

TITLE 34

MINERAL RESOURCES

ARTICLE 32.5

Colorado Land Reclamation Act for the Extraction of Construction Materials

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34-32.5-101. Short title. This article shall be known and may be cited as the "Colorado Land Reclamation Act for the Extraction of Construction Materials".

34-32.5-102. Legislative declaration. (1) The general assembly hereby declares that the extraction of construction materials for government and private enterprise and the reclamation of land affected by such extraction are necessary and proper activities that are compatible. It is the intent of the general assembly to foster and encourage the development of an economically sound and stable extraction materials industry and to encourage the orderly development of the state's natural resources while requiring those persons involved in extraction operations to reclaim land affected so that it may be put to a use beneficial to the people of this state. It is the further intent of the general assembly to conserve natural resources, aid in the protection of wildlife and

aquatic resources, establish agricultural, recreational, residential, and industrial sites, and protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that a reclamation regulatory program shall be developed under which the economic costs of reclamation measures shall bear a reasonable relationship to the environmental benefits derived from such measures. When considering the requirements of reclamation measures, the mined land reclamation board or the office of mined land reclamation shall determine the economic reasonableness of the action by evaluating the benefits expected to result from the use of such measures. When considering economic reasonableness, the financial condition of an operator shall not be a factor.

(3) The general assembly further finds and declares that:

(a) It is the policy of this state to recognize that extraction operations are conducted by both government and private entities;

(b) All residents of this state benefit from the reclamation of land;

(c) The funding needed to ensure that reclamation is achieved should be borne equitably by the public and private sectors;

(d) The funding for enforcement and other activities conducted for the benefit of the general public should be supported by the general fund; and

(e) It is the policy of this state to allocate resources adequate to accomplish the purposes of this article.

34-32.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "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 an operation. Affected lands include, but shall not be limited to, private ways, roads (except those roads excluded by this subsection (1)); land excavations; exploration sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property that result from or are used in such operations are situated. "Affected land" does not include land that has been reclaimed pursuant to an approved plan or otherwise, as may be approved by the board, or off-site roads that were constructed for purposes unrelated to the proposed operation, were in existence before a permit application was filed with the office, and will not be substantially upgraded to support the operation or off-site groundwater monitoring wells.

(1.5) "Aggrieved" means 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.

(2) "Board" means the mined land reclamation board established by section 34-32-105.

(3) "Construction material" means rock, clay, silt, sand, gravel, limestone, dimension stone, marble, or shale extracted for use in the production of nonmetallic construction products.

(4) "Department" means the department of natural resources.

(5) "Development" means work performed with respect to a construction materials deposit following the exploration required to prove construction materials are in existence in commercial quantities but prior to production activities. Development work includes, but is not limited to, work that must be performed for the purpose of preparing the site for mining, defining further the deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

(6) "Director" means the director of the division of reclamation, mining, and safety.

(7) "Division" means the division of reclamation, mining, and safety created in section

34-20-103.

(8) "Executive director" means the executive director of the department of natural resources.

(9) "Exploration" means the act of searching for or investigating a construction materials deposit. "Exploration" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes, and digging pits, cuts, or other works for the purpose of extracting samples prior to the commencement of development or extraction, and the building of roads, access ways, and other facilities related to such work. "Exploration" does not include:

(a) An activity that causes very little or no surface disturbance, such as airborne surveys and photographs, the use of instruments or devices that 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 that causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not involved in exploration activities; or

(b) Any single activity that 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 may not exceed five acres statewide in any exploration operation extending over twenty-four consecutive months.

(10) "Financial warranty" means a warranty of the type described in section 34-32.5-117 (3).

(11) "Life of the mine" means, with respect to a permit granted pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112, a period lasting as long as:

(a) An operator continues to engage in the extraction of construction materials and complies with this article. The life of the mine includes that period of time after the cessation of production that is necessary to complete the reclamation of disturbed lands as required by the board and this article and continues until the board releases the operator, in writing, from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

(b) Construction material reserves are shown by the operator to remain in the operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if such operator files a notice with the board stating the reasons for nonproduction, a plan for the resumption of production, and the measures taken to comply with reclamation and other necessary activities as established by the board to maintain the operation 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.

(c) Production is resumed within five years after the date production ended, or the operator files a report with the board requesting an extension of the period of temporary cessation of production stating the reasons for the continuation of nonproduction and those factors necessary to, and the plans for, resumption of production. In no case shall a 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.

(d) 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 paragraph (a), (b), or (c) of this subsection (11), or that inadequate reasons are provided in an operator's report under such paragraphs. In such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present his or her full case and shall provide reasonable time for such operator to comply with this article.

(e) The operator complies with section 34-32.5-109 (2).

(12) "Mining" means the extraction of construction materials.

(13) "Mining operation" means the development or extraction of a construction material from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation. The term also includes transportation and processing operations on affected land. The term does not include concentrating, milling, evaporation, cleaning, preparation, transportation, and other off-site operations not conducted on affected land.

(14) "Office" means the office of mined land reclamation, created in section 34-32-105.

