

Proposed Revisions
to the
Rules and Regulations
of the
Colorado Mined Land Reclamation Board
for
Coal Mining

October 1, 2014

RULE 1 GENERAL PROVISIONS

1.01-1.02 ***

1.03 RESPONSIBILITIES

1.03.1 ***

1.03.2 The Board is responsible for:

(1)-(3) ***

- (4) Requesting data and technical assistance, as it deems necessary for the performance of reclamation and enforcement duties prescribed by these Rules and the Act from the Department of Agriculture, the Department of Higher Education, the Department of Public Health and Environment, the State Soil Conservation Board, the Colorado Geological Survey, the Division of Parks and Outdoor Recreation, the Division of Water Resources, the Division of Wildlife, the University of Colorado, Colorado State University, Colorado School of Mines, and the State Forester. It is the duty of these agencies to furnish the Board and its designees such data and technical assistance, as is practically required, in a timely manner that will allow compliance with Sections 34-33-118, 34-33-119 and 34-33-126 of the Act.

1.03.3-1.03.4 ***

1.04 DEFINITIONS

(1) ***

- (1.1) "Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

(2)-(4) ***

- (5) "Administrator" means the director of the Division of Reclamation, *Mining and Safety* in the Department of Natural Resources.

(6) – (11)***

- (11.1) "Applicant/Violator System" or "AVS" means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing SMCRA.

(12)-(17)***

(17.1) "Blaster certification program" means the requirements set forth in Rule 6 to ensure that all blasting operations are conducted by trained and competent persons.

(18)-(20)***

(20.1) "Certified blaster" means a person certified under the requirements of Rule 6 to be directly responsible for the blasting operations in surface coal mining operations, and surface blasting operations of underground coal mining operations. A certified blaster shall be familiar with the blasting requirements of Rules 2.05.3(6)(A) and 4.08.

(21)-(22)***

(22=1) "Coal mine waste" means coal processing waste and underground development waste.

(23)-(26)***

(27) "Community or institutional building" means any structure, other than public building or occupied residential dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation and sewage treatment.

(28)-(30)***

(30.1) "Control" or "controller", when used in Rules 2.03.4, 2.03.5, 2.07.6, 2.07.8, 2.07.9, and 2.11 refers to or means:

(A) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

(31) ***

(31.1) "Cumulative impact area" means the area which includes, at a minimum, the entire projected lives through bond release of: the proposed operation; all existing operations; any operation for which a permit application has been submitted to the Division; all other operations required to meet diligent development requirements for leased federal coal, for which there is actual mine development information available.

(31.2) "Current assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(31.3) "Current liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

(32)-(37)***

(38) "Division" means the Division of Reclamation, *Mining and Safety* in the Department of Natural Resources.

(39) ***

(39.1) "Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use for which the user and/or owner has secured water rights or allocations recognized by state law. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

(40) ***

(41) "Employee" (regarding employee financial interests in Rule 1.11) means:

- (a) Any person employed by the Division who performs any function or duty under the Act; and
- (b) Consultants to the Board or Division who perform any function or duty under the Act, which involves decision making functions for the Division under the authority of State law or regulations;
- (c) But does not mean members of the Board.

(42)-(43)***

(43.1) "Excess spoil" means spoil material not necessary to achieve the approximate original contour, provided that spoil material used to blend the mined area with the surrounding terrain in non-steep slope areas shall not be considered excess spoil.

(44)-(46) ***

(46.1) "Farming", with respect to alluvial valley floors, is synonymous with the term "agricultural activities".

(47) ***

(47.1) "Fixed assets" means plants and equipment, but does not include land or coal in place.

(48)-(55) ***

(56) "Head-of-hollow fill" means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20[±]° or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10[±]°. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(57) Reserved.

(58)-(63)***

(63.1) "Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

(64)-(70)***

(70.1) "Knowing" or "Knowingly" means, with respect to individual civil or criminal penalties, that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal to comply with any regulatory requirements or order of the Board. This definition is applicable to any person, including individual operators as well as persons authorizing, ordering or carrying out an act or omission on the part of a corporate permittee.

(71) "Land use" means specific uses or management-related activities rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. All of the land uses defined below may include land used for support facilities which are adjacent to, or are an integral part of the land use. Changes of land use or uses from one of the following categories to another as a result of surface coal mining and reclamation operations shall be considered as a change to an alternative land use which is subject to approval by the Division.

(a)-(b) ***

(c) "Rangeland" land where the land use is a combination of Grazingland and Fish and Wildlife Habitat.

(d)-(h) ***

(i) "Developed water sources" means use of land for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land" means land with no current use or level of management. It includes land that has never been developed, or if

previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(k) "Grazingland" means lands where plant cover, dominated by adapted wildland species, is principally valuable for livestock forage, and management is primarily achieved by regulating the intensity of grazing and season of use.

(71.1) "Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(71.2) "Material subsidence damage", in the context of Rules 2.05.6(6) and 4.20, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(72)-(76)***

(77) "Noncommercial building" means any building, other than an occupied residential dwelling, that, at the time subsidence associated with underground mining operations occurs, is used on a regular or temporary basis as a public building or community or institutional building. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

(78) ***

(79) "Occupied residential dwelling" and structures related thereto means any building or other structure that, at the time subsidence from underground mining operations occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure, or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

(80) ***

(81) "Other treatment facilities" means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as, but not limited to, clarifiers or precipitators, that have a point source discharge and are utilized:

- (i) to prevent additional contributions of dissolved or suspended solids to streamflow or runoff outside the permit area; or
- (ii) to comply with all applicable State and Federal water-quality laws and regulations.

(82)-(83)***

(83.1) "Own", "owner", or "ownership" as used in Rules 2.03, 2.07, and 2.11 (except when used in the context of ownership of real property) means, based on instruments of ownership or voting securities, being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

(83.2) "Parent corporation" means a corporation which owns or controls the applicant.

(84)-(85)***

(86.1) "Permanent impoundment" means an impoundment which is approved by the Division, and if required, by other State and Federal agencies for retention as part of the post-mining land use.

(87)-(93)***

(93.1) "Point of compliance" means any geographic location at which compliance with applicable ground water quality standards established by the Water Quality Control Commission must be attained and where this compliance will be demonstrated by compliance monitoring of the groundwater or by other valid means approved by the Division.

(94) ***

(95) "Prime farmland" means land which has been historically used for cropland and that, in accordance with 7 C.F.R. 657, as amended, has the best combination of physical and chemical characteristics of producing food, feed, forage, fiber and oilseed crops, is also available for these uses and as interpreted by the USDA Natural Resources Conservation Service for Colorado.

(96)-(103)***

(103.1) "Reasonably available spoil" means spoil and suitable coal mine waste material generated by a re-mining operation, or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

(104)-(108)***

(108.1)"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

(109)-(110)***

(110.1)"Replacement of water supply" means, with respect to drinking, domestic or residential water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for the period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(111) "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approach structures, ditches, surface, and such contiguous appendages as are necessary for the total structure. The term does not include public roads, ramps, and routes of travel within or adjacent to the immediate mining pit area or within spoil or coal mine waste disposal areas.

(a) "Haul road" means any road used for the transportation of coal, spoil or coal mine waste.

(b) "Access road" means roads frequently traveled or used for purposes other than the transportation of coal, spoil or coal mine waste, including, but not limited to, roads used for supervision of mining operations, or servicing major facilities including sedimentation or monitoring facilities, or other frequent uses.

(c) "Light-use road" means roads infrequently traveled or used on an intermittent basis for purposes other than transportation of coal, spoil or coal mine waste, including, but not limited to, roads used for monitoring, periodic maintenance of monitoring facilities, or other occasional uses.

- (d) "Public road" means a street, road, or highway, and any related structure, that has been or will be built and maintained with appropriated funds of the United States; that has been or will be built and maintained with appropriated funds of the state of Colorado or any political subdivision thereof or that has been acquired by eminent domain or adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof; that has been or will be dedicated to public use; and which meets road construction standards for other public roads of the same classification in the local jurisdiction.

(112)-(116)***

(117) "Significant, environmental harm" to land, air or water resources means:

(a) ***

(b) ***

(118) ***

(118.1) "Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

(119) ***

(120) "Soil horizon" means the layers of soil parallel or nearly parallel to the land surface. Major soil horizons are defined as the O, A, E, B and C horizons as defined by the U.S.D.A. Natural Resources Conservation Service in the National Soils Handbook.

(121)-(124)***

(125) "Steep slope" means any slope of more than 20° or such lesser slope as may be designated by the Board or Division after consideration of soil, climate, and other characteristics of the region.

(126)-(127)***

(128) "Substantial legal and financial commitments" in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

(129)-(131) ***

(132) "Surface coal mining operations" means:

(a) ***

(b) ***

(c) Subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 103(26) of the Act and this Rule, and therefore is not prohibited in areas protected under Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) and Section 114(2) of the Act. Subsidence due to underground coal mining as it pertains to areas protected under Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) and Section 114(2) of the Act is addressed in Rules 2.05.6 and 4.20 and Sections 111 and 121 of the Act.

(133)-(134) ***

(135) "Suspended solids" also referred to as "nonfilterable residue" (expressed as milligrams per liter), means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

(135.1) "Tangible net worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

(136)-(137)***

(137.1) "Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the Division to remain as part of the approved post-mining land use.

(138)-(139)***

- (140) "Toxic drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
- (141) "Transfer, assignment, or sale of rights" means a change of a permittee.
- (142)-(145)***
- (146) "Unwarranted failure " means the failure of a permittee to (1) prevent the occurrence of any violation of his permit or any requirement of these Rules due to indifference, lack of diligence, or lack of reasonable care or (2) the failure to abate any violation of such permit or this article due to indifference, lack of diligence, or lack of reasonable care.
- (147) ***
- (148) "Valley fill" means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20° or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10°.
- (149) "Valid existing rights" means: a set of circumstances under which a person may, subject to Division approval, conduct surface coal mining operations on lands where Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) would otherwise prohibit such operations. Possession of valid existing rights confers an exception from the prohibitions of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) only. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the act and these rules. For federal lands within the boundaries of national parks, National wildlife refuges, National System of Trails, the National Wilderness Preservation System, Wild and Scenic Rivers Systems, National Recreation Areas designated by Act of Congress or national forests, the federal definition of valid existing rights in 30 CFR §761.5 shall apply. The federal definition of valid existing rights shall also apply to non-federal lands within the boundaries of national parks, National wildlife refuges, National System of Trails, Wild and Scenic Rivers Systems, or National Recreation Areas designated by Act of Congress.
- (a) Except for roads "valid existing rights means":
- (i) "Property Rights" - Those property rights in existence on August 3, 1977 or at the time the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the applicant to produce coal by surface coal mining operations. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no

applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation; and

- (ii) The person proposing to conduct surface coal mining operations on such lands either:
 - (A) “Good Faith/All Permits” - Had been validly issued, all State and Federal permits and other authorizations necessary to conduct such operations on those lands, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e). At a minimum, an application must have been submitted for any permit required under these Rules, or
 - (B) ”Needed for and Adjacent to” - Can demonstrate to the Division that the land is both needed for, and immediately adjacent to, an on-going surface coal mining operation for which all permits were obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e). To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e). Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) when the Division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Division may consider factors such as:
 - (I) The extent to which coal supply contracts or other legal and business commitments that pre-date the time that the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) depend upon use of that land for surface coal mining operations.
 - (II) The extent to which plans used to obtain financing for the operation before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) rely on the use of that land for surface coal mining operations.

- (III) The extent to which investments in the operation before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) rely on the use of that land for surface coal mining operations
 - (IV) Whether the land lies within the area identified on the life-of-mine map submitted under Rule 2.10.3(1)(c) before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e);
- (b) For roads, A person who claims "valid existing rights" to use or construct a road across the surface of lands protected by Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of surface coal mining operations in Rule 1.04(132):
- (i) A properly recorded right of way, recorded easement or a permit for a road recorded when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, under the document creating the right of way of easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations, or
 - (ii) Any other road in existence when the land upon which it is located came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations, or
 - (iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), or
 - (iv) Valid existing rights under paragraphs (a)(i) and (a)(ii) of this definition.

(149.1) "Violation", when used in the context of the permit application information or permit eligibility requirements of section 34-33-110 of the Act and related regulations, means:

- (a) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or
- (b) A noncompliance for which the Division has provided one or more of the following types of notice:
 - (i) A notice of violation under Rule 5.03.

- (ii) A cessation order under Rule 5.03.
- (iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Rules 5.04.3(5) and 5.05.
- (iv) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR 870.
- (v) A notice of bond forfeiture under Rule 3.04 when:
 - (A) One or more violations upon which the forfeiture was based have not been abated or corrected;
 - (B) The amount forfeited and collected is insufficient for full reclamation under Rule 3.04.2(6), the Division orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.
 - (C) The site is covered by an alternative bonding system approved under 30 CFR §800.11(e), that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

(149.2) "Violation, failure or refusal", for the purposes of Rule 5.05, means:

- (a) A failure to comply with a condition of a permit, Division requirement, or Board order; or
- (b) A failure or refusal to comply with any order issued under Section 123 of the Act.

(150)-(152)***

- (153) "Willful" or "Willfully" means that, with respect to individual civil penalties, that an individual acted:
 - (a) Either intentionally, voluntarily or consciously; and
 - (b) With intentional disregard or plain indifference to legal requirements

1.05-1.06 ***

1.07 PROCEDURES FOR VALID EXISTING RIGHTS DETERMINATIONS

- (1) Valid existing rights determination requests for federal lands within the boundaries of national parks, National wildlife refuges, National System of Trails, the National Wilderness Preservation System, Wild and Scenic Rivers Systems, National Recreation Areas designated by Act of Congress or national forests shall be submitted directly to the Secretary of the Interior. requests for

determinations on non-federal lands may be submitted to the Division as described in Rule 2.07.6(2)(d) and processed in advance of preparation and submission of a permit application or application for a boundary revision as follows:

- (a) A “property rights” demonstration under Rule 1.04(149)(a)(i) must include:
 - (i) A legal description of the land to which the request pertains.
 - (ii) Complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains.
 - (iii) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
 - (iv) A description of the nature and effect of each title instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities.
 - (v) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface Activities and facilities, and an explanation of how those operations would be consistent with State property law.
 - (vi) Complete documentation of the nature and ownership, as of the date that the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), of all property rights for the surface and mineral estates of the land to which the request pertains.
 - (vii) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
 - (viii) If the coal interests have been severed from other property interests, documentation that there has been notification and reasonable opportunity provided for the owners of other property interests in the land to which the request pertains to comment on the validity of the property rights claims.
 - (ix) Any comments received in response to the notification provided under paragraph (c)(i)(h) of this paragraph.
- (b) A “good faith/all permits” demonstration under Rule 1.04(149)(a)(ii)(A), in addition to the information required by Rule 1.07(1)(a)(i), must also include:
 - (i) Approval and issuance dates and identification numbers for any permits, licenses, and authorizations obtained before the land

came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).

- (ii) Application dates and identification numbers for any permits, licenses, and authorizations which were submitted before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).
- (iii) An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).

(c) A “needed for and adjacent to” demonstration under Rule 1.04(149)(a)(ii)(B), in addition to the information required by Rule 1.07(1)(a)(i), must also include an explanation of how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).

(d) A demonstration under the standards for roads (Rule 1.04(149)(b)) must include documentation that:

- (i) The road existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and the applicant has a legal right to use the road for surface coal mining operations;
- (ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or
- (iii) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).

(2) Initial review of request

- (a) The division will conduct an initial review to determine whether the applicant’s request includes all applicable components of the submission requirements of Rule 1.07(1). This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.
- (b) If the request does not include all applicable components of the submission requirements of Rule 1.07(1), the Division will notify the

applicant and establish a reasonable time for submission of the missing information.

- (c) When the request includes all applicable components of the submission requirements of Rule 1.07(1), the Division will implement the notice and comment requirements of Rule 1.07(3).
- (d) If the applicant does not provide information that the Division requests under Rule 1.07(2)(b) within the time specified or as subsequently extended, the Division will issue a determination that the applicant has not demonstrated valid existing rights, as provided in Rule 1.07(4)(c)(i).

(3) Notice and comment requirements and procedures.

