an applicant or operator chooses to submit and implement a SPCC plan, the Division may require the applicant or operator to address any changes to the relevant containment structures in an update to the SPCC plan as necessary and in compliance with applicable federal or state regulations. The Division is authorized to accept, as an alternative to the submittal of a SPCC plan, written containment dimensions adequate to enable the Division to complete bond release calculations and containment details sufficient to demonstrate protection of groundwater.

20.3.2 – Mine Site Inspections

Where groundwater impact from a loss of containment may be expected, the Division may, during an inspection, require a mine site operator to demonstrate that any contained waters in the spill containment structure do not compromise the structure's capacity to contain a storm event. The Division may accept a certification of a Colorado Professional Engineer of a SPCC plan as demonstration of containment capacity requirements. The Division may require removal of accumulated fluids from containment structures in accordance with applicable laws and regulations. The Division shall inspect and include in the inspection report whether a containment structure or, if applicable, a SPCC plan, is in place at a mine site. The Division shall not require secondary containment for double-walled tanks or convault tanks. Operators are encouraged to update spill plan site maps as part of the annual report to show the current location of the tank.

Applicants and operators shall provide a copy of the inspection report to WQCD if a SPCC plan or Materials Containment Plan is not available for inspection and the Division determines that such plans may be required.

The Division may require that site placement of containment structures prevent and protect against the loss of the containment structures due to debris or landslides, avalanches, or other reasonably anticipated events that could compromise the ability of the facility to contain a controlled product spill. For facilities where site placement has the potential to compromise containment, the operator may propose structural improvements or operational procedures. The Division shall determine whether a permit revision is required for the proposed structural improvements in order to prevent and/or protect against the loss of the containment structures due to debris or landslides, avalanches, or other reasonably anticipated events that could compromise the ability of the facility to contain a controlled product spill.

Operators shall report any spill of a petroleum product to the Division in accordance with Rule 3.1.13 of the Hard Rock Rules and Construction Materials Rules.

20.4 – Reserved

20.5 – Mining by a CDOT Contractor Within a Temporary Easement

The Board considers, and directs the Division to consider, the mining or extraction of material by a contractor acting under a valid CDOT contract to be an activity that does not require a reclamation permit, under the following conditions:

- (a) The mining or extraction is only conducted within the boundaries of a temporary easement established in conjunction with a CDOT project;
- (b) The mining or extraction activity must be for the purpose of supplying material needed to satisfy construction material requirements, in whole or in part, of that particular CDOT contract, including reclamation;
- (c) The mined or extracted material is not transported off the site; and
- (d) The CDOT contract contains specific requirements for reclamation of the affected area outside the highway right-of-way resulting from product extraction.

Mining or extraction of materials pursuant to a CDOT contract carried on outside the boundary of an existing highway right-of-way or a temporary easement is not exempt under this policy and may require a permit.

20.6 – 110 Limited Impact Mining Operations

20.6.1 – Side-by-Side Operations. The Division is directed not to approve side-by-side 110 limited impact mining operations (*i.e.*, mining operations approved under sections 34-32-110(1), (2) or 34-32.5-110(1), C.R.S.) by the same operator. The Division is further directed not to approve a Succession of Operator request for a 110 limited impact mining operation where the approval will result in two or more side-by-side 110 limited impact mining operations held by the same operator.

The policy shall not apply to a 110 limited impact operation directly adjacent to a 112 regular operation submitted by the same applicant, provided that the 110 limited impact operation precedes the 112 regular operation permit.

20.7 – Inspections

20.7.1 – General Guidelines

20.7.1.1 – Inspections on Citizen Complaints. The Board directs the Division to respond to citizen complaints within thirty days of receipt of the complaint. If a citizen complaint alleges either serious environmental problems associated with an operation or potential violation of approved conditions, rules, or statutes, the Division shall conduct an inspection as soon as possible, but no more than five working days after receipt of the complaint.