(15) "Open mining" means the mining of materials by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. "Open mining" also means 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.

(16) "Operator" means a person, firm, general or limited partnership, association, or corporation or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

(17) "Overburden" means earth and other materials that lie above natural minerals and includes earth and other materials that are disturbed from their natural state in the process of extracting construction materials.

(18) "Performance warranty" means a warranty of the type described in section 34-32.5-117 (2).

(19) "Reclamation" means the employment, during and after an operation, of procedures reasonably designed to minimize as much as practicable the disruption from an operation and provide for the establishment of plant cover, stabilization of soil, protection of water resources, or other measures appropriate to the subsequent beneficial use of the affected lands. Reclamation shall be conducted in accordance with the performance standards of this article.

(20) "Refuse" means all waste material directly associated with the cleaning and preparation of substances excavated by an operation.

34-32.5-104. Administration. In addition to the duties and powers prescribed by the provisions of article 4 of title 24, C.R.S., the office and the board have the full power and authority to carry out and administer the provisions of this article. The office is responsible for the enforcement of reclamation permits only and has no authority or duty to enforce other local, state, or federal agency permits unless otherwise authorized by law.

34-32.5-105. Office of mined land reclamation - mined land reclamation board. The office and the board created in section 34-32-105 shall administer this article.

34-32.5-106. Duties of board. In addition to the duties of the board set forth in section 34-32-106 (1), the board shall cause to be published the minutes of its meetings and approve or deny reclamation permits. The board may delegate its responsibility to approve reclamation permits to the director except for regular permits under section 34-32.5-112, where there is a written objection.

34-32.5-107. Powers of board. The board has the powers set forth in section 34-32-107.

34-32.5-108. Rules. The board may adopt and promulgate reasonable rules respecting the administration of this article.

34-32.5-109. Reclamation permit required - existing permits. (1) Before engaging in a new operation, an operator shall first obtain from the board or office a reclamation permit pursuant to section 34-32.5-110, 34-32.5-111, or 34-32.5-112. Notwithstanding this subsection (1), an operator who obtained a permit under section 34-32-110, 34-32-111, or 34-32-112 before July 1, 1995, which permit was valid as of such date, shall continue to operate under such permit, and such permit shall be deemed to be a permit issued under the provisions of this article.

(2) (a) A reclamation permit shall be effective for the life of the stated operation if the operator complies with the conditions of such reclamation permit, this article, and rules promulgated pursuant to this article that are in effect at the time the permit is issued or amended, except as otherwise provided in paragraph (b) of this subsection (2). Nothing in this article shall be construed to abrogate the duty of the operator to comply with other applicable statutes and rules.

(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 postmining 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 with that 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 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.

(3) 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.

(4) Upon receipt of an application for a reclamation permit, the board shall provide notice of such application to all counties in which proposed mining operations are located and to each municipality located within two miles of the area of proposed mining operations.

34-32.5-110. Existing limited impact operations - expedited process. (1) (a) Any person desiring to conduct mining operations on less than ten acres, 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. 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 34-32.5-116.

(b) The application required by this subsection (1) shall be sent to the office. If the office denies the application, the applicant may appeal to the board for final determination.

(2) A fee as specified in section 34-32.5-125, and a financial warranty in an amount the board shall determine pursuant to section 34-32.5-117 (4), shall accompany the application and shall be paid by the applicant.

(3) 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.

(4) Applications for permits made pursuant to subsection (1) 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 (2) of this section. The provisions of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 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 that 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 34-32.5-114 and 34-32.5-115.

(5) (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) of this section may request the conversion of the permit by filing an application for a permit pursuant to subsection (1) of this section or section 34-32.5-112; 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 (5) shall be processed and final action taken thereon in accordance with subsection (1) of this section or section 34-32.5-115, as appropriate. If action upon the conversion of the permit is taken in accordance with the time limits of this subsection (5) or section 34-32.5-115, 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 (2) of this section or in section 34-32.5-115 (3) or 34-32.5-117 (4).

(c) The provisions of sections 34-32.5-112, 34-32.5-114, and 34-32.5-115 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 34-32.5-115 (4).

(6) If the operator is a department, division, or agency of federal, state, county, or municipal government, the operator may, at its discretion, submit one composite application and annual report for all similarly situated sand, gravel, or quarry operations. Such composite application and annual report shall comply with subsections (1) to (5) of this section. Financial warranty under subsection (2) of this section shall not be required of the operator if it is a unit of county or municipal government or the department of transportation and the operator submits a written guarantee, in lieu of financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit and section 34-32.5-116.

(7) 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 34-32.5-125.

34-32.5-111. Special permits - fifteen-calendar-day processing. (1) An operator of a construction materials extraction operation shall be subject to this section if such operation is conducted solely to obtain materials for highway, road, utility, or similar construction purposes under a federal, state, county, city, town, or special district contract that requires work to commence within a specified short period of time and will affect no more than thirty acres of land.

(2) (a) An operator shall apply for a special permit by filing a written application with the board on forms provided by the board for such purpose. An approved special permit shall authorize the operator to engage in the operations described on such permit until the contractual reason for such operations has been completed.