- (a) When the request satisfies the completeness requirements of Rule 1.07(2), the applicant will publish a notice in a newspaper of general circulation in the county in which the land is located. This notice will invite comment on the merits of the request. The applicant must provide the Division with a copy of the published notice. Each notice must include:
 - (i) The location of the land to which the request pertains.
 - (ii) A description of the type of surface coal mining operations planned.
 - (iii) A reference to and brief description of the applicable standard(s) under the definition of valid existing rights in Rule 1.04(149).
 - (A) If the request relies upon the good faith/all permits standard or the needed for and adjacent standard in paragraph (b) of the definition of valid existing rights in Rule 1.04(149)(a)(ii), the notice also must include a description of the property rights that the applicant claims and the basis for the claim.
 - (B) If the request relies upon the standard in paragraph (b)(ii) of the definition of valid existing rights in Rule 1.04(149), the notice also must include a description of the basis for the claim that the road existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e). In addition, the notice must include a description of the basis for the claim that the applicant has a legal right to use that road for surface coal mining operations.
 - (C) If the request relies upon the standard in paragraph (b)(i) of the definition of valid existing rights in Rule 1.04(149), the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of Rule 2.07.6(2)(d) or 30 U.S.C.

1272(e). In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the applicant has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

- (D) If the request relies upon one or more of the standards in paragraphs (a), (b)(i), and (b)(ii) of the definition of valid existing rights in Rule 1.04(149), a statement that the Division will not make a decision on the merits of the request if, by the close of the comment period under this notice or the notice required by 1.07(3)(c), a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the claim.
- (iv) A description of the procedures that the Division will follow in processing the request.
- (v) The closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice.
- (vi) A statement that interested persons may obtain a 30-day extension of the comment period upon request.
- (vii) The name and address of the Division office(s) where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.
- (b) The Division will promptly provide a copy of the notice required under Rule 1.07(3)(a) to:
 - (i) All reasonably locatable owners of surface and mineral estates in the land included in the request.
 - (ii) The owner of the feature causing the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e). For example, both the landowner and the State Historic Preservation Officer must be notified if surface coal mining operations would adversely impact any site listed on the National Register of Historic Places. As another example, both the surface owner and the National Park Service must be notified if the request includes non-Federal lands within the authorized boundaries of a unit of the National Park System.

- (c) The letter transmitting the notice required under Rule 1.07(3)(b) must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days is available upon request. At its discretion, the Division may grant additional time for good cause upon request. The Division need not necessarily consider comments received after the closing date of the comment period.
- (4) How a decision will be made.
- (a) The Division will review the materials submitted under Rule 1.07(1), comments received under Rule 1.07(3), and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the Division will notify the applicant in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the Division deems necessary to remedy the inadequacy.
 - (b) Once the record is complete and adequate, the Division will determine whether the applicant has demonstrated valid existing rights. The decision document must explain how the applicant has or has not satisfied all applicable elements of the definition of valid existing rights in Rule 1.04(149). It will contain findings of fact and conclusions, and will specify the reasons for the conclusions.
 - (c) Impact of property rights disagreements. This paragraph applies only when an applicant's request relies upon one or more of the standards in paragraphs (a), (b)(i), and (b)(ii) of the definition of valid existing rights in Rule 1.04(149).
 - (i) The Division will issue a determination that the applicant has not demonstrated valid existing rights if the property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The Division will make this determination without prejudice, meaning that the applicant may refile the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under Rule 1.07(3)(a) or (c).
 - (ii) If the record indicates disagreement as to the accuracy of the applicant's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the Division will evaluate the merits of the information in the record and determine whether the applicant has demonstrated that the requisite property rights exist under paragraph (a), (b)(i), or (b)(ii) of the definition of valid existing rights in Rule 1.04(149), as appropriate. The Division will then proceed with the decision process under Rule 1.07(4)(b).

- (d) The Division will issue a determination that the applicant has not demonstrated valid existing rights if the applicant does not submit information that the Division requests under paragraph 1.07(2)(b) or 1.07(4)(a) within the time specified or as subsequently extended. The Division will make this determination without prejudice, meaning that the applicant may refile a revised request at any time.
- (e) After making a determination, the Division will:
 - (i) Provide a copy of the determination, together with an explanation of appeal rights and procedures, to the applicant, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).
 - (ii) Publish notice of the determination in a newspaper of general circulation in the county in which the land is located.
- (5) Administrative and judicial review. A determination that the applicant has or does not have valid existing rights is subject to Board Review under Rule 1.12, and administrative and judicial review under Sections 34-33-128 and 34-33-135 of the Act.
- (6) Availability of records. The Division, when a request subject to notice and comment under Rule 1.07(3) is made, will make a copy of that request available to the public in the same manner as the Division, when acting as the regulatory authority, must make permit applications available to the public under Rule 2.07.5. In addition, the Division will make records associated with that request, and any subsequent determination under Rule 1.07(4), available to the public in accordance with the requirements and procedures of Rule 1.09.

1.08 NOTICE OF CITIZEN SUITS

- (1) ***
- (2) A person who intends to initiate a civil action on his or her own behalf shall give notice of intent to do so, in accordance with 1.08.
- (3)-(4) ***
- (5) Service of notice under 1.08 is complete upon mailing to the last known address of the person being notified.
- (6)-(7) ***

1.09 AVAILABILITY OF RECORDS

1.010 COMPUTATION OF TIME

1.=11 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS

1.=11.1 Objective

1.=11.2 Responsibilities

1.=11.3 Penalties

- (1) Any person who knowingly violates the provisions of Section 34-33-122(9), C.R.S., as adopted in 1.=11.2(2) of these Rules, shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or both.

- (2) ***

1.=11.4 Who Shall File

1.=11.5 Where to File

1.=11.6 What to Report

1.=11.7 Gifts and Gratuities

1.=11.8 Resolving Prohibited Interests

1.=11.9 Appeals Procedure

1.=12 REQUESTS TO THE BOARD

1.=13 WATER RIGHTS

1.=14 LIMITATION ON THE EFFECT OF REGULATIONS REQUIRED BY FEDERAL LAW, RULES, OR REGULATIONS WHICH BECOME INEFFECTIVE

1.=15 DECLARATORY ORDERS (C.R.S., 24-4-105)

1.=16 GUIDELINES

1.=16.1 General

1.=16.2 Subject Matter

1.=16.3 Adoption

The Division shall develop guidelines as follows:

(1) ***

(2) Notice of proposed guidelines shall be given to all persons who are on the mailing list prepared in accordance with 1.=16.3(1), above.

(3)-(6)***

1.=16.4 Use of Guidelines

RULE 2 PERMITS

2.01 GENERAL REQUIREMENTS

2.01.1-2.01.2 ***

2.01.3 General Requirements for Permits for All Surface Coal Mining and Reclamation Operations

(1) Except as provided for in 2.01.3(2) and 2.01.3(5), on and after eight months from the date on which the Colorado regulatory program is approved by the Secretary of the Interior, which date is set forth by Rule of the Board, no person shall conduct, on lands within this State, any surface coal mining and reclamation operations unless such person has first obtained a valid permit issued under the applicable provisions of

these Rules. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

(2)-(6) ***

2.01.4 – 2.01.6 ***

2.02 GENERAL REQUIREMENTS FOR COAL EXPLORATION

2.02.1 Scope

2.02.2 Exploration Involving Removal of 250 Tons or Less of Coal

- (1) Any person who intends to conduct coal exploration during which 250 tons or less of coal will be removed from the area to be explored outside an approved permit area shall, prior to conducting the exploration, file with the Division a complete written notice of intention to explore. Exploration which will take place on lands designated as unsuitable for surface coal mining operations under Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e) shall be subject to the permitting requirements of Rule 2.02.3. Exploration conducted under a notice of intent shall be subject to the requirements of Rule 2.02.6.

(2)-(7) ***

2.02.3 General Requirements: Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining

Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored outside an approved permit area or who wishes to conduct coal exploration within an area which has been designated unsuitable for all or certain types of surface coal mining operations or Occurring on Lands Designated as Unsuitable for Surface Coal Mining shall, prior to conducting the exploration, obtain the written approval of the Board or Division, in accordance with the following:

- (1) Contents of complete application for approval. Each application shall contain, at a minimum, the following information:

(a)-(b) ***

- (c) An exploration and reclamation plan, including:

(i)-(iv) ***

- (v) A description of the measures to be used to comply with the applicable requirements of Rule 4.21.

(vi) If more than 250 tons are to be removed, a statement of why extraction of more than 250 tons of coal is necessary for exploration.

(d) ***

(e) A map at a scale of 1:24,000, or larger if requested by the Division, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied residential dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted within each quarter-quarter section (40AC.); water and coal exploratory holes to be drilled or altered within each quarter-quarter section (40AC.); earth or debris disposal areas; existing bodies of surface water; historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (U.S.C. 1531 et seq.), the Nongame, Endangered or Threatened Species Conservation Act (Section 33-8-101 et seq., C.R.S. as amended), Designated Natural Areas, National Natural Landmarks; and

(f) ***

(g) For any lands listed in Rule 2.07.6(2)(d), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e).

(2) ***

2.02.4 Applications: Approval or Disapproval of Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining

(1)-(2) ***

(3) ***

(a)-(c) ***

- (d) With respect to exploration activities on any lands protected under Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the Division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of Rule 2.07.6(2)(d) or 30 U.S.C. 1272(e), to comment on whether the finding is appropriate.

(4)-(5) ***

2.02.5 Applications: Notice and Hearing for Exploration Involving Removal of More Than 250 Tons of Coal or Occurring on Lands Designated as Unsuitable for Surface Coal Mining

(1) ***

(2) ***

2.02.6-2.02.8 ***

2.03 APPLICATION FOR PERMIT FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS: MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

2.03.1-2.03.2 ***

2.03.3 Format and Supplemental Information

(1)-(3) ***

- (4) All water quality sampling and laboratory analyses shall be conducted in accordance with the current edition of "Standard Methods for the Examination of Water and Wastewater", or the methodology in 40 CFR 136 and 434. "Standard Methods for the Examination of Water and Wastewater" is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association. This document is also available for inspection at the Division's Denver office.

This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. This rule does not include later amendments to or editions of the incorporated material. Certified copies of the material are available at cost upon request. The Division director can provide further information regarding how the incorporated material may be obtained or examined.

(5)-(9) ***

- (10) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of these Rules and the Act.

2.03.4 Identification of Interests

Each application shall contain the following information.

- (1) ***
- (2) The name, address, telephone number and taxpayer identification number of the:
- (a) Applicant;
 - (b) Any operator, if different from the applicant;
 - (c) Applicant's resident agent; and
 - (d) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business entity, the application shall also include the required information for every president, chief executive officer, and director (or other persons in similar positions) and every person who owns, of record, 10 percent or more of the entity.
- (3) a list of all names under which the applicant, operator, and partners or principal shareholders of the applicant or operator operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.
- (a) For any surface coal mining operations that the applicant or operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation the applicant or operator own or control on that date:
 - (i) The person's name, address, and taxpayer identification number;
 - (ii) The person's ownership or control relationship to the operation, including percentage of ownership and location in organizational structure;
 - (iii) The title of the person's position, date position was assumed, and when submitted under 2.07.7(5), date of departure from the position;

- (iv) the operation's Federal or State permit number, the regulatory authority with jurisdiction over the permit, and MSHA number with date of issuance; and
 - (b) For the applicant and the operator, the applicant must provide the application number and jurisdiction or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the applicant or operator in any state in the United States.
- (4) For any surface coal mining operation owned or controlled by the applicant or operator, every officer, partner, member, or director of the applicant or operator, person performing a function similar to a director, Person who owns, of record, 10 percent or more of the applicant or operator, or by any person who owns or controls the applicant or operator under the definition of "own, owner, or ownership" in Rule 1.04(83-1), the entity's:
- (a) Name, address, telephone number, identifying numbers, including employer identification number, Federal or State permit number, the regulatory authority, MSHA number, and the date of issuance of the MSHA number;
 - (b) Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure; and
 - (c) The date the entity began functioning in that position.
- (5) ***
- (6) Each permit application shall contain the names and addresses of:
- (a) Every legal or equitable owner of record of the property to be mined by surface coal mining activities, or for underground mining activities, areas to be affected by surface operations and facilities incidental thereto, and every legal or equitable owner of record of the coal to be mined;
 - (b) The holders of record of any leasehold interest in the property to be mined by surface coal mining activities, or for underground mining activities, area to be affected by surface operations and facilities incidental thereto, and any holders of record of any leasehold interest in the coal to be mined;
 - (c) Any purchaser of record under a real estate contract of the property to be mined by surface coal mining activities or for underground mining activities, areas affected by facilities incidental thereto, and any purchaser of record under a real estate contract of the coal to be mined;

- (7) ***
- (8) Each application shall contain the name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all structures that require MSHA approval, if any.
- (9) ***
- (10) The Division need not make a finding as provided for under Rule 2.07.9(3) before entering into AVS the information required to be disclosed under this section; however, the mere listing in AVS of a person identified in paragraph (3) or (4) of this Rule does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation. Challenges of information listed in AVS may be pursued as set forth in Rule 2.11.
- (11) Based on a complete permit application, the division will conduct the reviews required under RULES 2.03.4(12)(a), 2.03.4(12)(b)(i), and 2.03.4(12)(b)(ii). The Division will enter into AVS:
- (a) The information submitted under Rule 2.03.4.
 - (b) The information submitted under Rule 2.03.5 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

The Division will update the information referred to in this rule in AVS upon verification of any additional information submitted or discovered during the permit application review.

- (12) (a) The Division will rely upon the information submitted under Rule 2.03.4, information from AVS, and any other available information to review the permittee's and operator's organizational structure and ownership or control relationships. This review will be conducted before the Division can make a permit eligibility determination under Rules 2.07.6(1)(b) and 2.07.6(2)(g).
- (b) (i) The Division will rely upon the permit history information submitted under Rule 2.03.4(3), information from AVS, and any other available information to review The permittee's and operator's permit histories. The Division will conduct this review before making a permit eligibility determination under Rule 2.07.6(2)(g).
 - (ii) The Division will also determine if the permittee or operator has previous mining experience. If the permittee or operator does not have any previous mining experience, the Division may conduct an additional review under Rule 2.07.9(6). The purpose of this review will be to determine if someone else with mining experience controls the mining operation.

2.03.5 Compliance Information.

- (1) Each application shall contain:
 - (a) A statement of whether the applicant, permittee, operator, any subsidiary, affiliate, or entity owned or controlled by or under common control with the applicant, permittee or operator, has:
 - (i) Had a Federal or State mining permit for surface coal mining operations suspended or revoked in the last five years prior to the date of submission of the application; or
 - (ii) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.
 - (b) If any such suspension, revocation or forfeiture has occurred, a statement of the facts involved, including:
 - (i) Identification number and date of issuance of the permit or date and amount of bond or similar security;
 - (ii) Date of suspension, revocation, or forfeiture;
 - (iii) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;
 - (iv) The current status of the permit, bond, or similar security involved;
 - (v) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and
 - (vi) The current status of these proceedings.
 - (c) A list of all violation notices received by the applicant during the three year period preceding the application date, for any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.

For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

- (i) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
 - (ii) A brief description of the particular violation alleged in the notice;
 - (iii) The date, location and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by the applicant to obtain administrative or judicial review of the violations;
 - (iv) The current status of the proceedings and of the violation notice;
 - (v) The actions, if any, taken by the applicant to abate the violation; and
 - (vi) The final resolution of any notice of violation.
- (2) The Division will rely upon the violation information supplied by the permittee under Rule 2.03.5(1), a report from AVS, and any other available information to review histories of compliance with the Act or the applicable State regulatory program, and any other applicable air or water quality laws for:
- (a) the Permittee;
 - (b) the Operator;
 - (c) Operations owned or controlled by the permittee; and
 - (d) Operations owned or controlled by the operator.

This review will be conducted before the Division can make a permit eligibility determination under Rule 2.07.6(1)(b) and 2.07.6(2)(g).

- (3) (a) If the applicant has previously applied for a permit and the required information is already in AVS, the applicant may update the information required under this rule as follows:
- (i) If all or part of the information already in AVS is accurate and complete, then the applicant may certify to the Division by swearing or affirming, under oath and in writing, that the

relevant information in AVS is accurate, complete, and up to date.

- (ii) If Part of the information in AVS is missing or incorrect then the applicant must submit to the Division the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant submits is accurate and complete.
 - (iii) If the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant must include in the permit application the information required under this rule.
- (b) The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete.
 - (c) The Division may establish a central file to house an applicant's identity information, rather than place duplicate information in each of the permit application files. The Division will make the information available to the public upon request.
- (4) ***

2.03.6 ***

2.03.7 Relationship to Areas Designated Unsuitable for Mining

- (1) ***
- (2) If an applicant claims the exemption described in 7.02(3), the application shall contain information supporting the assertion that the has made substantial legal and financial commitments, in relation to the operation for which he or she is applying for a permit, prior to January 4, 1977. If the applicant has previously obtained a finding of the Secretary of the Interior or the Division Director acknowledging valid existing rights, or is in the process of applying for a valid existing rights determination on federal lands, the disposition of those proceedings shall be included in the application.
- (3) If an applicant proposes to conduct surface mining activities or conduct or locate surface operations or facilities within 300 feet measured horizontally of an occupied residential dwelling, the application shall contain the written waiver of the owner of the dwelling which states that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.