20.7.1.2 – Financial Warranty Release Inspections. A financial warranty release inspection by the Division shall be required prior to the release of a financial warranty.

20.7.1.2.1. The Division shall conduct a financial warranty release inspection of any operation located on land owned by federal agency jointly with a representative of the federal agency. Except as provided in Policy 20.7.1.2.3, the Division may waive the financial warranty release inspection requirement for an operation on land owned by a federal agency upon the Division's receipt of correspondence from the federal agency in which the federal agency indicates that the operation has been reclaimed to the federal agency's satisfaction and recommends financial warranty release.

20.7.1.2.2. Except as provided in Policy 20.7.1.2.3, the Division may release a financial warranty without an inspection for operations located on land managed by the State Land Board where the State Land Board provides correspondence stating the State Land Board is satisfied with final reclamation.

20.7.1.2.3. The Division may not waive the financial warranty release inspection requirement for an operation that is a DMO. For all DMOs, the Division shall ensure that the operator is in compliance with the requirements of Hard Rock Rule 7.2.11, conduct a financial warranty release inspection jointly with the federal agency or the State Land Board, and receive the agreement of the federal agency or the State Land Board that the financial warranty should be released.

20.7.1.2.4. In conjunction with each inspection of an operation, the Division shall note the date on which the Division most recently reviewed the financial warranty for the operation. If the financial warranty has not been reviewed in the four years preceding an inspection, the Division shall complete a financial warranty review to address site conditions and the adequacy of the amount of the financial warranty and provide its conclusions in the written report of inspection.

20.7.1.3. At the July Board meeting each year, the Division shall report to the Board the total number of inspections the Division conducted during the previous fiscal year.

20.7.2 – Inspection Types

20.7.2.1 – Complete Inspection. A complete inspection shall include review of the operation's compliance with all pertinent environmental performance standards and permit conditions.

20.7.2.2 – Partial Inspection. A partial inspection shall include review of the operation's compliance with selected relevant environmental performance standards and permit conditions, as the Division determines to be necessary.

20.7.2.3 – Aerial inspection. The Division may conduct the inspection of any operation from the air using photographic equipment. The Board encourages the Division to utilize aerial inspections judiciously and only if access to the site has been denied, is difficult, or Division personnel safety is in question. If potential violations are evident, a follow-up inspection shall occur.

20.7.3 – Hard Rock Operations. The Board directs the Division to inspect all operations that have been issued a permit under the Hard Rock Act as set forth below.

20.7.3.1 – Active Operations. The Division shall inspect all operations that are not either in temporary cessation or in any phase of post-mining reclamation once annually. The Division may adjust the frequency of inspection to every two years for operations which produce resources the Division has determined not to constitute a potential impact to the environment, such as gem stones, alabaster, or marble.

20.7.3.2 – Operations in Temporary Cessation. The Division shall inspect operations that either are in temporary cessation or an operation the Division has designated as an intermittent operator once every three years. At or near the time of the inspection, the Division is encourage to remind the operator of an operation in temporary cessation of the five year limit for temporary cessation status per section 34-32-103(6)(a)(III), C.R.S.

The Division may adjust the frequency of inspections for operations in either temporary cessation or final reclamation, provided that there are no known environmental concerns as determined in the professional opinion of the Division.

20.7.3.3 – Operations in Final Reclamation. The Division shall inspect operations that are in final reclamation: (a) once during the first year following the Division's receipt of notice of reclamation to ensure reclamation is progressing; and (b) once during the fourth year of reclamation to evaluate whether additional tasks must be accomplished to achieve final reclamation release. The Division may adjust the frequency of inspections as the Division

deems necessary to ensure adequate monitoring of operations that are either sensitive areas or that may require particular environmental protection measures.

20.7.3.4 – Designated Mining Operations. The Division shall inspect all DMOs as set forth in this policy below. The Division has broad discretion to increase the frequency of inspection of any DMO as the Division deems necessary, considering factors including but not limited to the size of the operation, whether the operation includes an active Environmental Protection Facility, or the operation's history of violations.