(b) An application shall consist of:

(I) Three application forms;

(II) The application fee specified in section 34-32.5-125;

(III) The financial warranty specified in subsection (5) of this section, unless the office shows good cause that the board should set such financial warranty at a different amount pursuant to section 34-32.5-117; and

(IV) Three copies of an accurate map of the affected land, prepared by a professional land surveyor, professional engineer, or other qualified person. Such map shall show 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 operation.

(c) Each application form shall include:

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

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

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

(IV) The approximate size of the affected land;

(V) Information sufficient to describe or identify the type of operation proposed and how it will be conducted;

(VI) The measures to be taken to comply with applicable provisions of section 34-32.5-116;

(VII) The terms of the governmental contract which make a special permit necessary;

(VIII) Evidence of any financial warranty required under the governmental contract; and

(IX) A statement that the operator has applied for necessary local government approval.

(3) If the board determines that any of the affected land lies within the boundaries of lands described in section 34-32.5-115 (4) (f), such land shall be withdrawn from the operation.

(4) At any time after the completion of reclamation the operator may notify the board that the land or a portion of the land has been reclaimed. Upon receipt of such notice the board shall cause the land to be inspected, and, within sixty days after the board finds the reclamation to be satisfactory and in accordance with the plan agreed upon, the board shall release the performance and financial warranties or the appropriate portions of such warranties.

(5) Special permits shall be denied or issued by the board within fifteen calendar days after the date an application is submitted. Approval shall depend on the application, map, fee, performance warranty, and financial warranty being in compliance with this section. If action on an application is not completed within such fifteen-day period, the permit shall be approved and promptly issued upon presentation by the applicant of a financial warranty in the amount of two thousand five hundred dollars per affected acre or such other amount as may be specified by rule of the board.

(6) A governmental subdivision shall be exempt from subparagraphs (II) and (III) of paragraph (b) of subsection (2) of this section when such subdivision, acting as an operator, requires a permit solely to mine construction materials for the construction of public roads under a contract with the department of transportation or otherwise.

34-32.5-112. Application for reclamation permit - changes in permits - fees - notice. (1) (a) To obtain a reclamation permit, an operator shall apply in writing to the board or the office on forms provided by the board. If approved, the reclamation permit shall authorize the operator to engage in the mining operation described in the application upon the affected land for the life of the mine.

(b) Each application shall consist of:

(I) Five copies of the application;

(II) A reclamation plan submitted with each copy of the application;

(III) An accurate map of the affected land submitted with each copy of the application;

and

(IV) The application fee specified in section 34-32.5-125.

(c) Each application form shall include:

(I) The legal description and area of affected land;

(II) The name of the owner of the surface of the area of affected land;

(III) The name of the owner of the substance to be mined;

(IV) The source of the applicant's legal right to enter and initiate a mining operation on the affected land;

(V) The address and telephone number of the general office and the local address and telephone number of the applicant;

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

(VII) The size of the area to be worked at any one time;

(VIII) A timetable estimating the periods required for 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.

(2) The reclamation plan shall include provisions for, or a 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 section 34-32.5-116;

(c) A proposed plan or schedule indicating when and how reclamation will be implemented, and such plan or schedule shall not be tied to a specific date but shall be tied to the implementation or completion of different stages of the mining operation;

(d) A map showing the proposed affected lands by all phases of the total scope of the mining operation. Such map shall:

(I) Indicate the expected physical appearance of the area of the affected land, correlated to the proposed timetables required by subparagraph (VIII) of paragraph (c) of subsection (1) of this section and the plan or schedule required by paragraph (c) of this subsection (2); and

(II) Portray the proposed final land use for each portion of the affected lands.

(3) The map of the affected lands shall:

(a) Be made by a professional land surveyor, professional engineer, or other qualified person;

(b) Identify the area that 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 within the area of the 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 using contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

(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 vegetation covering the affected land.

(4) The reclamation plan shall also show by statement or map the depth and thickness of the deposit to be mined and the thickness and type of the overburden to be removed, and where overburden is stockpiled, the approximate volumes stockpiled.

(5) The application fee specified in section 34-32.5-125 shall be paid.

(6) Reclamation shall be completed within five years after the date the operator advises the board that each phase of construction material extraction has been completed, as provided in

section 34-32.5-116 (4) (q). Such five-year 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.

(7) (a) An operator may, within the term of a reclamation permit, apply to the board or the office for a reclamation permit amendment to increase the acreage to be affected or otherwise revise the reclamation plan. An application for the amendment of a reclamation permit shall be reviewed by the board or office in the same manner as an application for a new reclamation permit. The operator shall also submit such supplemental performance and financial warranties as may be required by the board or office for the additional acreage. If the area described in the original application is reduced, then the amount of the financial warranty shall be reduced proportionately. When applicable, the operator shall file with the application for amendment a map and an application with the same content as required for an original application.

(b) An amended application shall be accompanied by the fee specified in section 34-32.5-125.