2.03.8-2.03.12 ***

2.04 APPLICATION FOR PERMIT FOR SURFACE OR UNDERGROUND MINING ACTIVITIES - MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

2.04.1-2.04.4 ***

2.04.5 General Description of Hydrology and Geology

- (1) Each application shall contain a description and map, prepared in accordance with Rule 2.10, of the geology, surface and ground water systems, including water quality and quantity, of all lands within the proposed permit area, the adjacent area, and the general area. The description shall include information on the characteristics of all surface and ground waters within the general area, and any water which will flow into or receive discharges of water from the general area. The description shall be prepared according to Rules 2.04.5 and 2.04.7, and conform to the following:
 - (a) Information on surface and groundwater systems including water quality, water quantity, and geology related to the hydrology of areas outside the permit area and within the general area shall be provided to the Division, to the extent that this data is available from an appropriate Federal or State agency. If this information is not available from those agencies, the applicant may gather and submit this information to the Division as part of the permit application.
 - (b) The permit shall not be approved by the Division until this information is made available in the application.

(2)-(3) ***

2.04.6 Geology Description

- (1) ***
- (2) Surface Mining
 - (a) ***
 - (b) (i)-(iii) ***
 - (iv) An applicant may request that the requirement for a statement of the results of the test borings or core samples be waived by the Division. The waiver may be granted only if the Division makes a written determination that the statement is unnecessary because other equivalent information is accessible to it in a satisfactory form. The source(s) of such equivalent information shall be referenced in the Division's written determination and the information itself shall be made readily accessible by the Division for public review as required by 1.09 if such

information has not been determined to be of a confidential nature in accordance with 2.02.7 and 2.07.5.

(3) Underground Mining

- (a) The description shall include a general statement of the geology (stratigraphy and structure) within the proposed area to be affected over the life of the operation, down to and including the first aquifer, and coal seam, if any, below the lowest coal seam to be mined. The geology for the areas proposed to be affected by surface operations and facilities, those surface lands underlain by the coal to be mined, and the coal to be mined shall be separately described as follows including a map and cross sections prepared to the standards of Rule 2.10 which shows:

(i)-(v) ***

(b) ***

2.04.7-2.04.11 ***

2.04.12 Prime Farmland Investigation.

- (1) For areas where mining was not authorized under permits issued or mining plans approved prior to August 3, 1977, the applicant shall conduct a preapplication investigation of the proposed permit area, or, in the case of underground mining, only those areas proposed to be disturbed by surface operations or facilities, to determine whether lands within the area may be prime farmland. The Division, following consultation with the U.S. Natural Resources Conservation Service, shall determine the nature and extent of the required prime farmland investigation.

- (2) Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

(a)-(e) ***

(f) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. Natural Resources Conservation Service; or

(g) Other factors as determined by the State Conservationist of the U.S. Natural Resources Conservation Service to show that the land is not prime farmland.

(3)-(4) ***

- (5) If the investigation indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall contact the U.S. Natural Resources Conservation Service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated prime farmland. If no

survey has been made for the lands proposed to be affected by surface operations or facilities, the applicant shall cause such a survey to be made in accordance with Rule 2.06.6(2).

(a) ***

(b) When a soil survey for lands within the proposed permit area, or, in the case of underground mining, only those areas proposed to be disturbed by surface operations or facilities contains soil map units which have not been designated as prime farmland after review by the U.S. Natural Resources Conservation Service, the applicant shall submit a request for negative determination for nondesignated land with the permit application establishing compliance with 2.04.12(2).

2.04.13 Annual Reclamation Report

(1) By February 15, or other such date as agreed on, each permittee shall file an annual reclamation report covering the previous calendar year for all areas under bond. The report shall include, but not be limited to—data, discussion and maps which address:

(a)-(f) ***

(2) ***

(3) For underground mines, the operator shall submit a map of the current location and extent of the active and inactive mine workings. Upon request of the operator, information submitted with the map may be held confidential, in accordance with Rule 2.07.5(1)(b).

2.05 APPLICATION FOR PERMIT FOR SURFACE OR UNDERGROUND MINING ACTIVITIES--MINIMUM REQUIREMENTS FOR OPERATION AND RECLAMATION PLANS

2.05.1-2.05.2 ***

2.05.3 Operation Plan - Permit Area

Each application shall contain a detailed description of the specific mining operations proposed to be conducted within the permit area. This description shall include, at a minimum, the following:

(1)-(2) ***

(3) Mine facilities.

(a)-(b) ***

(c) A description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

The description shall include a map, prepared in accordance with 2.10, appropriate cross sections, and the following:

- (i) ***
- (ii) A report of appropriate geotechnical analysis, where approval of the Division is required for alternative specifications, or for steep cut slopes under 4.03.1(3)(d)-or 4.03.2(3)(d).

(iii)-(vii) ***

(4) Ponds, impoundments, other treatment facilities and diversions.

- (a) General. A general plan and detailed design plan shall be submitted for each sediment pond, impoundment, other treatment facility and diversion proposed to be constructed within the permit area.

(i)-(v) ***

- (vi) All impoundments meeting the Class B or Class C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs" (TR60), shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of 30 CFR 77.216(a). TR60 and 30 CFR 77.216(a) are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

- (vii) Each plan for an impoundment which meets the Class B or Class C criteria in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs" (TR60) or meets the size or other criteria of 30 CFR 77.216(a) shall include a stability analysis of the structure. The stability analysis shall include, but shall not be limited to, strength parameters, pore pressure, and long term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods. TR60 and 30 CFR 77.216(a) are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(b)-(d) ***

(5)-(7) ***

(8) Coal Mine Waste And Non-Coal Waste.

A narrative explaining the construction, modification, use, maintenance, removal, and reclamation of coal mine waste and non-coal waste removal, handling, storage, transportation and disposal areas and structures in the permit area in accordance with Rules 4.10 and 4.11 including appropriate maps, which meet the requirements of Rule 2.10, explaining the location of each source of waste, waste storage area, and waste disposal facility.

(a) Each application shall contain a general plan and detailed design plan for each coal mine waste and non-coal waste bank, dam, or embankment proposed to be constructed within the permit area.

(i) – (iv) ***

(v) All impoundments meeting the Class B or Class C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs" (TR60), shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the 30 CFR 77.216(a). TR60 and 30 CFR 77.216(a) are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(vi) Each plan for an impoundment which meets the Class B or Class C criteria in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October 1985), "Earth Dams and Reservoirs" (TR60) or meets the size or other criteria of 30 CFR 77.216(a) shall include a stability analysis of the structure. The stability analysis shall include, but shall not be limited to, strength parameters, pore pressure, and long term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods. TR60 and 30 CFR 77.216(a) are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(b)-(c) ***

(9) ***

2.05.4 Reclamation Plan

- (1) ***
- (2) Each plan shall contain the following information for the proposed permit area, including any roads which are to be removed, or modified for retention as part of the post-mining land use:
 - (a)-(b) ***
 - (c) A plan for backfilling, soil stabilizing, compacting, and grading with postmining contour maps and appropriate cross sections that are typical and representative of the anticipated character of the final surface configuration of the proposed permit area, in accordance with 4.14, for closure of underground openings in accordance with 4.05.10 and 4.07.3, for stream channel reconstruction in accordance with 4.05.4, and for road removal or modification in accordance with 4.03.
 - (d)-(h) ***

2.05.5 ***

2.05.6 Mitigation of the Impacts of Mining Operations.

- (1)-(3) ***
- (4) Protection of public parks and historic places.
 - (a) For any publicly owned park or any place listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each application shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the Division and the other agencies as required in Rule 2.07.6(2)(-d)(iv).
 - (b) ***
- (5) ***
- (6) Subsidence Survey, Subsidence Monitoring, and Subsidence Control Plan.
 - (a) For underground mining activities the application shall include an inventory of all structures, renewable resource lands and drinking, domestic, or residential water supplies which exist within the proposed permit and adjacent area.
 - (i) If no such structures, renewable resource lands, or drinking, domestic or residential water supplies exist, no further information need be provided in the application under this Rule.

- (ii) If such structures, renewable resource lands, or drinking, domestic or residential water supplies exist, the application shall include:
 - (A) A brief description of all structures, renewable resource lands, and drinking, domestic or residential water supplies which exist within the proposed permit and adjacent area, describing specifically the pre-subsidence condition of any occupied residential dwelling and any structure related thereto and any noncommercial building. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner, in writing, of the effect that denial of access will have in establishing the pre-subsidence condition to determine whether any subsequent damage to protected structures was caused by subsidence from underground mining under Rule 4.20.3(2); and
 - (B) An appropriate map, prepared according to RULE 2.10, with the exception that the map shall be at a scale of 1:12,000 or larger if determined necessary by the Division, showing the location and configuration of structures, renewable resource lands, and drinking, domestic or residential water supplies within the permit and adjacent area, identifying specifically any occupied residential dwelling, any structure related thereto, any noncommercial building, and any drinking, domestic or residential water supply.
 - (iii) Any technical assessments, engineering evaluations, or pre-subsidence inventories or surveys used to determine the pre-subsidence condition of any occupied residential dwelling, any structure related thereto, or any noncommercial building, or used to determine the pre-subsidence quality or quantity of any drinking, domestic or residential water supply, shall be paid for, performed, or otherwise obtained by the applicant.
 - (iv) Copies of any pre-subsidence inventories and surveys, technical assessments, and engineering evaluations, related to occupied residential dwellings and structures related thereto, noncommercial buildings, or drinking, domestic or residential water supplies shall be submitted to the Division and provided by the applicant to property owners at their request.
- (b) If structures, renewable resource lands, or drinking, domestic or residential water supplies are determined to exist within the

proposed permit and adjacent area, the application shall include a description of the worst possible consequences that subsidence, if it occurred, could create for such structures, renewable resource lands, or drinking, domestic or residential water supplies.

- (i) This description of worst possible consequences shall include:
 - (A) A brief description of pre- and postmining land uses of the permit and adjacent area, as described pursuant to Rules 2.04.3 and 2.05.5;
 - (B) ***
 - (C) A brief description of material subsidence damage, diminution of reasonably foreseeable use of structures and renewable resource lands or contamination, diminution or interruption of drinking, domestic or residential water supplies which could result from the occurrence of the subsidence related phenomena described in accordance with RULE 2.05.6(6)(b)(i)(B), including consideration of the definitions and considerations contained in Rules 2.05.6(6)(e)(ii)(A),(B), and (C).
- (ii) If the description of worst possible subsidence consequences, prepared in accordance with Rule 2.05.6(6)(b)(i), determines that no material subsidence damage, diminution of reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution or interruption of drinking, domestic or residential water supply could result in the event of mine subsidence within the permit and adjacent areas, and if the Division concurs with that conclusion, the application shall include a monitoring program designed to determine the accuracy of that conclusion, as described in Rule 2.05.6(6)(c).
- (iii) If the description of worst possible subsidence consequences, prepared in accordance with Rule 2.05.6(6)(b)(i), determines that material subsidence damage, diminution of reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution or interruption of a drinking, domestic or residential water supply could result in the event of mine subsidence within the permit and adjacent areas, the application shall include additional information as required by either one of the following:
 - (A) A subsidence survey, as described in Rule 2.05.6(6)(e); or

- (B) A subsidence control plan, as described in Rule 2.05.6(6)(f).
- (c) Subsidence Monitoring Program.
 - (i) The monitoring program shall be designed to determine the commencement and magnitude of subsidence movements which occur and shall include the following monitoring techniques:
 - (A)-(D) ***
 - (E) Monitoring of drinking, domestic and residential water supplies shall be conducted in accordance with the plan for the collection, recording, and reporting of ground and surface water quality data described in Rules 2.05.6(3)(b)(iv) and 4.05.13, and results of monitoring of drinking, domestic and residential water supplies shall also be submitted with the subsidence monitoring program report.
 - ~~(F)~~ Results of the monitoring program shall be submitted to the Division at least semi-annually.
 - ~~(G)~~ The monitoring program shall be designed to extend for a time, beyond cessation of mining in any area, consistent with the need for verification of the subsidence prediction.
 - (ii) The application shall include an appropriate map, prepared according to the standards of Rule 2.10, with the exception that the map shall be at a scale of 1:12,000 or larger if determined necessary by the Division, showing the location of monuments to be installed and monitored, the location of any structure to be monitored, and the location of any drinking, domestic or residential water supply to be monitored within the permit and adjacent area.
- (d)
 - (i) If a subsidence monitoring program determines, in the opinion of the Division, that the subsidence prediction was inaccurate and that material subsidence damage, diminution of reasonably foreseeable use of structures or renewable resource lands or contamination, diminution or interruption of a drinking, domestic or residential water supply may occur, the permittee will be required to submit a subsidence control plan, as defined in Rule 2.05.6(6)(f).
 - (ii) In order to protect structures, renewable resource lands, and drinking, domestic or residential water supplies within the permit and adjacent area, the Division, after

consultation with the permittee, shall suspend underground coal mining near structures or renewable resource lands, if imminent danger of material subsidence damage or diminution of reasonably foreseeable use is determined to exist.

(e) A subsidence survey, prepared by appropriately qualified professionals in accord with the current state-of-the-art of subsidence prediction technology, shall contain the following information:

(i) A detailed description of subsidence predicted to occur within the permit and adjacent area, including:

(A)-(E) ***

(F) Appropriate maps, prepared according to the standards of Rule 2.10, with the exception that the map shall be at a scale of 1:12,000 or larger if determined necessary by the Division, showing:

(I) ***

(II) ***

(III) The ground surface areal extent of an area determined by the projection of the angle-of-draw, if predicted pursuant to Rule 2.05.6(6)(e)(i)(E) or 45°, if no prediction is made by the applicant, from the limits of the proposed mine workings to the ground surface; and

(IV) ***

(ii) A detailed description of material subsidence damage or diminution of reasonably foreseeable use of structures and renewable resource lands which could result from the occurrence of subsidence related phenomena predicted in accordance with Rule 2.05.6(6)(e)(i)(D) within the permit and adjacent area, including consideration of the following:

(A) with respect to structures, changes which make it technologically or economically infeasible to promptly restore the affected structures to the condition they would be in if subsidence had not occurred.

(B) with respect to renewable resource lands, changes which disrupt an aquifer, or a recharge area to an aquifer, which serves as a beneficial use of water

or changes which make it technologically or economically infeasible to restore the productivity of the affected renewable resource lands, expressed in terms of food, fiber or forage, to the level it would be if subsidence had not occurred.

- (C) with respect to diminution of reasonably foreseeable use of structures or renewable resource lands within the permit and adjacent area, the description shall consider the capability of those structures and lands, before and after subsidence occurrence, to support those uses described in Rule 2.05.6(6)(b)(i)(A), giving consideration to factors such as soil and foundation characteristics, topography, vegetative cover, surface hydrology and groundwater hydrology.
- (iii) If the subsidence survey determines that no material subsidence damage, diminution of reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution or interruption of drinking, domestic or residential water supplies could result in the event of subsidence predicted to occur within the permit and adjacent area, and the Division concurs with that conclusion, the application shall include a subsidence monitoring program, consistent with Rule 2.05.6(6)(c), designed to determine the accuracy of the subsidence prediction required by Rule 2.05.6(6)(e)(i)(D).
- (iv) If the subsidence survey determines that material subsidence damage, diminution of reasonable foreseeable use or contamination, diminution or interruption of a drinking, domestic or residential water supply could result in the event of subsidence predicted to occur within the permit and adjacent area, or if the Division determines that such damage or diminution could occur, the application shall include a subsidence control plan as described in Rule 2.05.6(6)(f).
- (f) A subsidence control plan, prepared by appropriately qualified professionals, shall contain the following information:
 - (i)-(ii) ***
 - (iii) A detailed description of the measures to be taken to prevent subsidence from causing material subsidence damage, or lessening the value or reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution, or interruption of drinking, domestic, or residential water supplies, including:

- (A) The technique of coal removal, such as longwall mining, room and pillar removal, hydraulic mining or other methods, including the size, sequence, and timing for the development of underground workings as required by Rule 2.05.3(2)(b); and
 - (B) ***
 - (C) Measures to be taken on the surface to prevent material subsidence damage or lessening of the value or reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution, or interruption of drinking, domestic, or residential water supplies including such measures as:
 - (I)-(IV) ***
 - (V) Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material subsidence damage.
- (iv) A detailed description of the measures to be taken to mitigate the effects of any material subsidence damage, diminution of value or reasonably foreseeable use of structures or renewable resource lands, or contamination, diminution or interruption of drinking, domestic or residential water supplies which may occur, including one or more of the following as required in Rule 4.20.3(4):
- (A) Restoration, replacement, or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.
 - (B)-(C) ***
 - (D) Purchase before mining of non-cancellable premium pre-paid insurance policies payable to the surface owner in the full amount of the possible material subsidence damage, or diminution of reasonable foreseeable use of structures or renewable resource lands or other comparable measures.
 - (E) Promptly replace, as required in Rule 4.05.15(2), any drinking, domestic or residential water supply that is contaminated, diminished, or interrupted by underground mining activities.