20.7.3.4.1 – 110d operations and any DMO in temporary cessation shall have one complete inspection annually.

20.7.3.4.2 – 112d-1 and 112d-2 operations shall have one complete inspection annually with additional frequency, as deemed necessary based on operational complexity.

20.7.3.4.3 – 112d-3 operations shall have at least one complete inspection annually, quarterly inspections if active, and more frequent inspections as deemed necessary based on operational complexity.

20.7.4 – Construction Materials Operations. The Board directs the Division to inspect all operations that have been issued a permit under the Construction Materials Act as set forth below.

20.7.4.1 – 110c Permits. All 110c operations shall be inspected at least once every five years unless it meets criteria from section 20.7.3.4 below.

20.7.4.2 – 111c Permits. All 111c operations shall be inspected once annually until the Division determines the operation to be in final reclamation. All 111c operations that are in final reclamation shall be inspected at least once every five years.

20.7.4.3 – 112c Permits. All 112c operations shall be inspected at least once every four years. The Division may increase the frequency of inspections as the Division deems to be appropriate, considering factors including but not limited to, whether the operation has been approved for phased bonding for mining and reclamation plans, whether the operation involves quarrying, whether the operation has exposed or potentially exposed groundwater, whether the operation has a pattern of violations, or whether the operation has any other specific reclamation liability that may require more frequent reviews.

20.7.4.4 – Operations in a Stream Bed or Channel. The inspection frequency set forth in this Policy 20.7.3.4 shall apply to any 110c, 111c, and 112c operation that is partially or completely located within a stream bed, river channel, or other area of particular environmental sensitivity, regardless of permit acreage. All permitted construction materials operations, regardless of permit acreage, shall

be inspected at least once every two years, or more frequently if deemed necessary.

20.7.5 – Notices of Intent

The Board directs the Division to inspect all operations for which a NOI has been submitted to and approved by the Division in accordance with section 34-32-113 and 34-32.5-113, C.R.S. as set forth below.

20.7.5.1 – Pre-operational Inspections. The Division shall evaluate whether to conduct a pre-operational inspection of any new NOI operation or any modification to an existing NOI operation on a case by case basis. The Division shall conduct a pre-operational inspection of any new NOI or any modifications to an existing NOI operation at which historic or pre-law features are to be disturbed or re-established. When sites are on land managed by a federal agency, a joint inspection with the federal agency is advised. The Division may determine not to conduct an inspection of any NOI operation which the Division determines to have minimal disturbance area or no potential to impact either the environment or the prevailing hydrological balance, provided that the NOI includes photographic documentation of pre-activity conditions.

20.7.5.2 – Potential for Environmental Impact. The Division shall inspect any active NOI operation that the Division determines to have no potential to affect the prevailing hydrological balance or have any other environmental impacts at least once every four years. The Division shall inspect any active NOI operation that may affect the prevailing hydrological balance or have any other environmental impacts as the Division deems necessary, but no less than once every four years.

20.7.5.3 – NOI Operations in Reclamation. The Division shall inspect all active NOI operations that are in any phase of reclamation: (a) once during the first year following the Division's receipt of notice of reclamation to ensure reclamation is progressing; and (b) once during the fourth year of reclamation to evaluate whether additional tasks must be accomplished to achieve final reclamation release. The Division may adjust the frequency of inspections as the Division deems necessary to ensure adequate monitoring of operations that are either sensitive areas or that may require particular environmental protection measures.

20.7.5.4 – Abandoned NOI Operations. Any active NOI operation for which an annual report is not submitted for two consecutive years shall be considered abandoned. The Division shall inspect an NOI operation that is considered abandoned for the purpose of ensuring that the financial warranty is sufficient to complete reclamation.

30.0 – Factors of Safety for Slope Stability/Geotechnical Analyses

30.1 – Definitions.

Factor of Safety – Ratio of forces resisting movement to those driving movement.