(c) When an operator files a notice of temporary cessation pursuant to section 34-32.5-103 (11) (b), such notice shall be accompanied by the fee specified in section 34-32.5-125.

(8) The information provided in an application for a reclamation permit that relates to the location, size, or nature of the deposit or information required by subsection (4) of this section and that is marked confidential by the operator shall be protected by the board and the office as confidential information. Such information shall not be a matter of public record in the absence of a written release from the operator or until the mining operation has been terminated. A person who willfully and knowingly violates this subsection (8) or section 34-32.5-113 (3) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(9) (a) Upon the filing of an application for a reclamation permit, the applicant shall place a copy of such application for public inspection at the office of the board and the office of the county clerk and recorder of the county in which the affected land is located. Such copy shall not include the information exempted by subsection (8) of this section. The copy placed at the office of the county clerk and recorder shall not be recorded but shall be retained until such application has been heard by the board or the office and shall be available for inspection during such period. At the end of such period, the copy may be reclaimed or destroyed by the applicant.

(b) The applicant shall cause notice of the filing of the application to be published in a newspaper of general circulation in the area of the proposed mining operation once a week for four consecutive weeks, commencing not more than ten days after the filing of such application with the board or office. Such notice shall contain information about the:

(I) Identity of the applicant;

(II) Location of the proposed mining operation, if such information does not violate subsection (8) of this section;

(III) Proposed dates of commencement and completion of the operation;

(IV) Proposed future use of the affected land;

(V) Location where additional information about the operation may be obtained;

(VI) Location and final date for filing objections with the board or the office.

(c) The applicant shall mail a copy of such notice immediately after first publication to all owners of record of the surface and mineral rights of the affected land, the owners of record of all land surface within two hundred feet of the affected lands, and any other owners of record designated by the board who may 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 shall become part of the application.

34-32.5-113. Exploration notice - reclamation requirements. (1) A person desiring to

conduct exploration shall, prior to entry upon the lands, file with the board a notice of intent to conduct exploration operations on a form approved by the board. Such notice shall be accompanied by the fee specified in section 34-32.5-125.

(2) The notice shall contain:

(a) The name of the person or organization doing the exploration;

(b) A statement that exploration will be conducted pursuant to the terms and conditions listed on the approved form;

(c) A brief description of the type of operations that will be undertaken;

(d) A description of the lands to be explored, by township and range;

(e) An approximate date of commencement of operations; and

(f) A description of the measures to be taken to reclaim affected lands, consistent with section 34-32.5-116.

(3) All information provided to the board in a notice of intent to conduct exploration 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.

(4) (a) Upon filing a notice of intent to conduct exploration, the applicant shall provide a financial warranty in an amount determined by the office.

(b) An applicant may submit statewide warranties for exploration if such warranties are in an amount fixed by the board by rule and such person otherwise complies with this section for every area to be explored.

(5) Upon completion of the exploration, there shall be filed with the board a notice of completion of exploration operations. Reclamation shall be completed according to section 34-32.5-116 and the approved notice of intent.

(6) All drill holes sunk for the purpose of exploring for locatable or leasable minerals on any land within the state of Colorado shall be plugged, sealed, or capped pursuant to this subsection (6) by the person conducting the exploration. This subsection (6) 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.

(7) (a) Drill holes sunk for exploration purposes 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 flow.

(II) (A) Drill holes that encounter an aquifer in volcanic or sedimentary rock shall be sealed using a sealing procedure that is adequate to prevent fluid communication between aquifers.

(B) For purposes of this subparagraph (II), "aquifer" shall have the same meaning as set forth in section 37-90-103 (2), C.R.S.

(III) Each drill hole shall be securely capped at a minimum depth that is 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 lower. The cap shall be made of concrete or other material which is satisfactory for such capping and the site shall be backfilled above the cap to the original land surface.

(IV) If a 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 34-32.5-116, including, if necessary, reseeding if grass or a crop was destroyed.

(b) Abandonment in the manner provided in paragraph (a) of this subsection (7) shall

occur immediately following the drilling of the hole and the probing for construction materials in the exploration process; except that a drill hole may be maintained as temporarily abandoned without being plugged, sealed, or capped. However, no drill hole that 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 that will prevent injury to persons and animals.

(c) No later than sixty days after the completion of the abandonment of a drill hole that has artesian flow at the surface, the person conducting the exploration 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 known, and a description of the technique used to plug such drill hole. Such report shall be confidential and shall not be a matter of public record.

(d) No later than twelve months after the completion of the abandonment of a drill hole, the person conducting the exploration shall file 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. Such report and the information in such report shall be confidential and shall not be a matter of public record.

(e) The head of the office may waive, upon written application filed with the director, any of the administrative provisions of this subsection (7) that pertain to aquifers.

(8) The board shall inspect explored lands within ninety days after receiving notification from the person exploring the lands that reclamation has been completed. If the board finds the reclamation satisfactory, it shall release all applicable performance and financial warranties. The financial warranty shall not be held for more than sixty days after satisfactory completion.

(9) The board and the office are authorized to inspect any ongoing exploration operation or any exploration operation prior to the request for release of performance and financial warranties in order to determine compliance with this article.