- (v) A detailed description of measures to be taken to determine the degree of material subsidence damage; or diminution of value or reasonably foreseeable use of structures or renewable resource lands; or of contamination, diminution or interruption of drinking, domestic or residential water supplies, including such measures as:
 - (A) The results of pre-subsidence surveys of all structures, surface features, renewable resource lands, and drinking, domestic or residential water supplies which might be materially damaged, or contaminated, diminished, or interrupted by subsidence.
 - (B) ***
- (vi) Appropriate maps, prepared according to the standards of Rule 2.10, with the exception that the map shall be at a scale of 1:12,000 or larger if determined necessary by the Division, showing the underground workings, the location of any facilities, structures, renewable resource lands, or drinking, domestic or residential water supplies proposed for subsidence control, and the location and extent of areas in which planned-subsidence mining methods will be used including all areas where measures will be taken to prevent or minimize subsidence and subsidence-related damage.
- (vii) ***

2.06 REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

2.06.1-2.06.5 ***

2.06.6 Prime Farmlands.

- (1) ***
- (2) Application contents for prime farmland. If land within the proposed permit area is prime farmland under 2.04.12, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:
 - (a) A soil survey of the permit area according to standards established by the U.S.D.A. Natural Resources Conservation Service for the National Cooperative Soil Survey. These standards are described in the National Soil Survey Handbook (Soil Survey Staff, 2001).

(i) This publication is hereby incorporated by reference as it exists on the date of adoption of these rules and does not include later amendments to or editions of this publication. The National Soil Survey Handbook is available for inspection at the Division's Denver office, at the Denver office of the U.S.D.I. Office of Surface Mining Reclamation and Enforcement, and at the Colorado state office and web site of the U.S.D.A. Natural Resources Conservation Service.

(ii) ***

(b)-(h) ***

(3) Consultation with the State Conservationist of the U.S. Natural Resources Conservation Service. Before any permit is issued for areas that include prime farmlands, the Division shall consult with the State Conservationist of the U.S. Natural Resources Conservation Service. The Conservationist shall be provided, for review and comment, the proposed method of soil reconstruction in this plan submitted under Rule 2.06.6(2).

(4) Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the Division, if it first finds, in writing, upon the basis of a complete application that:

(a) ***

(b) The permit incorporates as specific conditions the contents of the plan submitted under Rule 2.06.6(2) after consideration of any revisions to that plan suggested by the State Conservationist of the U.S. Natural Resources Conservation Service under Rule 2.06.6(3);

(c)-(d) ***

2.06.7 ***

2.06.8 Surface Coal Mining and Reclamation Operations on Areas, or Adjacent to Areas, Including Alluvial Valley Floors

(1) Scope. Rule 2.06.8 applies to each person who conducts or intends to conduct surface coal mining and reclamation operations in, adjacent to or under a valley holding a stream.

(2)-(4) ***

(5) (a) ***

(b) (i) ***

(ii) For surface coal mining and reclamation operations which satisfy the requirements of 2.06.8(5)(b)(i) above, the geographic extent of lands eligible for such exemption shall be limited to:

(A) ***

(B) For underground mining activities,

I. The actual extent of the mine workings on August 3, 1977, and

II. adjacent lands for which there existed substantial demonstrable financial or regulatory commitment on August 3, 1977. This will be determined by the Division on a case-by-case basis using all available information.

(c) ***

(6) ***

2.06.9-2.06.12 ***

2.07 PUBLIC PARTICIPATION AND APPROVAL OF PERMIT APPLICATIONS

2.07.1 Scope

This rule establishes the requirements for:

(1) ***

(2) The review of permit applications and decisions on these applications by the Division and Board;

(3) Approval or disapproval of permits to conduct surface coal mining and reclamation operations and for the terms and conditions of permits issued;

(4) Identification and management of improvidently issued permits; and

(5) post-permit issuance requirements for the Division and applicant.

2.07.2 ***

2.07.3 Government Agency and Public Comments on Permit Applications

(1) ***

- (2) At the time of submission of an application for a permit, permit revision, technical revision, or renewal of an existing permit, the applicant shall submit to the Division the proposed public notice announcing the filing of the application. The notice shall include, at a minimum, the information described in paragraphs (a) through (h) of this rule. Upon notification to the applicant that the application for a permit, permit revision, or renewal is complete, the applicant shall place the notice in a local newspaper of general circulation in the locality of said operation. This notice shall be published at least once a week for four consecutive weeks and shall contain, at a minimum, the following information:
 - (a) The name and business address of the applicant;
 - (b)-(g) ***
 - (h) an application for a permit revision or technical revision shall include in the notice a written description of the proposed revision and a map or description clearly identifying the lands specifically subject to the revision.
- (3) (a) Upon receipt of a complete application for a permit, a permit revision, or permit renewal, the Division shall issue written notification of:
 - (i)-(iv) ***
 - (b)-(c) ***
- (4)-(6) ***

2.07.4 Division and Board Procedures for Review of Permit Applications

- (1) ***
- (2) Proposed Decision by the Division on an application for a permit, permit revision, or permit renewal.
 - (a)-(d) ***
 - (e) The applicant may file the required performance bond anytime within three calendar years of a proposed or final decision granting a permit. However, such performance bond must be filed and approved prior to the issuance of the permit. For applications approved on or after the effective date of this Rule, the Division will review the terms of the original permit approval if the performance bond is not submitted within three calendar years of the final approval. At that time, The Division may reaffirm the approval or request updated and/or additional information.
 - (i) Updated or revised information will be subject to the notification and review requirements of Rule 2.07.

- (ii) If the applicant does not respond to the Division's request within 90 days, the Division will reissue a proposed decision to deny the application. Notice of the Division's proposed decision to deny the permit will be provided as set forth in Rule 2.07.4(2)(c) and (d), and any objections to the decision shall be submitted as set forth in Rule 2.07.4(3).
 - (f) Within ten days after the granting of a permit, including the filing of the performance bond which complies with Rule 3, the Division shall notify the local government officials in the local political subdivision in which the area of land to be affected is located, that a permit has been issued and shall describe the location of all the lands within the permit area.
- (3) Formal hearing by the Board.
- (a)-(c) ***
 - (d) When a formal hearing is requested, the Board may grant such temporary relief as it deems appropriate pending final determination of the proceedings if:
 - (i)-(iii) ***
 - (iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part by the Division, except that continuation under an existing permit may be allowed where the operation has a valid permit issued under section 114 of the Act.
 - (e) ***
 - (f) Ex parte contacts between representatives of the parties appearing before the Board and the Board shall be prohibited.
 - (g) Judicial appeal. If any applicant or any person with an interest which is or may be adversely affected who has participated in the administrative proceedings as an objector is aggrieved by the decision of the Board or if the Division or Board fails to act within the time limits specified in the Act, such applicant or person shall have the right to appeal in accordance with Section 34-33-128, C.R.S.
 - (h) Notwithstanding any of the foregoing provisions of Rule 2.07, no time limit under the Act or Rule 2.07 requiring the Board or Division to act shall be considered expired from the time the Board or Division initiates a proceeding under Rule 2.07.6(1)(e) until the final decision of the hearing body.

2.07.5 ***

2.07.6 Criteria for Review of Permit Applications for Permit Approval or Denial

- (1) Review of permit applications.
 - (a)
 - (i) The Division shall review the complete application and written comments, written objections submitted, and records of any informal conference held under Rule 2.07.3(6).
 - (ii) ***
 - (b) Based on the reviews required under Rules 2.03.4(12) and 2.03.5(2), the Division will determine whether the applicant is eligible for a permit under Rules 2.07.6(2)(g), and 2.07.6(2)(o) AND 34-33-114(3). Except as provided in 2.07.6(1)(g), the Division shall not issue the permit if any surface coal mining and reclamation operation that is:
 - (i) directly owned or controlled by the applicant has an unabated or uncorrected violation; or
 - (ii) indirectly controlled by the applicant or operator has an unabated or uncorrected violation and that control was established or the violation was cited after November 2, 1988.
 - (c) The Division will not issue a permit if the applicant or operator is permanently ineligible to receive a permit under Rule 2.07.9(3).
 - (d) If the applicant is deemed ineligible for a permit under this Rule, the Division will send written notification of its decision. The notice will tell why the applicant is ineligible and include notice of the applicant's appeal rights under Rule 2.07.4(3) and 34-33-128 C.R.S.
 - (e) Before any final determination of approval or denial of the permit application by the Division or the Board, the applicant, or any person who owns or controls the applicant, or the operator specified in the application whom the Division finds controls or has controlled mining operations with a demonstrated pattern of willful violation of the Act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the Act, shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for by 2.07.4(3)(b)-2.07.4(3)(-g).
 - (f) After final approval of a permit under Rule 2.07.6(2), the Division will not issue the permit until the information update and certification requirement of Rule 2.03.5(3) is received. Upon fulfillment of that requirement, the Division will again request a compliance history report from AVS to determine if there are any

unabated or uncorrected violations which affect permit eligibility under paragraphs (b) and (c) of this Rule. The Division will request this report no more than five business days before permit issuance under Rule 2.07.4.

- (g) (i) This Rule applies if an applicant owns or controls a surface coal mining and reclamation operation with:
 - (A) A notice of violation issued pursuant to Rule 5.03.2(2) or under a Federal or State program for which the abatement period has not yet expired; or
 - (B) A violation that is unabated or uncorrected beyond the abatement or correction period.
- (ii) The Division will find the applicant eligible for a provisionally issued permit under this Rule if the applicant demonstrates that one or more of the following circumstances exists with respect to all violations listed in paragraph (g)(i)(A) of this Rule:
 - (A) For violations meeting the criteria of paragraph (g)(i)(A) of this section, the applicant certifies that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and the Division has no evidence to the contrary.
 - (B) As applicable, the applicant, the operator, and operations that the applicant or operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation.
 - (C) The applicant is pursuing a good faith:
 - (I) Challenge to all pertinent ownership or control listings or findings under Rules 2.11.1 through 2.11.4; or
 - (II) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.
 - (D) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial

judicial decision affirming the violation and that decision remains in force.

- (iii) The Division will consider a provisionally issued permit to be improvidently issued, and must immediately initiate procedures under Rules 2.07.8(2) and 2.07.8(3) to suspend or rescind that permit, if:
 - (A) Violations included in paragraph (g)(i)(A) of this rule are not abated within the specified abatement period;
 - (B) The applicant, operator, or operations that the applicant or operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (g)(ii)(B) of this rule;
 - (C) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (g)(ii)(C) or (D) of this section affirms the validity of the violation or the ownership or control listing or finding; or
 - (D) The initial judicial review decision referenced in paragraph (g)(ii)(C)(I) or (g)(ii)(D) of this rule affirms the validity of the violation or the ownership or control listing or finding.

(2) Criteria for permit approval or denial.

No permit or permit revision application shall be approved, unless the application affirmatively demonstrates and the Division or Board finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

(a)-(c) ***

(d) The affected area is, subject to valid rights existing as determined under Rule 1.04(149), and with the further exception of those lands within the approved permit boundaries of surface coal mining operations which permit boundaries were in existence at the time the land came under the protection of this rule OR 30 U.S.C. 1272(e).:

(i) reserved.

(iii) Not on any lands subject to the following prohibitions or limitations:

(A) On any lands within the boundaries 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, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors established in any guidelines issued under that act; or National Recreation Areas designated by Act of Congress;

(B)-(C) ***

(D) On any Federal lands within the boundaries of any national forest; except that surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations, and:

(I) Surface operations and impacts are incident to an underground coal mine; or

(II) Where the Secretary of the United States Department of Agriculture determines, with respect to lands in national forests which do not have significant forest cover, that surface mining is in compliance with the "Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. 528–531" as amended, the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq. and the provisions of the Act;

(III) If a person intends to rely upon the exception provided in paragraph D, above, approval from the Secretary of the Interior must be obtained. Procedures for obtaining Secretarial approval are set forth in 30 CFR §761.13. The Division may not issue the permit or approve a boundary revision before the Secretary makes the findings required by 30 CFR §761.11(b).

(E) ***

(iv) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road except where mine access roads or haul roads join such right-of-way line or

where the applicant proposes to relocate or close any public road. The Division or Board shall only allow such relocation or closure or affected area within 100 feet, measured horizontally, of the public road if the Division, or the appropriate public road authority, pursuant to being designated as the responsible agency by the Division, allows the public road to be relocated, closed, or the affected area to be within 100 feet, measured horizontally, of such road, after public notice and an opportunity for a public hearing in accordance with 2.07.6(2)(d)(iv)(A) and (B).

(A)-(D) ***

- (v) Not within 300 feet measured horizontally from any occupied residential dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet which states that the owner and signatory had the legal right to deny mining and knowingly waived that right. Valid waivers existing as of August 3, 1977 shall be considered binding for purposes of Rule 2.07.6(2)(d)(v) and binding subsequent purchasers of such valid waivers by prior owners. The waiver must be separate from a lease or deed unless the lease or deed contains an explicit waiver. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state laws or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

- (vi) Not within any lands where the proposed operations would adversely affect any publicly owned park or any place listed on or those places eligible for listing, as determined by the SHPO, on the National Register of Historic Places, unless approved jointly by the Board and the Federal, State, or local agency with jurisdiction over the park or place. Where the proposed surface coal mining operation may adversely affect any publicly owned park or place listed on or those places eligible for listing, as determined by the SHPO, on the National Register of Historic Places, the Division or Board shall transmit to the Federal, State, or local agencies with jurisdiction over the park or historic site a copy of the complete application containing the following:
 - (A) A request for the agency's approval or disapproval of the operations;

(B) A notice to the appropriate agency that it must respond within 30 days from the receipt of the request.

- =(e) The proposed permit area is
 - (i) Not included within an area designated unsuitable for surface coal mining operations in an administrative proceeding begun under Rule 7 or 30 CFR 769.
 - (ii) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under Rule 7 or 30 CFR 769 unless the applicant demonstrates that, before January 4, 1977, he or she has made substantial financial and legal commitments in the relation to the operation for which he or she is applying for a permit.
- (f) For operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under Rule 2.03.6(2).
- (g) The applicant is eligible to receive a permit, based on the reviews under Rules 2.03.4(11) and (12), 2.03.5(2), 2.07.4(2)(b), and 2.07.6(1).
- (h) ***
- (i) ***
- (j) The applicant will submit the performance bond required under the Rule 3, prior to the issuance of permit.
- (k) The applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of Rules 2.06.6 and 2.06.8, excluding undeveloped range lands which are not significant to farming on said alluvial valley floors and those lands upon which the Board finds that the farming which will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on said land's agricultural production.
- (l) The proposed postmining land use of the permit area has been approved by the Division in accordance with the requirements of Rule 4.16.
- (m) ***
- (n) ***

- (o) ***
- (p) The applicant has satisfied the applicable requirements of Rules 4.23 through 4.29 (requirements for special categories of mining).
- (q) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of Rules 4.15.1(2)(c), 4.15.7(3)(b)(i), 4.15.8(1)(a), 4.15.9, and 4.25.5(2).

2.07.7 ***

2.07.8 Improvidently issued permits.

- (1) Initial review and finding requirements for improvidently issued permits.
 - (a) If the Division has reason to believe that a permit was improvidently issued, the Division must review the circumstances under which the permit was issued. The Division will make a preliminary finding that the permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing section 114(3) of the Act in effect at the time of permit issuance, the permit should not have been issued because the permittee or operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.
 - (b) The Division will make a finding under paragraph (a) of this rule only if the permittee or operator:
 - (i) Continue to own or control the operation with the unabated or uncorrected violation;
 - (ii) The violation remains unabated or uncorrected; and
 - (iii) The violation would cause the permittee to be ineligible under the permit eligibility criteria in the current Rules and Regulations.
 - (c) When the division makes a preliminary finding under paragraph (a) of this rule, the Division must serve the permittee with a written notice of the preliminary finding which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.
 - (d) Within 30 days of receiving a notice under paragraph (c) of this rule, the permittee may challenge the preliminary finding by providing the Division with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this rule.