Slope Failure – the movement (sliding or collapsing) of rock and/or soil in response to gravitational stresses, often under the influence of a rainfall or seismic activity.

Slope Stability – the resistance of inclined surface to failure by sliding or collapsing.

Slope Stability Analysis – performed to assess the safe design of a human-made or natural slopes (e.g. open-pit mining, excavations, embankments, road cuts, etc.) and the equilibrium conditions.

30.2 – Declaration of Purpose

The Division of Reclamation, Mining and Safety Minerals Program (Division) issues this memorandum to promote the orderly development of the state's natural resources while considering the industry's "standard of care" relative to Factors of Safety with the intent to:

- i. Protect and promote the safety and general welfare of the people of Colorado,
- ii. Ensure reclamation of lands affected by mining to beneficial use, and
- iii. Aid in the protection of aquatic resources and wildlife.

30.3 – Background

In the past, the Division has typically accepted a factor of safety (FS) greater than 1.0 for slope stability analyses to demonstrate "that such structures shall not be damaged by activities occurring at the mining operation" pursuant to Rules pertaining to permanent man-made structures and geotechnical stability: Construction Materials Rules 6.3.12(b) and 6.4.19(b) and 6.5 and Hard Rock Rules 6.3.12(b), 6.4.20(b) and 6.5. This practice was based on the oversimplified concept that a slope with a FS > 1.0 is stable. This is technically true **IF** there is a comprehensive and complete understanding of all the geologic, hydraulic, land use, and other conditions that influence the forces and stresses determining whether or not the slope in question can or will fail. However, this is very rarely possible or feasible, particularly in a mining application. An FS must account for uncertainties (geologic setting, groundwater conditions, mining parameters, etc.), and the selection of an appropriate FS for slope stability should consider the following factors:

1. Magnitude of damages (potential risk to human safety, environmental impact and property damage),
2. Reliability of geologic information such as the proximity to faults, orientation of jointing, and subsurface soil and water data,

3. Changes in soil properties due to mine operations and variability in subsurface material,
4. Accuracy (or approximations used) in developing design/ analysis methods,
5. Additional considerations if relevant: Construction tolerances, Relative change in probability of failure by changing the factor of safety, and Relative cost of increasing or decreasing the factor of safety.

The Division engineering staff has researched the standard of care for factors of safety accepted by the industry, including literature searches, regulatory agency requirements/guidelines, and departments of transportation standards. In order to be consistent with other Colorado State agencies, we also considered FS standards used by the Colorado Department of Transportation (CDOT) and the Colorado Geological Survey (CGS). CDOT uses the AASHTO minimum FS of 1.3 for construction slopes near roadways and utilities. CGS uses a minimum FS of 1.5 for residential areas when using "generalized" strength values, or 1.3 for analyses when good quality site-specific soil parameters are known. It should be noted that most industry standards assume a permanent slope configuration, ignoring the temporary conditions that are frequently observed in the mining industry.

30.4 – Guidance for Stability Criteria and Use of Minimum Factors of Safety

The permittee should either follow the criteria in Table 1 for all stability analyses submitted to the Division; or, alternatively, the permittee may submit stability analyses based on site-specific engineering analysis performed in consideration of good practices as specified in relevant industry guidelines and/or professional standards and reviewed by the Division on a case-by-case basis.

Slope stability analyses for existing facilities may also be reviewed on a case-by-case basis, subject to the criteria described herein.