34-32.5-114. Protests - petition for hearing. An aggrieved person has the right to file written objections to and any person has the right to file written statements in support of an application for a permit and to petition for a hearing. Such protests or petitions for a hearing shall be filed with the board or office not more than twenty days after the date of last publication of notice made pursuant to section 34-32.5-112 (9). For good cause shown in such protest or petition documents, the board may, in its discretion, hold a hearing pursuant to section 34-32.5-115 to determine whether the permit should be granted. The applicant shall be notified within ten days after any objections are filed with respect to the application and shall be supplied with a copy of the written objections.

34-32.5-115. 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 to determine whether a permit should be granted.

(2) Prior to holding a hearing, the board or the office shall provide notice to any person who filed a protest or petition for a hearing or statement in support of an application pursuant to section 34-32.5-114. Notice of the time, date, and location of the hearing shall be published in a newspaper of general circulation in the locality of the proposed mining operation once a week for the two consecutive weeks immediately preceding the hearing. The hearing shall be conducted 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 may reasonably extend the time in which a final decision must be made by sixty days.

(3) If action upon an 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) In the determination of whether the board or the office shall grant a permit to an operator, the applicant must comply with the requirements of this article and section 24-4-105 (7), C.R.S. The board or office shall not deny a permit except on one or more of the following grounds:

(a) The application is incomplete and the performance and financial warranties have not been provided.

(b) The applicant has not paid the required fee.

(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this article.

(d) The proposed mining operation, the reclamation program, or the proposed future use is 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.

(e) The mining operation will adversely affect the stability of any significant, valuable, and permanent manmade structures located within two hundred feet of the affected land; except that the permit shall not be denied on this basis 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 or, where such an agreement cannot be reached, the applicant provides an appropriate engineering evaluation that demonstrates that such structures shall not be damaged by proposed construction materials excavation operations.

(f) The mining operation is 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 parks and wildlife commission or unless the operation will not create any surface disturbance therein.

(g) The proposed reclamation plan does not conform to the requirements of section 34-32.5-116.

34-32.5-116. Duties of operators - reclamation plans. (1) Every operator to whom a permit is issued pursuant to this article shall perform the reclamation 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 necessary to achieve the proposed postmining land use.

(3) (a) Each year, on the anniversary date of the permit, an operator shall submit the annual fee specified in section 34-32.5-125, a report and 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, reclamation that will be performed during the coming year, the dates for the beginning of active operations, and the date active operations ceased for the year, if any.

(b) Notwithstanding any provision of paragraph (a) of this subsection (3), an operator who has filed an application pursuant to this article shall submit the annual fee specified in section 34-32.5-125 in addition to the map and plan. Where an operator is late in payment of the annual fee by greater than sixty days, the office shall set the matter for a hearing before the board for permit revocation and forfeiture of the financial warranty.

(4) Reclamation plans and their implementation are required on all affected lands and shall conform to the following requirements:

(a) Grading shall be carried on so as to create a final topography appropriate to the final post-extraction land use selected in accordance with paragraph (m) of this subsection (4).

(b) If earth dams are constructed to impound water, the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules, or regulations of the federal government or the state of Colorado or with any local government pollution ordinances.

(c) An operator shall demonstrate that all mined material disposed of within the affected area and all affected areas to be reclaimed as part of the approved application will not result in any unauthorized release of pollutants to the surface drainage system.

(d) No unauthorized release of pollutants to groundwater shall occur from any materials mined, handled, or disposed of within the permit area.

(e) All refuse shall be disposed of in a manner that controls unsightliness or the deleterious effects of such refuse.

(f) In those areas where revegetation is part of the reclamation plan, land shall be revegetated so that a diverse, effective, and long-lasting vegetative cover is established that is capable of self-regeneration and is at least equal, with respect to the extent of cover, to the natural vegetation of the surrounding area. Species chosen for revegetation shall be compatible for the proposed post-extraction land use and shall be of adequate diversity to establish successful reclamation.

(g) Where it is necessary to remove overburden to mine the construction material, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a period of time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that such topsoil is preserved from wind and water erosion, remains free of contamination, 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.

(h) 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 (h) 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.

(i) Areas outside of the affected land shall be protected from slides or damage occurring during the mining operation and reclamation.

(j) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion.

(k) All affected areas to be seeded or to receive transplants shall be seeded or transplanted using reclamation practices and techniques acceptable to the office. Planting methods include seedbed and seed preparation and soil amendments appropriate to the topography, physical and chemical characteristics of soil, and selected plant species adequate to give the best chance for successful reclamation.

(l) The operator may permit the public to use lands it owns 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.

(m) With respect to 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. Before approving a new reclamation plan or a change in an existing reclamation plan, the board may 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.

(n) If the operator's choice of reclamation is for range, the affected land shall be restored to slopes commensurate with the proposed land use that shall not be too steep to be traversed by livestock. 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 that normally require the use of farm equipment, the operator shall grade the affected land so 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 such 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 minimum requirements necessary for such reclamation shall be agreed upon between the operator and the board.