- (e) The provisions of Rules 2.11.1 through 2.11.3 apply when a challenge under paragraph (d) of this rule concerns a preliminary finding under paragraphs (a) and (b)(i) of this rule that the permittee currently owns or controls, or owned or controlled, a surface coal mining operation.
- (2) Notice requirements for improvidently issued permits.
- (a) The Division must serve the permittee with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension or rescission, if:
 - (i) After considering any evidence submitted under Rule 2.07.8(1)(d) the Division finds that a permit was improvidently issued under the criteria in paragraphs (a) and (b)(1) of Rule 2.07.8(1); or
 - (ii) The permit was provisionally issued under Rule 2.07.6(1)(g)(ii) and one or more of the conditions in Rule 2.07.6(1)(g)(iii)(A) through (D) exists.
 - (b) The Division will provide 60 days notice if a decision is proposed to suspend a permit.
 - (c) The Division will provide 120 days notice if a decision is proposed to rescind a permit.
 - (d) If the permittee wishes to appeal the notice, he/she must exhaust administrative remedies under Rule 2.07.4(3).
 - (e) After the Division serves a notice of proposed suspension or rescission under this Rule, action will be taken under Rule 2.07.8(3).
 - (f) The regulations for service at Rule 5.03.4 will govern service under this section.
 - (g) The times specified in paragraphs (b) and (c) of this rule will apply unless the permittee obtains temporary relief from the Board pursuant to Rule 2.07.4(3)(d).
- (3) Suspension or rescission requirements for improvidently issued permits.
- (a) Except as provided in paragraph (b) of this Rule, the Division must suspend or rescind a permit upon expiration of the time specified in Rule 2.07.8(2)(b) or (c) of these Rules unless the permittee submits evidence and the Division finds that:

- (i) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;
 - (ii) The permittee or operator no longer own or control the relevant operation;
 - (iii) The Division's finding for suspension or rescission was in error;
 - (iv) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);
 - (v) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or
 - (vi) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).
- (b) If the permittee has requested administrative or judicial review of a notice of proposed suspension or rescission under Rule 2.07.8(2)(e), the Division will not suspend or rescind a permit unless and until the Board or court affirms the Division's finding that the permit was improvidently issued.
- (c) When the Division suspends or rescinds a permit under this section, the Division must:
- (i) Issue the permittee a written notice requiring the permittee to cease all surface coal mining operations under the permit; and
 - (ii) Post the notice at the Division office.
- (d) If the Division suspends or rescinds a permit under this rule, the permittee may request administrative review of the notice under the procedures at Rule 2.07.4.

2.07.9 Post-permit issuance requirements for the Division and other actions based on ownership, control, and violation information.

- (1) For the purposes of future permit eligibility determinations and enforcement actions, the Division must enter into AVS:
 - (a) Permit records within 30 days of a permit being issued or subsequently changed.

- (b) Unabated or uncorrected violations within 30 days of the expiration of the abatement or correction period for the violation.
 - (c) Changes to information initially required to be provided by the applicant under Rule 2.03.4 within 30 days of receiving notice of a change.
 - (d) Changes in violation status within 30 days of abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.
- (2) If, at any time, the Division discovers that any person owns or controls an operation with an unabated or uncorrected violation, the Division will determine whether enforcement action is appropriate under Rule 5.03.2, 5.05, or 5.06. The Division must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.
- (3) The Division must serve a preliminary finding of permanent permit ineligibility under section 114(3) of the Act on an applicant or operator, if the criteria in paragraphs (3)(a) and (3)(b) are met. In making a finding under this paragraph, the Division will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under Rules 2.07.6(1)(b)(i) and (ii) and Rule 2.07.6(1)(c). The Division must make a preliminary finding of permanent permit ineligibility if it finds that:
- (a) The applicant or operator control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 114(3) of the Act; and
 - (b) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant or operator's intent not to comply with the Act, its implementing regulations, the regulatory program, or his/her permit.
- (4) The applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility under Rule 2.07.4.
- (5) Entry into AVS.
- (a) If no request for a hearing is made, and the time for seeking a hearing has expired, the Division will enter its finding into AVS.
 - (b) If a hearing is requested, the Division will enter its finding into AVS only if that finding is upheld on administrative appeal.
- (6) At any time, the Division may identify any person who owns or controls a surface coal mining and reclamation operation or any relevant portion or aspect thereof. If the Division identifies such a person, the Division must issue a written preliminary finding to the person and the applicant or

permittee describing the nature and extent of ownership or control. The Division's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

- (7) After the Division issues a written preliminary finding under paragraph (6) of this rule, the Division will allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate his/her lack of ownership or control. If after reviewing any information submitted, the Division is persuaded that he/she is not an owner or controller, the Division will serve the person a written notice to that effect. If, after reviewing any information the person submits, the Division still finds that he/she is an owner or controller, or if the person does not submit any information within the 30-day period, the Division will issue a written finding and enter that finding into AVS.
- (8) If the Division identifies a person as an owner or controller under paragraph (7) of this section, he/she may challenge the finding using the provisions of Rules 2.11.1, 2.11.2, and 2.11.3.

2.07.10 Post-permit issuance information requirements for permittees.

Within 60 days of any addition, departure, or change in position of any person identified in Rule 2.03.4(3), The permittee must provide:

- (1) The information required under Rule 2.03.4(4); and
- (2) The date of any departure.

2.08 PERMIT REVIEW, REVISIONS AND RENEWALS AND TRANSFER, SALE AND ASSIGNMENT

2.08.1-2.08.3 ***

2.08.4 Revisions to a Permit

(1)-(4) ***

- (5) Application requirements. An application for all types of revisions to a permit shall contain:

(a)-(d) ***

- (6) **Review and Notification Requirements for Revisions to a Permit**

- (a) Permit revision. An application for a permit revision shall be subject to the requirements of Rule 2.07.
- (b) Technical Revision.

(i) An applicant for a technical revision shall place an advertisement in a local newspaper pursuant to the requirements of Rule 2.07.3(2), except that the publication need only be once and no reference to an informal conference shall be made. The applicant shall make a copy of his or her complete application for the public to inspect and copy. This shall be done by filing a copy of the application with the recorder at the courthouse of the county closest to the surface coal mining operations, or if approved by the Division, at another equivalent public office, if it is determined that the office will be more accessible to local residents than the county courthouse. The public copy shall be filed at the same time as the advertisement. The Division shall issue written notification of the complete technical revision application to federal and state agencies and various local governmental bodies with jurisdiction over or an interest in the area of the proposed operations.

(ii)-(iii) ***

(c) ***

2.08.5 Right of Successive Renewal

(1) (a) ***

(b) Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and be subject to the requirements of Rule 2.08.4.

(c) ***

(d) If the surface coal mining and reclamation operations authorized under the original permit were not subject to the standards contained in 34-33-114(2)(e)(I)(A) and (B) of the Act and 2.06.8, because the permittee complied with the exception provided in 34-33-114(2)(e)(II) of the Act (for surface coal mining operations located within or adjacent to alluvial valley floors and producing coal in commercial quantities in the year proceeding August 3, 1977, or operations that had obtained permit approval to mine within said alluvial valley floors), the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted for the original permit shall not be subject to the standards contained in 34-33-114(2)(e)(I)(A) and (B) of the Act and 2.06.8.

(2)-(3) ***

2.08.6 Transfer, Assignment or Sale of Permit Rights

(1)-(3) ***

(4) The Division may, upon the basis of the applicant's compliance with the requirements of 2.08.6(2) and 2.08.6(3); grant written approval for the transfer, sale, or assignment or rights under a permit, if it first finds, in writing, that:

(a) The person seeking approval is eligible to receive a permit in accordance with Rule 2.07.6(1)(b), (e) and (2)(-g);

(b)-(c) ***

(5)-(8) ***

2.09-2.10 ***

2.11 Challenging Ownership or Control Listings and Findings

2.11.1 Who may challenge ownership or control listings and findings.

An entity may challenge a listing or finding of ownership or control using the provisions under Rules 2.11.2 and 2.11.3 if he/she/it is:

- (1) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;
- (2) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under Rule 2.07.8(1) or 2.07.9(7) of these Rules; or
- (3) An applicant or permittee affected by an ownership or control listing or finding.

2.11.2 How to challenge an ownership or control listing or finding.

This section applies to those entities challenging an ownership or control listing or finding.

- (1) To challenge an ownership or control listing or finding, the challenger must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials he/she/it wishes to provide under Rule 2.11.3(2), to the Division, as follows:
 - (a) If the challenge concerns a pending state or federal permit application, the challenger must submit a written explanation to the regulatory authority with jurisdiction over the application.

- (b) If the challenge concerns ownership or control of a surface coal mining operation, and the challenger is not currently seeking a permit, then a written explanation must be submitted to the regulatory authority with jurisdiction over the surface coal mining operation.
- (2) The provisions of this rule and of Rules 2.11.3 and 2.11.4 apply only to challenges to ownership or control listings or findings. These provisions may not be used to challenge liability or responsibility under any other provision of the Act or its implementing Rules and Regulations.
- (3) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.
- (4) A regulatory authority responsible for deciding a challenge under paragraph (a) of this section may request an investigation by the AVS Office.
- (5) At any time, a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS Office as to the reason he/she is shown in AVS in an ownership or control capacity. Within 14 days of the request, the AVS Office will provide a response describing why he/she is listed in AVS.

2.11.3 Burden of proof for ownership or control challenges.

This section applies to challengers of an ownership or control listing or finding.

- (1) When challenging a listing of ownership or control, or a finding of ownership or control made under Rule 2.07.9(7), the challenger must prove by a preponderance of the evidence that the challenger either:
 - (a) Does not own or control the entire operation or relevant portion or aspect thereof; or
 - (b) Did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.
- (2) In meeting the burden of proof, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the Division. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the Division will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under Rules 2.07.5 and 5.02.4.
- (3) Materials that may be submitted in response to the requirements of paragraph (b) of this rule include, but are not limited to:

- (a) Notarized affidavits containing specific facts concerning the duties that the challenger performed for the relevant operation, the beginning and ending dates of his/her ownership or control of the operation, and the nature and details of any transaction creating or severing his/her ownership or control of the operation.
- (b) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.
- (c) Certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency.
- (d) An opinion of counsel, when supported by:
 - (i) Evidentiary materials;
 - (ii) A statement by counsel that he or she is qualified to render the opinion; and
 - (iii) A statement that counsel has personally and diligently investigated the facts of the matter.

2.11.4 Written decision on challenges to ownership or control listings or findings.

- (1) Within 60 days of receipt of a challenge under Rule 2.11.2(1), the Division will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision must state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.
- (2) The Division will promptly provide the challenger with a copy of its decision by either:
 - (a) Certified mail, return receipt requested; or
 - (b) Any means consistent with the rules governing service of a summons and complaint under Rule 4 of Chapter 1 of the Colorado Rules of Civil Procedure.
- (3) Service of the decision is complete upon delivery and is not incomplete if the challenger refuses to accept delivery.
- (4) The Division will post all decisions made under this section on AVS.
- (5) Any person who receives a written decision under this section, and who wishes to appeal that decision, may do so as set forth in Rule 2.07.4.

- (6) Following the Division's written decision or any decision by the Board or a reviewing administrative or judicial tribunal, the Division must review the information in AVS to determine if it is consistent with the decision. If it is not, the Division must promptly revise the information in AVS to reflect the decision.

RULE 3 PERFORMANCE BOND REQUIREMENTS

3.01-3.02 ***

3.03 RELEASE OF PERFORMANCE BONDS

3.03.1 ***

3.03.2 Procedures for Seeking Release of Performance Bond

- (1) Bond release application and contents.

The permittee may file a request with the Division for the release of all or part of a performance bond pursuant to the criteria and schedule described in Rule 3.03.1. Prior to filing the request, the permittee shall send written notice of his intention to seek release from bond to adjoining property owners, surface owners, appropriate local government bodies, municipalities, regional planning commissions, boards of county commissioners, county planning agencies, sewage and water treatment authorities, and water conservancy and water conservation districts in the locality in which the surface coal mining operations took place and other governmental agencies as directed by the Division.

Such a request shall include:

(a)-(e) ***

(2)-(6) ***

3.03.3 ***

3.04-3.06 ***

RULE 4 PERFORMANCE STANDARDS

4.01-4.02 ***

4.03 ROADS

4.03.1 Haul Roads

- (1) General Requirements.

(a)-(d) ***

- (e) ***
- (2) ***
- (3) Design and Construction.

Haul roads not within the disturbed area in accordance with Rule 4.05.2(4) shall be designed and constructed or reconstructed in compliance with the following standards in order to control erosion and disturbance of the hydrologic balance:

- (a) Vertical alignment. Maximum road grades shall be as follows, except that alternative design criteria may be utilized after Division review and approval of an analysis by a qualified registered professional engineer demonstrating that the alternative design will meet accepted industry standards for safety. The alternative design criteria may, as appropriate, include restrictions relative to maintenance and use under adverse weather conditions:
 - (i) The overall grade shall not be steeper than 10h:1v (10 percent).
 - (ii) Maximum pitch grade shall not be steeper than 6.5h:1v (15 percent).
 - (iii) There shall not be more than 300 feet of pitch grade exceeding 10 percent within any consecutive 1,000 feet, but in no case shall there be any pitch grade steeper than 6.5h:1v (15 percent).
- (b)-(d) ***
- (e) Road embankments.
 - (i)-(v) ***
 - (vi) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing it in 12 inch layers impossible under Rule 4.03.1(3)(d)(v), the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches, rock shall be placed in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Rule 4.03.1(3)(~~e~~)(v).
 - (vii) Each layer of the embankment shall be completed, leveled, and compacted before the succeeding layer is placed.

Loads of material shall be leveled as placed and kept smooth. Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used for the duration of the road. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction and equipment to be used. If necessary to ensure stability structural and foundation analysis shall be performed to establish design standards for embankment stability appropriate to the site. The degree of compaction shall be determined on the basis of soil type and the anticipated volume of traffic and weight and speed of vehicles to be used for the duration of the road. No lift shall be placed on a layer until the design density is achieved throughout the layer. American Association of State Highway and Transportation Officials (AASHTO), specifications such as T-99, T-180, and the modified AASHTO test, 12th Edition, published July, 1978 or other comparable specifications approved by the Division may be used as guidelines for the determination of the maximum dry density for granular materials. Incorporation by reference of the above publication does not include future editions. Copies of the above specifications may be obtained by contacting the Division Director, 1313 Sherman Street, Room 215, Denver, Colorado 80203-2273.

(viii)-(xi) ***

(4)-(7) ***

4.03.2 Access Roads

(1) General Requirements.

(a)-(d) ***

(e) (i) The construction or reconstruction of access roads not within the disturbed area in accordance with 4.05.2(4) shall be certified in a report to the Division by a qualified registered professional engineer, except as provided for in Rule 4.03.2(1)(~~e~~)(ii). The certification report shall be submitted to the Division upon completion of any construction or reconstruction and shall indicate that the road has been constructed or reconstructed as designed and in accordance with the approved plan.

(ii) ***

- (f) ***
- (2) ***
- (3) Design and Construction.

Access roads not within the disturbed area in accordance with Rule 4.05.2(4) shall be designed and constructed or reconstructed in compliance with the following standards in order to control erosion and disturbance of the hydrologic balance:

(a) Vertical alignment. A continuous grade with excessive cuts or embankments shall be avoided. Changes of grade shall be made to conform as closely as possible to the existing terrain, and maximum road grades shall be as follows, except that alternative design criteria may be utilized after Division review and approval of an analysis by a qualified registered professional engineer demonstrating that the alternative design will meet accepted industry standards for safety. The alternative design criteria may, as appropriate, include restrictions relative to maintenance and use under adverse weather conditions:

- (i) The overall grade shall not be steeper than 10h:1v (10 percent).
- (ii) The pitch grade shall not be steeper than 6.5h:1v (15 percent), for any consecutive 1,000 feet.
- (iii) The pitch grade exceeding 15 percent shall not be longer than 300 feet within any consecutive 1,000 feet.

(b)-(d) ***

(e) Road embankments.

(i)-(iv) ***

(v) Where the material for an embankment consists of large-size rock, broken stone, or fragmented material that makes placing in 12-inch layers impossible under Rule 4.03.2(3)(d)(iv), the embankment shall be constructed in uniform layers not exceeding in thickness the approximate average size of the rock used, but the layers shall not exceed 36 inches in thickness. Rock shall be placed in a manner that will ensure proper placement in the embankment, so that voids, pockets, and bridging will be reduced to a minimum. The final layer of the embankment shall meet the requirements of Rule 4.03.2(3)(~~e~~)(iv).

(vi)-(xi) ***

(4)-(7) ***

4.03.3 Light-Use Roads.

(1)-(2) ***

(3) Design and construction.

Field-design methods may be utilized for light-use roads.