Table 1. Recommended Minimum Factors of Safety for Slope Stability Analyses for Operations and Reclamation

Type of Structure/Consequence of Failure	Generalized, Assumed, or Single Test Strength Measurements	Strength Measurements Resulting from Multiple Tests ⁽¹⁾
<u>Non-Critical Structures</u> (e.g., fences) No imminent danger to human life, minor repair costs, and minor environmental impact if slope fails	1.3 (1.15) ⁽²⁾	1.25 (1.1) ⁽²⁾

Table 1. Recommended Minimum Factors of Safety for Slope Stability Analyses for Operations and Reclamation

<p><u>Critical Structures</u> (e.g., residences, utilities, dams, pipelines, irrigation canals, public roads, etc.) Potential human safety risk, major environmental impact, and major repair costs if slope fails (includes Environmental Protection Facilities/EPFs, such as tailings facilities, heap leach pads, process effluent ponds, milling facilities, overburden/waste rock storage facilities, and hazardous/toxic material storage facilities, etc.)</p>	<p align="center">1.5 (1.3)⁽²⁾</p>	<p align="center">1.3 (1.15)⁽²⁾</p>
<p>(1) The number of tests required to provide a high degree of confidence in the strength parameters used depends on the variability of the material being tested and the extent of disturbance.</p> <p>(2) Numbers without parentheses apply for analyses using static conditions. Those within parentheses apply to analyses using seismic parameters. Based on site specific conditions, seismic analyses may be required and parameters selected shall be consistent with the risk and duration of the condition being considered.</p>		

* The values presented in Table 1 are not intended to supersede standards required by other agencies.

40.0 – Reserved.

50.0 – Reserved.

60.0 – Reserved.

70.0 – Board Administrative Procedures.

70.1 – Rotation of Board Chair

The position of Chair of the Board shall rotate among all members with the exception of the Department Executive Director or the Executive Director’s designee and the member appointed by the State Conservation Board. Each Board member shall serve as Chair of the Board for a term of six months, beginning in April and October annually.

70.2 – Authority of Board Chair

70.2.1 – Hearing Officer. At any Board hearing conducted pursuant to section 24-4-105, C.R.S., the Board Chair shall serve as the hearing officer unless another Board member is otherwise designated to serve as hearing officer. The hearing officer shall have the authority set forth in section 24-4-105(4), C.R.S.

70.2.2 – Prehearing Motions and Requests. The Board authorizes the Board Chair to, at the Board Chair's sole discretion, rule upon written prehearing motions and requests prior to a Board meeting, including, but not limited to, written requests to participate in a Board hearing by telephone. The ruling upon any such motion or request by the Board Chair shall constitute a ruling of the Board. Prehearing motions and requests that are not ruled upon by the Board Chair may be considered by the Board at a Board meeting.

80.0 – Delegation to Division.

The Board makes the following delegations to the Division in accordance with section 34-32-107(2), C.R.S.

80.1 – Continuances and Withdrawals from Board Agenda. The Board delegates to the Director authority to remove from a posted Board meeting agenda any matter that the Director determines to be continued or withdrawn. The Division shall include in the Board meeting agenda packet a list of all matters continued or withdrawn from the Board's meeting agenda.

80.2 – Issuance of Cease and Desist Orders. The Board delegates to the Director authority to sign and issue, on behalf of the Board, cease and desist orders in any circumstance that, in the determination of the Director, requires issuance of a cease and desist order pursuant to sections 34-32-122(4)(c), 34-32-124(2)(a), or 34-32.5-124(2), C.R.S. The Division shall schedule the cease and desist order for Board consideration at the earliest Board meeting following issuance of the cease and desist order. At such meeting, the Board shall have discretion to affirm, rescind, or modify the cease and desist order, or take such further action as the Board deems appropriate.

80.3 – Issuance of Notices of Violation. The Board delegates to the Director authority to sign and issue, on behalf of the Board, notices of violation to any operator that, in the determination of the Director, has failed to pay an annual fee required by section 34-32.5-116(3), C.R.S. within sixty days of the permit anniversary date.

80.4 – Appointment of Prehearing Conference Officer. The Board delegates to the Director authority to appoint a prehearing conference officer to conduct a prehearing conference in any matter where the Board's rules allow or require the appointment by the Board of a prehearing conference officer. The prehearing conference officer shall have no involvement in the matter to be heard by the Board and shall be employed in a specialty area (*i.e.*, minerals, coal, inactive mines, mine safety) different than the specialty area of the matter to be heard by the Board.