(q) (I) All reclamation requirements required by this section shall be carried to completion with reasonable diligence and conducted concurrently with mining operations to the extent practicable, taking into consideration the mining plan, safety, economics, the availability of equipment and material, and other site-specific conditions relevant and unique to the affected land and the postmining land use. Upon completion of each phase of mining and, in accordance with the reclamation plan, final reclamation of each mining phase shall be completed prior to the expiration of five years after the date the operator advises the board in an annual report that such phase of mining has been completed, unless such period is extended by the board pursuant to section 34-32.5-112; except that reclamation may be completed in phases and the five-year period may be applied separately to each phase as it commences during the life of the mine.

(II) No planting shall be required on affected land:

(A) 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 operations;

(B) Within depressed haulage roads or final cuts while such roads or final cuts are being used or made; or

(C) Where permanent pools or lakes have been formed.

(III) No planting of any kind shall be required on affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are chemically incompatible with plant growth, 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. When natural weathering and leaching of any of such affected land, over a period of five years after commencement of reclamation, fails to remove the chemical and physical characteristics inhibitory to plant growth or if, at any time within such five-year period, the board determines that any of such affected land is, and during the remainder of said five-year period will be, unplatable, 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 and not otherwise subject to reclamation under this article.

(IV) With the approval of the board and the owner of the land to be reclaimed, an operator may substitute land previously mined and owned by the operator that is 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 excavated or mined but not owned by the operator if the operator has not previously abandoned unreclaimed land affected by mining operations. As an alternative, the board may grant the reclamation of lesser or greater acreage if the cost of reclaiming such acreage is at least equivalent to the cost of reclaiming the original permit lands. If an area is so substituted, the operator shall submit a map of the substituted area conforming to all map requirements in 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.

(r) A building, or a structure placed on affected land during extraction operations, may remain on the affected land at the option of the operator with the approval of the landowner and the board if such building or structure conforms to local building and zoning codes and is compatible with the postmining land use.

34-32.5-117. Warranties of performance - warranties of financial responsibility - release of warranties. (1) A permit shall not be issued under this article until the board receives the performance and financial warranties described in subsections (2), (3), and (4) of this section.

(2) A "performance warranty" is a written promise made by the operator to the board to comply with this article and 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, such operators may limit the scope of their individual performance warranties if such warranties, in the aggregate, warrant the performance of all requirements of this article.

(3) (a) A "financial warranty" is a written promise a party makes to the board to be responsible for reclamation costs, up to the amount specified in subsection (4) of this section, and includes proof of financial responsibility. A financial warranty shall be in such form as the board

may prescribe and may be provided by the operator, by a third party, or by any combination of persons or entities.

(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 such property. A person offering such a financial warranty shall submit information to show clear title to and the value of such property.

(c) The board may refuse to accept a financial warranty if:

(I) The value of such warranty is dependent upon the success, profitability, or continued operation of the mine; or

(II) It determines that such warranty cannot reasonably be converted to cash within one hundred eighty days of forfeiture.

(d) For construction materials operations:

(I) This subsection (3) shall apply on July 1, 1993, to a deed of trust used as collateral for a new financial warranty completed on or after such date;

(II) This subsection (3) shall be effective on January 1, 1996, with respect to a:

(A) Financial warranty that is collateral for a deed of trust used as collateral for a financial warranty in existence on July 1, 1993, and subsequent amendments of such deed of trust; and

(B) Financial warranty completed before July 1, 1993, if the value of such financial warranty includes a construction material value or if construction material value is used to update such warranty. The value of a financial warranty described in this sub-subparagraph (B) shall include the construction material value for the life of the warranty.

(e) An instrument offered as a financial warranty pursuant to this subsection (3) shall provide that the board may recover any necessary costs it incurs, including attorney fees, in foreclosing on or realizing collateral used to secure such financial warranty in the event of forfeiture.

(f) Proof of financial responsibility may consist of 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 this 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, and 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 the 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 the amount specified in 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 of such warranty;

(D) Existing liens and encumbrances applicable to project-related fixtures and equipment shall be subordinated to the lien described in section 34-32.5-118; except that liens in favor of

the United States, a state, or a political subdivision shall not be so subordinated;

(E) Project-related fixtures and equipment shall 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) The obligations enjoy a rating by such rating organization of 'A' or better;

(C) The financial warrantor's net worth was at least twice the amount of all financial warranties made by such warrantor as of the close of the most recent fiscal year;

(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 such year the financial warrantor's:

(A) Net worth was at least ten million dollars and was equal to or greater than twice the amount of all financial warranties;

(B) Tangible fixed assets in the United States were worth at least twenty million dollars;

(C) Total liabilities-to-net-worth ratio was not more than two to one;

(D) Net income, excluding nonrecurring items, was positive. Nonrecurring items that affect net income shall 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) Proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with 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 a 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 such year plus all lands affected in previous permit years and not yet fully reclaimed. For purposes of this paragraph (b), reclamation costs shall be computed with reference to current reclamation costs. A financial warranty shall be sufficient to assure the completion of reclamation of affected lands if, because of forfeiture, the office has to complete such reclamation and shall include an additional amount equal to five percent of the amount of the financial warranty to defray 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 a financial warranty.