(a) Vertical Alignment. Except for pre-existing roads, roads within the disturbed area in accordance with 4.05.2(4), or where lesser grades are necessary to control site-specific conditions as approved by the Division maximum road grades shall be as follows, except that alternative design criteria may be utilized after Division review and approval of an analysis by a qualified registered professional engineer demonstrating that the alternative design will meet accepted industry standards for safety. The alternative design criteria may, as appropriate, include restrictions relative to maintenance and use under adverse weather conditions:

(i) The overall grade shall not be steeper than 10h:1v (10 percent).

(ii) The pitch grade shall not be steeper than 5h:1v (20 percent) for any consecutive 1,000 feet.

(iii) The pitch grade exceeding 20 percent shall not be longer than 300 feet within any consecutive 1,000 feet.

(b)-(g) ***

(4)-(7) ***

4.04 ***

4.05 HYDROLOGIC BALANCE

4.05.1-4.05.2 ***

4.05.3 Diversions and Conveyance of Overland Flow and Shallow Ground Water Flow, and Ephemeral Streams Draining a Watershed Less Than One Square Mile

(1)-(5) ***

(6) When no longer needed, each temporary diversion shall be removed and the affected land regraded, topsoiled and revegetated in accordance with 4.06, 4.14, and 4.15. Before diversions are removed, downstream

treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. Removal of any sedimentation pond will be accomplished in accordance with Rule 4.05.6(7). If the temporary diversion were for an ephemeral stream, the channel shall be reestablished to functionally blend with the undisturbed drainage above and below the area to be reclaimed.

(7) ***

4.05.4-4.05.8 ***

4.05.9 Impoundments

(1) ***

(2) All impoundment spillway systems shall provide for either a combination of principal and emergency spillways, or a single spillway configured as required by 4.05.9(2)(a), designed to safely pass the applicable design precipitation event specified in 4.05.9(2)(c), plus inflow from any underground mine water or water pumped from the pit. Appropriate barriers shall be provided to control piping along conduits that extend through the embankment, unless otherwise approved by the Division. Emergency spillway grades and allowable velocities shall be approved by the Division. Impoundment spillways shall meet the following requirements, as applicable.

(a)-(c) ***

(d) Impoundments meeting the Class B or Class C criteria for dams in the U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October, 1985), "Earth Dams and Reservoirs" (TR60), shall comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR60, or greater event as specified by the Division. TR60 is hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(e) The Division may approve a temporary impoundment that relies primarily on storage to control the runoff from the design event specified in 4.05.9(2)(c), when it is demonstrated by the operator and certified by a qualified registered professional engineer, that the temporary impoundment will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage, except where:

- (i) In the case of a temporary impoundment that meets the size or other criteria of 4.05.9(4), or meets the Class B or Class C criteria for dams in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October, 1985), "Earth Dams and Reservoirs" (TR60), it is designed to control the probable maximum precipitation of a 24-hour event, or greater event specified by the Division, for good cause shown. TR60 is hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9); or,
 - (ii) ***
- (3) ***
- (4) Where an impoundment meets the size or other criteria of 30 CFR 77.216(a) (has an embankment that is greater than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway; or has an embankment that is greater than 5 feet and has a storage volume of 20 acre feet or more; or any impounding structures determined by the District Manager of MSHA to present a hazard to coal miners), then the permittee shall meet the criteria of 30 CFR 77.216(a). 30 CFR 77.216(a) is hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).
- (5) ***
- (6) All impoundment embankments, foundations and abutments shall be stable during all phases of construction and operation and shall be designed based on accurate information on the foundation conditions. For impoundments meeting the size or other criteria of 30 CFR 77.216(a), or meeting the Class B or Class C criteria for dams in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60), October 1985, "Earth Dams and Reservoirs" (TR-60), or having embankments in excess of 10 feet in vertical height measured from the bottom of the channel to the bottom of the spillway at the centerline of the dam, or a surface area of 20 acres, a foundation investigation, and any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability. 30 CFR 77.216(a) and TR60 are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).
- (7) ***
- (8) (a) Any impoundment meeting the size or other criteria of 30 CFR 77.216(a), or meeting the Class B or Class C criteria for dams in U.S. Department of Agriculture, Natural Resources Conservation

Service Technical Release No. 60 (210-VI-TR60, October, 1985), "Earth Dams and Reservoirs" (TR60), or located where failure would be expected to cause loss of life or serious property damage shall have a minimum safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2, or a higher safety factor as designated by the Division to ensure stability. 30 CFR 77.216(a) and TR60 are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(b) ***

(9) ***

(10) All impoundments shall be designed, constructed, and maintained with adequate freeboard to prevent overtopping by waves or by sudden increases in volume. Impoundments meeting the Class B or Class C criteria for dams in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October, 1985), "Earth Dams and Reservoirs" (TR60), shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" in TR60. TR60 is hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

(11)-(20) ***

(21) For an impoundment meeting the size or the other criteria of 4.05.9(4), or meeting the Class B or Class C criteria for dams in U.S. Department of Agriculture, Natural Resources Conservation Service Technical Release No. 60 (210-VI-TR60, October, 1985), "Earth Dams and Reservoirs" (TR60), the examination shall also be in accordance with 30 CFR 77.216-3. The examination report shall be maintained at or near the mine site. TR60 and 30 CFR 77.216-3 are hereby incorporated by reference, and can be viewed and copies can be obtained at the Division as set forth in Rule 1.01(9).

4.05.10-4.05.12 ***

4.05.13 Surface and Ground Water Monitoring

(1) Ground Water.

(a) Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the Division, including, but not limited to, specific points of compliance after consultation with the Division of Water Resources, to determine:

(i)-(iii) ***

(b)-(e) ***

(2)-(4) ***

4.05.14 ***

4.05.15 Water Rights and Replacement

- (1) Any person who conducts surface or underground mining activities shall replace the water supply of any owner of a vested water right which is proximately injured as a result of the mining activities in a manner consistent with applicable State law, and as described in Rule 2.04.7(3).
- (2) Any person who conducts surface or underground coal mining activities shall promptly replace, as defined in Rule 1.04(110.1), any drinking, domestic, or residential water supply, as defined in Rule 1.04(39.1), that is contaminated, diminished, or interrupted by mining activities. The baseline information required by Rules 2.04.5, 2.04.6, and 2.04.7, and the information required by Rule 2.05.6(3) shall be used to determine the impact of mining activities upon the water supply. Nothing in this rule shall be construed to prohibit or interrupt underground coal mining operations.

4.05.16-4.05.18 ***

4.06 TOPSOIL

4.06.1-4.06.3 ***

4.06.4 Redistribution

- (1) ***
- (2) Topsoil and other materials shall be redistributed in a manner that:
 - (a) Achieves an approximately uniform, stable thickness when consistent with the approved postmining land uses, contours, and surface water drainage systems. Soil thickness may also be varied to the extent such variations help meet the specific revegetation goals identified in the permit application. Permit applications shall describe a range in replacement thickness for defined areas of the reclaimed landscape, based on the pertinent land use, topography, drainage system, and revegetation factors and objectives;
 - (b) Prevents excess compaction and contamination of topsoil and spoil or subsoil;

- (c) Minimizes deterioration of the biological, chemical, and physical properties of the topsoil; and
 - (d) Protects the topsoil from wind and water erosion during redistribution and before and after it is seeded and planted.
- (3) Final surface or seedbed preparation of topsoil shall be done along the contour to minimize subsequent erosion and instability. If such preparation of topsoil along the contour is hazardous to equipment operators, then preparation in a direction other than parallel to the contour may be used.

4.06.5 ***

4.07 SEALING OF DRILLED HOLES AND UNDERGROUND OPENINGS

4.07.1-4.07.2 ***

4.07.3 Permanent Sealing

When no longer needed for its intended use and upon a finding by the Division of no adverse environmental or health and safety effect, each exploration hole, other drilled hole or borehole, well, or other exposed underground opening including but not limited to shaft, drift, adit, tunnel, or entryway shall be capped, sealed, backfilled, or otherwise properly managed, as follows:

(1) Shafts, Drifts, Adits, Tunnels, or Mine Entryways

Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. closure construction shall be certified by a qualified registered professional engineer. The certification report shall be submitted to the Division upon completion of any construction and shall indicate that the closure has been completed as designed and in accordance with the approved plan and this rule.

(a) Shaft openings shall be effectively capped or filled. Filling shall be for the entire length of the shaft and, for the first fifty (50) feet from the bottom of the coalbed, the fill shall consist of incombustible material. Caps consisting of a six (6) inch thick concrete cap or other equivalent means may be used for sealing. Caps shall be equipped with a vent pipe at least two (2) inches in diameter extending for a distance of at least fifteen (15) feet above the surface of the shaft.

(b) Slope or drift openings shall be sealed with either:

(i) a bulkhead seal consisting of solid, substantial, incombustible material, such as concrete blocks, bricks or tile placed a distance of at least twenty-five (25) feet into

the opening; and complete backfill with incombustible material from the bulkhead seal to the roof edge of the opening with no spaces between the top of the fill and the roof of the adit that exceed three (3) inches, and no space between the top of the fill and the roof of the adit at the entrance of the adit; or

- (ii) Complete backfill, with incombustible material from twenty-five (25) feet into the opening to the roof edge of the opening,
 - (A) with no spaces between the top of the fill and the roof of the adit that exceed three (3) inches and no space between the top of the fill and the roof of the adit at the entrance of the adit, and
 - (B) the innermost three (3) feet of the backfill consisting entirely of rock with a minimum two (2) feet in diameter.

(2) Exploration Holes, Drill Holes, Boreholes, or Wells

- =(a) Exploration holes, drill holes or boreholes, wells or other exposed underground openings not completed to aquifers shall be sealed by replacing cuttings or other suitable media in the hole and placing a suitable plug 10 feet below the ground surface to support a cement plug or other media approved by the Division to within 3 feet of the ground surface. Sealing by a surface plug only may be approved by the Division on a case by case basis where both physical and chemical properties of the formation allow. The hole will be marked.
- =(b) Exploration holes, drill holes or boreholes, wells, or other underground openings completed in aquifers shall be sealed using cement or other suitable sealant by placing the sealant in the hole from the bottom to within 10 feet of the surface. Holes which have multiple aquifers or bedrock aquifers not exhibiting artesian flow at the surface may be sealed using a solid cement plug or other suitable media approved by the Division extending 20 feet above and below the water bearing zone. A surface plug shall be placed in accordance with 4.07.3(2)(a) and the hole shall be marked.
- =(c) Proof of compliance. Within 60 days after abandoning a drill hole, specific drilling program approved by the Division, or when requested by the Division, the operator shall submit a report detailing the following information:
 - (l) Location of the drill hole as spotted accurately on a topographic map;
 - (l) Depth of drill hole;

- (III) Surface elevation of drill hole;
- (IV) Intervals where water was encountered during drilling activities;
- (V) Diameter of drill hole;
- (VI) Type of cement or other approved sealant used;
- (VII) Amount of cement and volume of slurry mixture or other sealant used in plugging drill hole;
- (VIII) Name of drilling contractor and license number of drill and rig; and
- (IX) How the hole was worked.

4.07.4 ***

4.08 USE OF EXPLOSIVES

4.08.1 General Requirements

(1)-(3) ***

- (4) (a) An anticipated blast design, prepared and signed by a certified blaster, shall be submitted, either as part of a permit application or at a time before the blast approved by the Division, if blasting operations will be conducted within:
 - (i) 1,000 feet of any occupied residential dwelling, public building, school, church or community or institutional building outside the permit area; or
 - (ii) ***

(b)-(c) ***

4.08.2 Pre-blasting Survey

- (1) At least 30 days before initiation of blasting, the operator shall provide written notification to all residents or owners of occupied residential dwellings or other structures located within one-half mile of the permit area which explains how to request a preblasting survey. Upon request to the Division by a resident or owner of an occupied residential dwelling or structure that is located within one-half mile of any part of the permit area for surface mining activities, or in the case of surface blasting activities incident to underground mining activities, within one-half mile of such blasting activity, the person who conducts surface or underground mining activities shall promptly conduct a pre-blasting survey of the

occupied residential dwelling or structure and promptly submit a report of the survey to the Division and to the person requesting the survey. If a structure is renovated or added to, subsequent to a pre-blasting survey, then upon request to the Division a survey of such additions and renovations shall be performed in accordance with Rule 4.08.2.

(2) The survey shall determine the condition of the occupied residential dwelling or structure and document any pre-blasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface conditions and readily available data. Special attention shall be given to the pre-blasting condition of well and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) ***

4.08.3 ***

4.08.4 Surface Blasting Requirements

(1)-(3) ***

(4) A resident or owner of an occupied residential dwelling or structure that is located within one-half mile of any area affected by surface blasting activities shall be notified no less than 24 hours prior to any surface blasting. Notification may be provided less frequently if approved in writing by said resident or owner.

(5) ***

(6) (a) Airblast shall be controlled so that it does not exceed the values specified below at any occupied residential dwelling, public building, school, church, or community or institutional structure, outside the permit area, unless such structure is owned by the person who conducts the surface coal mining operations and is not leased to any other person. If a building owned by the person conducting surface coal mining operations is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of 4.08.4(6)(a).

Lower Frequency Limit of Measuring System, Hz (3dB)	Maximum Level in dB
0.1 Hz or lower – flat response ¹	134 peak
2 Hz or lower -- flat response	133 peak
6 Hz or lower -- flat response	129 peak
C-weighted, slow response	105 C

¹ Only when approved by the Division

- (b) ***
- (c) ***
- (7) Except where lesser distances are approved by the Division, based upon a pre-blasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted within:
 - (a) 1,000 feet of any occupied residential dwelling, school, church, hospital, or nursing facility; and
 - (b) ***
- (8) Flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest occupied residential dwelling or other occupied structure, beyond the topsoil stripping limit resulting in loss of resource, and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under Rule 4.08.4(5).
- (9) ***
- (10) Except as provided in Rule 4.08.4(10)(b), the maximum peak particle velocity in blasting operations shall not exceed the following limits at the location of any occupied residential dwelling, public building, school, church, or community or institutional building, outside the permit area:

Distance (D) from the Blasting Site (in feet)	Maximum Allowable Peak Particle Velocity (V max) for Ground Vibration (in inches/second†)	Scaled-Distance Factor to be Applied without Seismic Monitoring (Ds‡)
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

† Ground velocity shall be measured as the particle velocity. Peak particle velocities shall be recorded in three mutually perpendicular directions from the blasting site. The maximum peak particle velocity shall be the largest of any of the three measurements.

‡ Applicable to the scaled-distance equation of Rule 4.08.4(10)(c)(i)

- (a)-(b) ***
- (c) (i) If blasting is conducted in accordance with the following equation, the peak particle velocity shall be deemed to be

within the limit. The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula $W = (D/D_s)^2$ where W = the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period; D = the distance, in feet, from the blast to the nearest occupied residential dwelling, school, church, or community or institutional building; and D_s = the scaled-distance factor, using the values listed in the table in Rule 4.08.4(10).

(ii) ***

4.08.5 Records of Blasting for Surface Coal Mining Operations

A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the Division and by the public on request. The record shall contain the following data:

(1)-(3) ***

(4) Identification, direction and distance, in feet, from the nearest blast hole to the nearest occupied residential dwelling, school, church, or community or institutional building either:

(a)-(b)***

(5)-(18)***

4.08.6 ***

4.09 DISPOSAL OF EXCESS SPOIL

4.09.1 General Requirements.

(1)-(11) ***

(12) Coal mine wastes may only be disposed of in excess spoil fills, if such waste is:

(a)-(c) ***

4.09.2 ***

4.09.3 Head of Hollow Fill

Disposal of spoil in the head-of-hollow fill shall meet all the standards set forth in Rules 4.09.1 and 4.09.2 and the additional requirements of Rule 4.09.3.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for

valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in 4.09.2 with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock core chimney drain.

(2)-(3) ***

4.09.4 ***

4.10 COAL MINE WASTE BANKS

4.10.1 ***

4.10.2 Site Inspection

- (1) All coal mine waste banks shall be inspected, on behalf of the person conducting surface coal mining operations, by a qualified registered engineer or other qualified professional specialist under the direction of the professional engineer, experienced in construction of similar earth and waste structures.
- (2) Inspection of coal mine waste banks shall be performed in accordance with rule 4.09.1(11), and the following additional requirements:
 - (a) Inspection shall occur at least quarterly, beginning within 7 days after the preparation of the disposal area begins. The Division may require more frequent inspection based upon an evaluation of the potential danger to the health or safety of the public and the potential harm to land, air and water resources. Inspections may terminate when the coal mine waste bank has been graded, covered in accordance with Rule 4.10.4(5), topsoil has been distributed on the bank in accordance with Rule 4.06.4, and revegetated, or at such a later time as the Division may require.

(b)-(d) ***

(3) ***

4.10.3 ***

4.10.4 Construction Requirements

- (1) Coal mine waste banks shall be constructed in compliance with Rule 4.09.1 and Rule 4.09.2, except to the extent that the requirements of those Rules are varied in Rule 4.10.4.
- (2) (***)

- (3) (a) ***
- (b) Compacted to attain 90 percent of the maximum dry density to prevent spontaneous combustion and to provide the strength required for stability of the coal mine waste bank. Dry densities shall be determined in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Specifications T99-74 (Twelfth Edition)(July 1978) or an equivalent method. AASHTO T99-74 is hereby incorporated by reference as it exists on the date of adoption of Rule 4.10. This publication is on file and available for inspection at the office of the Division; and
- (c) ***
- (4) ***
- (5) Following grading of the coal mine waste bank, the site shall be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material, in accordance with Rule 4.14.3, and in a manner that does not impede flow from subdrainage systems. The coal mine waste bank shall be revegetated in accordance with Rule 4.15. The Division may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of Rule 4.15 will be met.

4.11 COAL MINE WASTE

4.11.1-4.11.2 ***

4.11.3 Return to Underground Workings

Coal mine waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the Division and Mine Safety and Health Administration under RULE 2.05.3(9).

4.11.4 ***

4.11.5 Dams and Embankments.

(1)-(2) ***

(3) Design and Construction.

(a) The design of each dam and embankment constructed of coal mine waste or intended to impound such waste shall comply with the requirements of 4.05.9 modified as follows:

(i) The design freeboard between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet. The maximum water elevation shall be

that determined by the freeboard hydrograph criteria contained in the U.S. Natural Resources Conservation Service criteria referenced in 4.05.9;

(ii)-(iii) ***

(b)-(d) ***

4.12-4.13 ***

4.14 BACKFILLING AND GRADING

4.14.1 ***

4.14.2 General Grading Requirements

(1)-(4) ***

- (5) Grading, preparation, or placement of material shall be conducted in a manner which minimizes erosion and slippage and provides a surface for the replacement of topsoil.

4.14.3 ***

4.14.4 Thin Overburden

- (1) The provisions of Rule 4.14.4 apply only where there is insufficient spoil and other waste materials available from the area disturbed by surface coal mining operations to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:
- (a) Closely resemble the surface configuration of the land prior to mining; or
 - (b) Blend into and complement the drainage pattern of the surrounding terrain.

These provisions of Rule 4.14.4 apply only when surface mining activities cannot be carried out to comply with Rule 4.14.1 to achieve the approximate original contour.

(2) ***

4.14.5 Thick Overburden

(1) The provisions of Rule 4.14.5 apply only where there is more than sufficient spoil and other waste materials available from the area disturbed by surface coal mining operations to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

(a) Closely resemble the surface configuration of the land prior to mining; or

(b) Blend into and complement the drainage pattern of the surrounding terrain.

The provisions of Rule 4.14.5 apply only when surface mining activities cannot be carried out to comply with Rule 4.14.1 to achieve the approximate original contour.

(2) ***

4.14.6 ***

4.15 REVEGETATION

4.15.1 General Requirements.

(1) ***

(2) All revegetation shall be in compliance with the plans submitted under 2.05.3 and 2.05.4, as approved by the Division in the permit, and carried out in a manner that encourages the prompt establishment of vegetation cover and recovery of productivity levels compatible with the approved postmining land use.

(a) ***

(b) The vegetation cover shall be capable of stabilizing the soil surface to achieve erosion control equal to or greater than premining levels.

(c)-(d) ***

(3)-(5) ***

4.15.2-4.15.6 ***

4.15.7 Determining Revegetation Success: General Requirements and Standards

(1) ***

- (2) The plan for revegetation required as part of a permit application in 2.05.4(2)(e) includes a description of measures proposed to be used to determine the success of revegetation. Such description shall, at a minimum, contain the following information:

(a)-(c) ***

- (d) A discussion of the comparisons to be made between the reclaimed and undisturbed areas in order to demonstrate that the success criteria in Rules 4.15.8, 4.15.9 or 4.15.10 have been met. Upon approval of the Division, such comparisons of vegetative cover and herbaceous productivity, woody plant density, species diversity, seasonal variety or other applicable parameters shall be based on one or more of the following:

(i) ***

- (ii) Standards of vegetative cover or herbaceous productivity, or other applicable parameters, established by reference to technical documents of the United States Department of Agriculture, United States Department of Interior, or other authorities. These documents must be approved by the Division;

(iii)-(vi)***

(3)-(4) ***

- (5) The liability period under the performance bond requirements of 3.02.3 begins after the last year of augmented seeding, fertilization, irrigation or other work. The liability period shall continue for not less than either five (5) or ten (10) years, as appropriate, as described in 3.02.3. For grazingland, pastureland, or cropland, applicable revegetation success standards shall be demonstrated during the growing season of any two years following year six, where the minimum ten year liability period applies, pursuant to Rule 3.02.3; but bond release cannot be approved prior to year ten. Such standards shall be demonstrated during any two growing seasons except the first year of the liability period, where the minimum five year liability period applies, pursuant to Rule 3.02.3.

For areas approved for Forestry, Recreation, Wildlife Habitat, or Undeveloped Land Postmining land use, applicable success standards shall be demonstrated during any growing season after year nine of the liability period, where the minimum ten year liability period applies. Such standards shall be demonstrated during any two growing seasons except the first year of the liability period, where the minimum five year liability period applies, pursuant to Rule 3.02.3.

For areas approved for a postmining land use of Rangeland, the success of cover, diversity, and herbaceous production shall be demonstrated

during the growing season of any two years following year six, where the minimum ten year liability period applies, pursuant to Rule 3.02.3; but bond release cannot be approved prior to year ten. Such standards shall be demonstrated during any two growing seasons except the first year of the liability period, where the minimum five year liability period applies, pursuant to Rule 3.02.3. The success of woody plant reestablishment shall be demonstrated during any growing season after year nine, where the minimum ten year liability period applies, pursuant to Rule 3.02.3. Woody plant reestablishment success shall be demonstrated during any growing season after year four of the liability period, where the minimum five year liability period applies, pursuant to Rule 3.02.3.

The liability period shall re-initiate whenever augmented seeding, planting, fertilization, irrigation, or other augmentive work is required or conducted. Management activities that are not augmentive and are approved as normal husbandry practices may be conducted without re-initiating the liability period under the following specified conditions:

(a) ***

(b) Weed control measures conducted in compliance with the "Colorado Weed Management Act" (§ 35-5.5-115) and the Division's "Guideline for the Management of Noxious Weeds on Coal Mine Permit Areas" are considered normal husbandry practices. The revegetation specifically necessitated by such measures and approved by the Division shall not re-initiate the liability period, if less than five percent of the acreage initially reclaimed in any one year is revegetated. The location and extent of such revegetation must be fully described in the annual reclamation report.

The "Colorado Weed Management Act" (§ 35-5.5-115) and the Division's "Guideline for the Management of Noxious Weeds on Coal Mine Permit Areas" are hereby incorporated by reference as they existed on the date of these regulations. This rule does not include later amendments to or editions of the incorporated material. Copies of the Weed Management Act are available on the Department of Agriculture's, Division of Plant Materials web site. The Guideline for Management of Noxious Weeds on Coal Mine Permit Areas is available on the Division's web site. Both documents are also available at cost upon request from the Division and are available at the Division's Denver office.

(c)-(d) ***

(e) Fertilization, interseeding, and irrigation associated with pasture land forage production are considered to be normal husbandry practices when such practices are consistent with normal or prudent management in the region and could reasonably be expected to occur after final bond release. Documentation that irrigation, interseeding, and fertilization application rates and

methods are appropriate shall be based on applicable publications, or site-specific written recommendations of the Cooperative Extension Service of Colorado State University, the Colorado Department of Agriculture, or the United States Department of Agriculture.

(f) ***

(g) Interseeding is considered a normal husbandry practice to enhance species or life form diversity on rangeland, grazingland, or wildlife habitat. Interseeding is not an allowable substitute for complete reseeding when a stand is dominated by species which do not support the approved post mine land use, or when vegetation cover is deficient and excessive erosion has resulted. Interseeding shall be permitted within the first four years of any ten-year liability period, upon approval by the Division. The nature, location and extent of the interseeding must be fully described in the annual reclamation report.

Interseeding is defined as a tool to enhance the diversity of established vegetation. Forb, shrub, and grass species native to the area are considered acceptable. The exact species to be used depends upon the post mining land use. Interseeding only applies to lands where vegetation is established and no other management tools are necessary. In contrast, augmented seeding is reseeding with fertilizer or irrigation, or in response to an unsuccessful reclaimed parcel. If a reclaimed parcel is deficient in vegetative cover due to insufficient moisture, poor germination or improper planting methodologies, augmented seeding would be necessary and the ten year liability period is reinitiated.

4.15.8 Revegetation Success Criteria

(1) Rule 4.15.8 defines the success criteria which must be met for the postmining vegetation to be judged adequate for final bond release. Exceptions to the requirements of 4.15.8 may be granted only under the following conditions:

(a)-(b) ***

(2) Within 4.15.8, applicable success criteria are based on the approved postmining land use as follows:

(a) If the approved postmining land use is grazingland or pastureland, applicable vegetation success criteria shall include vegetation cover and herbaceous production.

(b) If the approved postmining land use is recreation, fish and wildlife habitat, or undeveloped land, applicable vegetation success criteria

shall include woody plant density, species diversity, and vegetation cover.

- (c) If the approved postmining land use is forestry, applicable success criteria shall include tree stocking density, and vegetation cover.
 - (d) If the approved postmining land use is rangeland, applicable success criteria shall include vegetation cover, herbaceous production, species diversity and woody plant density.
- (3) Vegetative cover and herbaceous production, species diversity and woody plant density on the reclaimed surface (applicable criteria based on approved postmining land use pursuant to Rule 4.15.8(2) shall be at least equal to (as defined below) the vegetative cover and herbaceous production, species diversity and woody plant density of living plants on the approved reference area or to the standards established in 4.15.7(2)(d). In addition, the vegetation on the reclaimed area shall be of the same seasonal variety native to the area of disturbed land, or shall consist of species that support the approved postmining land use.
- (4) (a) For vegetative cover the revegetated area shall be considered acceptable if statistically adequate sampling and testing pursuant to 4.15.11 demonstrate that the revegetated area cover is not less than 90 percent of the reference area cover or 90 percent of the approved standard or that the revegetated area cover exceeds 90 percent of the reference area cover or 90 percent of the approved standard, unless the Division makes a finding that:
- (i) A higher percentage of herbaceous cover than existed before mining is practicable and is desirable for reducing erosion; or
 - (ii) A lower percentage of herbaceous cover is advisable where there is danger that herbaceous vegetation will out-compete the woody vegetation and hinder its successful establishment, and the lower percentage will be adequate for erosion control.
- (b) For purposes of 4.15.8, cover means either canopy or basal cover of living herbaceous or herbaceous and woody vegetation.
- (5) For herbaceous production the revegetated area shall be considered acceptable if statistically adequate sampling and testing (or complete harvest) pursuant to Rule 4.15.11 demonstrate that the revegetated area production is not less than 90 percent of the reference area production or 90 percent of the approved standard, or that the revegetated area production exceeds 90 percent of the reference area production or 90 percent of the approved standard. Production shall be measured as current year above-ground biomass of herbaceous vegetation on grazingland, rangeland, pasture land, or for forage crops. For grain

crops, or other non-forage crops, measurement of production shall be limited to the primary harvestable commodity.

- (6) The permittee shall be required to demonstrate, using techniques approved by the Division, that adequate species diversity has been achieved on the revegetated area. Such techniques may include, but not be limited to, diversity indices and/or comparisons of species composition (based on cover or production) between the reclaimed area and the undisturbed vegetation.
- (7) The permittee shall be required to demonstrate, using techniques approved by the Division, that the vegetation on the reclaimed surface consists of a mixture of the species of the same seasonal variety native to the area of disturbed land, or of species that support the approved postmining land use. The vegetation on the reclaimed surface must be of equal or superior utility for the approved postmining land use when compared with the utility of naturally occurring vegetation during each season of the year.
- (8) For areas with a fish and wildlife habitat, rangeland, or recreation postmining land use, establishment of woody plants on the revegetated area shall be considered acceptable if a complete census demonstrates that woody plant density exceeds 90 percent of the approved standard. Alternatively, statistically valid sampling and testing pursuant to Rule 4.15.11 shall be used to demonstrate that woody plant density mean is not less than 90 percent of the reference area or 90 percent of the approved standard, or that the woody plant density mean exceeds 90 percent of the reference area or 90 percent of the approved standard, or that the woody plant density median exceeds 70 percent of the approved technical standard. For areas with a rangeland or wildlife postmining land use minimum stocking levels, planting arrangements, and methods for mitigation of potential adverse impacts must be determined on the basis of local and regional conditions after consultation with the and approval by the Colorado Division of Wildlife.
 - (a) ***
 - (b) For areas with a fish and wildlife, rangeland, or recreation postmining land use initially seeded after November 30, 2005, demonstrations of successful establishment of woody plants shall include documentation showing that all required woody plant establishment efforts were completed during the first four years of the liability period. Any natural woody plant regeneration will count towards the success standard.
- (9) Where the approved postmining land use is forestry, the revegetated area will be stocked using documented local and regional reforestation practices of appropriate State or Federal agencies for the species to be planted in the commercial forest, with the exception that, where no such practices exist, the minimum acceptable stocking rate shall be 450 trees per acre. The stocking rate and planting arrangement for commercial tree

species shall be approved by the State Forester. Establishment of the trees shall be considered acceptable if the density is not less than 90 percent of the standard. Stocking rates shall be determined on the basis of countable trees which can be used in the calculation of density under the following criteria:

(a)-(c) ***

4.15.9 Revegetation Success Criteria: Cropland

For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard during the growing season of any two years following year six, where minimum 10 year liability period applies, pursuant to 3.02.3; but bond release cannot be approved prior to year 10. This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard based on applicable demonstration methods of 4.15.11.

4.15.10 ***

4.15.11 Revegetation Sampling Methods and Statistical Demonstrations for Revegetation Success

- (1) All aspects of the vegetation sampling program must be conducted to ensure a repeatable, unbiased estimate of the appropriate population parameter. Consistency in sampling shall be required in comparisons between the reclaimed area and the undisturbed areas. Both random and systematic sampling designs are acceptable. Double sampling (involving measurements and estimations as equivalent sample data) is not acceptable.

Total harvest success demonstration can be substituted for herbaceous production sampling; and total woody plant count (complete census) can be substituted for woody plant density sampling, upon approval by the Division, based on demonstration that the total harvest or census method employed is appropriate and practicable, and no less effective than statistically valid sampling.

(a)-(c) ***

- (2) Demonstrations of sample adequacy and revegetation success for cover and productivity shall be made with one of the following statistically valid approaches in (a), (b), (c), or (d). Demonstrations of sample adequacy and revegetation success for woody plant density shall be made with one of the following statistically valid approaches in (a), (b), (c), or (d), or with one of the alternative approaches specified 4.15.11(3).

(a)-(b) ***

- (c) If the reclaimed area sample mean is greater than 90 percent of the standard, and sample adequacy is not demonstrated using the formula in (a), success may be demonstrated by use of the “reverse” null hypothesis. Under the reverse null approach, a one sided t-test with alpha error probability of 0.20, is used to demonstrate that the reclaimed area mean is greater than 90 percent of the relevant success standard with 80 percent statistical confidence. The basic assumption, or null hypothesis, is that the reclaimed area mean is less than or equal to 90 percent of the standard. If the null hypothesis of equality is rejected by the test, then reclamation is considered successful for the parameter tested. A minimum sample size of thirty is required. The general form of the “reverse null” t-test is:

$$t_c = \frac{\bar{x} - Q}{S_{\bar{x}}}$$

Where:

\bar{x} = Bond Release Block Sample Mean

Q = 90% of Standard

$S_{\bar{x}}$ = Standard error of mean [s / \sqrt{n}]

S = Sample standard deviation

n = Sample size

t_c = Calculated t value

t_t = Table t value

The null hypothesis being tested is that the bond release block mean (μ) is less than or equal to 90% of the standard, stated as $H_0: \mu \leq Q$.

If t_c is greater than the 1-tailed t table value for alpha error probability of .20, with (n-1) degrees of freedom (infinite degrees of freedom may be used if $n > 30$), then H_0 is rejected, and revegetation is deemed successful.

The general form of the reverse null (presented above) is for a one sample t-test, which is valid when sample adequacy is achieved in the reference area. A two sample t-test (with Satterthwaite corrected standard error and degrees of freedom) is required if sample adequacy is not achieved in the reference area. In the latter case, a minimum sample size of 30 is required in the reference area as well as in the reclaimed area.