(c) (I) The board may:

(A) From time to time and for good cause shown, increase or decrease the amount and duration of a required financial warranty;

(B) By rule or permit condition, require that proof of value of all or any group of warranties held by the board be submitted on a periodic basis;

(C) By rule or permit condition, limit certain types of warranties to specific purposes or require that a specified 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 an adjustment to fulfill the new requirements.

(5) (a) An operator may file a written notice of completion with the office whenever such

operator believes that any or all requirements of this article have been completed with respect to any or all of such operator's affected lands. Within sixty days after receiving such notice, or as soon as weather conditions permit, the office shall inspect affected lands and the reclamation described in the notice to determine if the operator has complied with all applicable requirements.

(b) If the board or office finds that an operator has successfully complied with any or all requirements of this article, it shall release all performance and financial warranties applicable to such requirements. Releases shall be in writing and delivered promptly to the owner or operator after the date of such finding.

(c) If the board or office finds that an operator has not complied with applicable requirements of this article, it shall advise the operator of such noncompliance 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 to advise the operator of deficiencies within the time specified in paragraph (c) of this subsection (5), then all financial warranties applicable to the reclamation described in the notice shall be deemed released as a matter of law.

(6) (a) A financial warranty shall be maintained in good standing for the entire life of a permit issued under this article. A financial warrantor shall immediately notify the board of an event that may impair its warranty.

(b) Each financial warrantor who provides proof of financial responsibility in a form described in subsection (3) (f) (IV) to (3) (f) (VII) or subsection (8) of this section shall cause to be filed with the board a certification by an independent auditor. Such certification shall be filed annually and shall provide that, as of the close of the financial warrantor's most recent fiscal year, such financial warrantor continued to meet all applicable requirements of such subparagraphs (IV) to (VII). A financial warrantor who no longer meets such requirements shall cause to be filed an alternate form of financial warranty.

(c) A financial warrantor who provides proof of financial responsibility in a form described in paragraph (b) of this subsection (6) shall notify the board within sixty days after a net loss is incurred in a 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 convenes 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. If a financial warrantor refuses to sign such an agreement, the board may, without hearing, order such financial warrantor to provide an alternate form of financial warranty.

(f) If the board finds, at any hearing held pursuant to this subsection (6), 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 the requirements of article 4 of title 24, C.R.S.

(7) For purposes of this section, a "Rating of 'A' or better" means that a nationally

recognized rating organization has determined that the obligations are at least of an upper-medium grade. This means that the factors giving security to the principal and interest are considered to be adequate but elements may be present that suggest the possibility of adverse effects if economic and trade conditions change.

(8) (a) The board or office may accept a first-priority lien on project-related fixtures and equipment that must remain on site for the reclamation plan to be performed in lieu of including the cost of acquiring and installing such fixtures and equipment in the amount of the financial warranty prescribed pursuant to subsection (4) of this section.

(b) The board or office may accept a first-priority lien on project-related fixtures and equipment that must be demolished or removed from the site under a reclamation plan and may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited does not exceed the cost of demolishing and removing such 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. A financial warrantor that provides 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.

34-32.5-118. Forfeiture of financial warranties. (1) A financial warranty shall be subject to forfeiture whenever the board determines that one or more of the following circumstances exist:

(a) The operator has violated a cease-and-desist order entered pursuant to section 34-32.5-124 and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to do so has elapsed; or

(b) The operator is in default under a performance warranty and has failed to cure such default although the operator has been given written notice and has had ample time to do so; or

(c) The financial warrantor has failed to maintain a financial warranty in good standing as required by section 34-32.5-117; or

(d) The financial warrantor no longer has the financial ability to carry out any obligations required under this article.

(2) When the board has reason to believe a financial warranty is subject to forfeiture, it shall so notify the operator and all financial warrantors. The board shall grant 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 such notice. Any such hearing shall be held in accordance with article 4 of title 24, C.R.S.

(3) (a) At a hearing held pursuant to subsection (2) of this section, the board may withdraw or modify any determination that the financial warranty is subject to forfeiture, settle or compromise the determination, or 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 an 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 a forfeited financial warranty shall constitute a lien upon project-related fixtures or equipment offered as proof of financial responsibility pursuant to section 34-32.5-117. Such lien shall be in favor of this state.

(c) The lien described in paragraph (b) of this subsection (4) 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, this state, and political subdivisions of this state 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 special account described in section 34-32.5-122 and shall be used to reclaim lands covered by forfeited warranties; except that five percent of the amount of such forfeited warranties shall be deposited in the mined land reclamation fund, created in section 34-32-127, to cover administrative costs incurred by the office in performing reclamation. The board shall have a right of entry to reclaim such lands, and upon completion of such reclamation the board shall present a full accounting to the financial warrantor and shall refund all unspent moneys.

(6) Notwithstanding any discharge of applicable financial warranties, an operator in default 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.

(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.

34-32.5-119. Operators - succession. When one operator succeeds another at an uncompleted operation, the board shall release the first operator from all liability as to that operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes all liability for the reclamation of the affected land and such obligation is covered by appropriate performance and financial warranties. The fee specified in section 34-32.5-125 (1) (a) (X) shall be paid to the board by the successor operator before the first operator is released from liability and before any financial warranties are released.

34-32.5-120. Permit refused - operator in default. The board shall not grant a permit for new mining operations to an operator who is found to be in violation of this article at the time of application.

34-32.5-121. Entry upon lands for inspection - reporting certain conditions. (1) The board, the office, or their authorized representatives may enter upon the lands of an operator at any reasonable time for inspection purposes to determine if the requirements of this article have been or are being met.

(2) Any person engaged in any 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 or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property.

34-32.5-122. Fees, civil penalties, and forfeitures - deposit. (1) All fees and assessments collected pursuant to this article and five percent of the proceeds of any financial warranty forfeited pursuant to section 34-32.5-123 for administrative costs associated with reclaiming sites for which the financial warranty has been revoked shall be deposited in the mined land reclamation fund, created in section 34-32-127. All civil penalties collected pursuant to this article shall be deposited in the general fund. Ninety-five percent of the proceeds of all financial warranties forfeited under section 34-32.5-118 shall be deposited in a special account in the general fund established by the board for the purpose of reclaiming lands that were required to be reclaimed under permits upon which such financial warranties had been forfeited.

(2) An applicant that desires to use the self-insurance provisions in section 34-32.5-117 (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 such applicant. Such funds are hereby annually made available to the office, which shall utilize outside financial and legal services for this purpose.

34-32.5-123. Operating without a permit - penalty. (1) If an operator or person conducting exploration fails to obtain a valid permit or file a notice of intent pursuant to 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 34-32.5-124.

(2) An 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, not to exceed three hundred sixty-five days. An operator who mines substantial acreage beyond the approved permit boundary may be found to be operating without a permit.

(3) A person who conducts exploration without filing a notice of intent shall be subject to a civil penalty of not less than fifty dollars per day 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.

(4) In addition to the civil penalties imposed in subsections (2) and (3) of this section, the board shall also assess a civil penalty in an amount not less than the amount necessary to cover costs incurred by the division in investigating the alleged violation.

34-32.5-124. Failure to comply with conditions of order, permit, or regulation. (1) Whenever the board or the office has reason to believe that a violation of an order, permit, notice of intent, or regulation issued under this article has occurred, written notice of the alleged violation shall be given to the operator or person conducting the exploration. 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 have been violated and the facts alleged to constitute such violation and may include the nature of any corrective action proposed to be required.

(2) If the board determines that any provision of this article or any notice, permit, or regulation issued or promulgated pursuant to this article has been violated, it 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. Such order may include the nature of any corrective action proposed to be required and shall be served personally or by certified mail, return receipt requested, upon the alleged

violator or the violator's agent for service of process.

(3) If an 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 thirty 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 this section, it shall be open to the public and conducted in accordance with article 4 of title 24, C.R.S. The board shall permit all parties to respond to the notice served, present evidence and arguments on all issues, and conduct the cross-examination necessary for a full disclosure of the facts.

(6) (a) Upon a determination, after a hearing, that a violation of a permit provision has occurred, the board may suspend, modify, or revoke such permit.

(b) If the board suspends or revokes the permit of an operator, such operator may continue mining operations only for the purpose of bringing such operations into satisfactory compliance with the provisions of such operator's permit. Once such operations are completed to the satisfaction of the board, the board shall reinstate such permit.

(7) A person who violates any provision of a 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.

34-32.5-125. Mined land reclamation fund - fees. (1) 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:

- (a) Applications pursuant to:
- (I) Section 34-32.5-110 (2)\$ 1,258
 - (II) Section 34-32.5-110 (2) relating to permit amendments\$ 827
 - (III) Section 34-32.5-111\$ 898
 - (IV) Section 34-32.5-112, except for applications relating to the mining operations specified in subparagraph (I) of this paragraph (a)\$ 2,696
 - (V) Section 34-32.5-112 relating to quarries\$ 3,342
 - (VI) Section 34-32.5-112 (8) relating to reclamation permit amendments...\$ 2,229
 - (VII) Sections 34-32.5-110 to 34-32.5-112 relating to revisions to permits other than amendments\$ 216
 - (VIII) Section 34-32.5-103 (11) relating to temporary cessations of operations\$ 144
 - (IX) Section 34-32.5-113\$ 108
 - (X) Section 34-32.5-119\$ 144
- (b) Annual fees for fiscal year 2007-08 and for each subsequent year for operations pursuant to:
- (I) Section 34-32.5-110 (2)\$ 323
 - (II) Section 34-32.5-112\$ 791
 - (III) Section 34-32.5-111\$ 504
 - (IV) Section 34-32.5-113\$ 86
- (c) (Deleted by amendment, L. 2000, p. 1165, § 1, effective July 1, 2000.)

(2) Notwithstanding the amount specified for any fee in subsection (1) 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.