- (d) As approved by the Division, techniques for sample adequacy and statistical tests are allowed for determining reclamation success from the document “Evaluation and Comparison of Hypothesis Testing Techniques for Bond Release Applications”, May 28,

2003, prepared by McDonald, Howlin, Polyakova and Bilbrough, for the Wyoming Abandoned Coal Mine Lands Research Program. This document is hereby incorporated by reference as it exists on the date of these regulations. This rule does not include later amendments to or editions of the incorporated material. Certified copies of the document are available at cost upon request from the Division and are available for inspection at the Division's Denver Office and on the Division's website. The Division Director can provide further information regarding how the incorporated material may be obtained or examined.

- (3) Demonstrations of sample adequacy and revegetation success for woody plant density may be made with one of the following valid approaches, in lieu of the approaches in (2) above.

- (a) ***

- (b) If the reclaimed area sample mean is equal to or greater than 90 percent of the relevant success standard, but sample adequacy is not achieved using the formula in 4.15.11(2)(a) above, success may be demonstrated by direct comparison and sample adequacy may be established by

- a minimum sample size of 75, and minimum quadrat size of 100 square meters.

4.16 POSTMINING LAND USE

4.16.1-4.16.2 ***

4.16.3 Alternative Land Uses

Alternative land uses may be approved by the Division after consultation with the landowner or the land-management agency having jurisdiction over the lands, if the following criteria are met:

- (1)-(5) ***

- (6) Proposals to change premining land uses of rangeland, grazingland, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, shall be reviewed by the Division to ensure that:

- (a) ***

- (b) ***

4.17 AIR RESOURCE PROTECTION

Each person who conducts surface coal mining and reclamation operations shall stabilize and protect all surface areas, including spoil piles, to effectively control erosion and attendant air pollution and shall conduct such operations in such a manner so as to comply with all applicable State and Federal air quality statutes and regulations.

4.18 PROTECTION OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES

(1)-(4) ***

(5) Each person who conducts surface coal mining operations, to the extent possible using the best technology currently available, shall:

(a)-(j) ***

(k) Where the primary land use is to be residential, recreation, or industrial land use, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such green belts are inconsistent with the approved postmining land use.

4.19 ***

4.20 SUBSIDENCE CONTROL

4.20.1 General Requirements

(1) Underground mining activities shall be planned and conducted so as to maximize mine stability, prevent material subsidence damage, prevent diminution of reasonably foreseeable use of structures and renewable resource lands, and prevent contamination, diminution and interruption of drinking, domestic and residential water supplies, to the extent technologically and economically feasible, so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence. Nothing in Rule 4.20 shall be construed to prohibit the standard method of room and pillar mining.

(2)-(3) ***

4.20.2 ***

4.20.3 Surface Owner Protection

(1) Each person who conducts underground mining activities must either adopt measures consistent with known technology that prevent subsidence from causing material subsidence damage to the extent

technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material subsidence damage to the extent technologically and economically feasible to non-commercial buildings and occupied residential dwellings and structures related thereto except that measures required to minimize material subsidence damage to such structures are not required if:

- (a) The permittee has the written consent of their owners, or
 - (b) Unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.
- (2) Each person who conducts underground mining activities which result in subsidence that causes material subsidence damage, or reduces the value or reasonably foreseeable use of surface lands, structures or renewable resource lands, or contamination, diminution, or interruption of drinking, domestic or residential water supplies shall, with respect to each of the following surface lands, uses, or water supplies affected by subsidence:
- (a) Promptly restore or rehabilitate any surface lands or renewable resource lands for which the value or reasonably foreseeable use has been reduced or which have been materially damaged by subsidence. Such lands shall be restored or rehabilitated to a condition capable of maintaining the value and reasonably foreseeable and appropriate uses they were capable of supporting before subsidence, to the extent technologically and economically feasible.
 - (b)
 - (i) Promptly and fully repair, rehabilitate, restore, or replace damaged occupied residential dwellings and related structures or noncommercial buildings; or
 - (ii) ***
- (3) In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the regulatory authority.
- (4) Each person who conducts underground mining activities which result in subsidence that causes material subsidence damage, diminution in the reasonably foreseeable use of ~~use~~ of surface lands, structures, or renewable resource lands, or contamination, diminution, or interruption of

drinking, domestic or residential water supplies shall obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated costs to replace the protected drinking, domestic or residential water supply, if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of the subsidence related damage, subsidence related diminution in use of surface lands, structures, or renewable resource lands, or the subsidence related contamination, diminution or interruption of drinking, domestic or residential water supplies, additional bond need not be obtained. The Division may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the Division finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of the protected water supply.

- (5) Nothing in Rule 4.20.3 shall be deemed to grant or authorize an exercise of power of condemnation or the right of eminent domain by any person engaged in underground mining activities.

4.20.4 Buffer Zones

- (1) Underground mining activities shall not be conducted beneath or adjacent to any perennial stream, or impoundment having a storage volume of 20 acre-feet or more, or bodies of water with a volume of 20 acre-feet or more unless the Division, on the basis of detailed subsurface information, determines that subsidence will not cause material subsidence damage to streams, water bodies and associated structures. If subsidence causes material subsidence damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and prevent additional subsidence from occurring. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above, it may limit the percentage of coal extracted under or adjacent thereto.
- (2) Underground mining activities beneath any body of water or aquifer that serves as a significant source of water supply to any public water system shall be conducted so as to avoid disruption of the body of water or aquifer and consequent exchange of water between the body of water or aquifer and other strata. The Division may prohibit mining in the vicinity of the body of water or aquifer or may limit the percentage of coal extraction to protect the body of water or aquifer and water supply.
- (3) Underground mining activities shall not be conducted beneath or adjacent to any public buildings and facilities, including but not limited to, churches,

schools, hospitals, courthouses and government offices, unless the Division, on the basis of detailed subsurface information, determines that subsidence from those activities will not cause material subsidence damage to these structures and specifically authorizes the mining activities. If the Division determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above, it may limit the percentage of coal extracted under or adjacent thereto.

- (4) If subsidence causes material damage to any of the features or facilities covered by paragraphs (1), (2), or (3) of this rule, the Division may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.
- (5) In order to protect the stability of affected land, the Division, after consultation with the operator and the Mine Safety and Training Program of the Colorado division of reclamation, mining and safety, shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments or permanent streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities. If, in the opinion of the Division, the delay necessary for consultation would exacerbate the imminent danger to inhabitants, the Division shall suspend underground coal mining prior to consultation.

4.21 ***

4.22 CONCURRENT SURFACE AND UNDERGROUND MINING

4.22.1-4.22.3 ***

4.22.4 Performance Standards

In addition to the applicable requirements of Rule 4 each person who conducts combined surface and underground mining activities shall comply with the following:

- (1) A 500-foot barrier, measured horizontally, shall be maintained between the surface and underground mining activities, except that the Division shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing and sequencing of the approximate coincidence of specific surface coal mining activities with specific underground mine activities are jointly approved by the Division and by the Mine Safety and Health Administration, or its successor, if such operations will result in:
 - (a) Improved coal resources recovery;
 - (b) Abatement of water pollution; or

(c) Elimination of hazards to the health and safety of the public.

(2)-(3) ***

4.22.5 ***

4.23-4.24 ***

4.25 OPERATIONS ON PRIME FARMLAND

4.25.1 ***

4.25.2 Special Requirements

(1)-(2) ***

(3) Revegetation success on prime farmlands shall be measured upon the basis of comparison of actual crop production from the disturbed area, compared to the target level of crop production based on the requirements of 4.15.9 and 4.25.5 as approved by the Division in accordance with 2.06.6(2)(g). If such undisturbed prime farmland is not available for comparison purposes, comparison of production on disturbed areas shall be made with the premining target yields approved by the Division in the permit in accordance with 2.06.6(2)(g).

(4) ***

4.25.3 Soil Removal and Stockpiling

Unless exempted by Section 34-33-114(4)(b) of the Act, surface coal mining operation for all prime farmlands as identified in Section 34-33-110(2)(q) of the Act to be mined and reclaimed, must comply with specifications for soil removal, storage, replacement, and reconstruction to be established by the State Conservationist of the U.S. Natural Resources Conservation Service, and the operator shall be required, as a minimum to:

(1) ***

(2) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded soil a root zone of comparable depth and quality to that which existed in the natural soil, and, if not utilized immediately, stockpile within the permit area this material separately from other removed soil materials and spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material in accordance with 4.06.3.

(3) ***

4.25.4 ***

4.25.5 Revegetation

Each person who conducts surface coal mining activities on prime farmland shall meet the following revegetation requirements during reclamation:

(1)-(2) ***

(3) Measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the Division under Rule 2.06.6. At a minimum, the following shall be met:

(a) ***

(b) Reference crop yields for a given crop season are to be determined from:

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Natural Resources Conservation Service; or

(ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Natural Resources Conservation Service for local yield variation within the county that is associated with differences between non-mined prime farmland soil and all other soils that produce the reference crop. The average reference crop yield may be adjusted with the concurrence of the U.S. Natural Resources Conservation Service for disease, pest, and weather-induced seasonal variability, or differences in specific management practices where the overall management practices of the crops being compared are equivalent;

(c) ***

(d) In measuring revegetation success on prime farmlands, an appropriate total harvest method, or a statistically valid sampling technique shall be employed. If statistical methods are employed, a positive determination of revegetation success shall be made with not less than 90 percent level of confidence in accordance with statistical methods as approved by the Division after consultation with the U.S.D.A. Natural Resources Conservation Service.

4.26-4.29 ***

4.30 CESSATION OF OPERATIONS

4.30.1 Temporary

- (1) ***
- (2) Before temporary cessation of mining and reclamation operations for a period of 30 days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, the permittee shall notify the Division. Within 90 days after notifying the Division, the permittee shall submit to the Division a notice of intention to cease temporarily or abandon operations. This notice shall include a statement of:
 - (a) ***
 - (b) The extent and kind of reclamation of surface area which will have been accomplished through the date of cessation or abandonment;
 - (c)-(d) ***
- (3) ***

4.30.2 ***

RULE 5 INSPECTIONS, ENFORCEMENT AND CIVIL PENALTIES

5.01 ***

5.02 INSPECTIONS

5.02.1 Scope

5.02.2 Frequency, Time and Manner of Inspections

- (1)-(3) ***
- (4) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:
 - (a) The Division has secured from the permittee the written notice provided for under Section 4.30.1(2) of these regulations: or
 - (b) ***
- (5)-(7) ***

(8) ***

(a) In selecting an alternate inspection frequency authorized under the paragraph above, the Division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (8)(b) of this section. Following the inspection, the Division shall prepare and maintain for public review a written finding and proposed decision justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i)-(iv) ***

(v) The extent to which the site is located near or above urbanized areas, communities, occupied residential dwellings, schools, and other public or commercial buildings and facilities;

(vi)-(vii) ***

(b)-(c) ***

5.02.3-5.02.6 ***

5.03 ENFORCEMENT

5.03.1 ***

5.03.2 Cessation Orders and Notices of Violation

(1) ***

(2) (a)-(d) ***

(e) If any of the conditions in paragraph (c) of this section exist, the permittee or other person who is issued a notice of violation pursuant to (a) above may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Administrator or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or other person who is issued a notice of violation pursuant to (a) above shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of 5.03.2(2)(b) and (c). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the

file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(f)-(h) ***

(3) ***

(4) (a) Each notice of violation or cessation order issued shall be on a form approved by the Board, shall be signed by the authorized representative issuing it, and shall set forth with reasonable specificity the following:

(i) ***

(ii) A description of the steps necessary to abate the violation in the most expeditious manner physically possible, including a description of any affirmative obligations imposed under 5.03.2(1)(=c) above;

(iii)-(iv) ***

(b) The notice of violation or cessation order additionally shall:

(i) ***

(ii) Inform such person that he or she has the right to review the notice of violation or cessation order in an informal public hearing in accordance with Rule 5.03.2(7) and/or a public hearing before the Board in accordance with Rule 5.03.5; and

(iii) ***

(5) (a)-(b) ***

(c) An authorized representative may, upon written request and a showing of good cause, extend the time for abatement, subject to the overall 90 day limitation of 5.03.2(2)(b), if the failure to abate within the time previously fixed in a cessation order was not caused by lack of diligence on the part of the person issued such order.

(d) ***

(e) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(6)-(7) ***

5.03.3-5.03.4 ***

5.03.5 Formal Review by the Board

(1) (a)-(c) ***

(d) A person issued any notice of proposed individual civil penalty assessment under 5.05 may request review thereof by the Board within 30 days after issuance of the proposed individual civil penalty assessment.

(2)-(5) ***

5.03.6-5.03.7 ***

5.04 CIVIL PENALTIES

5.04.1-5.04.2 ***

5.04.3 Procedures for Assessment of Civil Penalties

(1)-(4) ***

(5) (a) If any person issued a notice of violation or cessation order does not request an assessment conference under (2) above, if an assessment conference is held but the issues are not resolved, or if an agreed penalty is fixed in an assessment agreement but is not paid within the prescribed time, then the Division shall order the civil penalty fixed at an amount determined to be appropriate, in the light of the criteria set forth in 5.04.5(3) and relevant information received at any assessment conference.

(b)-(c) ***

5.04.4-5.04.6 ***

5.05 Individual CIVIL Penalties

5.05.1 SCOPE

This rule addresses the assessment of individual civil penalties under section 123(10) of the Act.

5.05.2 WHEN AN INDIVIDUAL CIVIL PENALTY MAY BE ASSESSED

The Division may assess an individual civil penalty against any Corporate Director, Officer or Agent of a Corporate Permittee who knowingly and willingly authorized, ordered or carried out a violation, failure or refusal to comply with any regulatory requirements or order of the Board. An individual civil penalty shall

not be assessed in situations resulting from a violation until a cessation order has been issued by the Division to the Corporate Permittee for the violation, and the cessation order has remained unabated for 30 days.

5.05.3 AMOUNT OF INDIVIDUAL CIVIL PENALTY

The amount of civil penalty shall be based on the criteria set forth in 5.04.5 and 5.04.6.

5.05.4 Procedure for assessment of individual civil penalty.

- (1) Notice. The Division shall serve on each individual a Notice of Proposed Individual Civil Penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying Notice of Violation and cessation order. Such notice shall be served by certified mail directed to such person, and service shall not be incomplete due to any refusal to accept service. Notifications shall be sufficient if the certified mail is directed to such person at the address set forth in the permit application as required by 2.03.4.
- (2) Final order and opportunity for review. The Notice of Proposed Individual Civil Penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:
 - (a) The individual files a request for review by the Board within 30 days of service of the Notice of Proposed Individual Civil Penalty assessment. Upon submission of a request for hearing, such hearing shall be held in accordance with 5.03.5(2) - (4); or
 - (b) The Division and the individual or responsible Corporate Permittee agree within 30 days of service of the Notice of Proposed Individual Civil Penalty Assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

5.05.5 Payment of Penalty

- (1) No abatement or appeal. If a Notice of Proposed Individual Civil Penalty Assessment becomes a final order in the absence of a request for review or abatement agreement, the penalty shall be due upon issuance of the final order.
- (2) Appeal. If an individual named in a Notice of Proposed Individual Civil Penalty Assessment files a request for review in accordance with 5.03.5 the penalty shall be due upon issuance of the Board Order.
- (3) Abatement Agreement. Where the Division and the Corporate Permittee or an individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a Notice of Proposed Individual Civil Penalty assessment may postpone payment until receiving either a final order from the Division stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

- (4) Delinquent Payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty may be recovered in a civil action brought by the Attorney General, at the request of the Board, in the District Court of this State for the district in which any of the affected land is located or in such other district agreeable to all parties of such action.

5.06 Alternative Enforcement

5.06.1 Scope

This rule governs the use of measures provided in sections 123(9), (11) and (12) of the Act for criminal penalties and civil actions to compel compliance with provisions of the Act.

5.06.2 General provisions.

- (1) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, the Division must update AVS to reflect the judgment or conviction.
- (2) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.
- (3) Nothing in this rule eliminates or limits any additional enforcement rights or procedures available under Federal or State law.

5.06.3 Criminal penalties.

Under sections 123(9) and (11) of the Act, the Division or Board may request the Attorney General to pursue criminal penalties against any person who:

- (1) Willfully and knowingly violates a condition of the permit;
- (2) Willfully and knowingly fails or refuses to comply with:
 - (a) Any order issued under section 123 or 128 of the Act; or
 - (b) Any order incorporated into a final decision issued by the Board under the Act (except for those orders specifically excluded under section 123(9) of the Act); or
- (3) Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the Division or any order or decision issued by the Board under the Act.

5.06.4 Civil Actions for Relief

- (1) ***
- (2) A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee has his/her principal office.
- (3) Temporary restraining orders will be issued in accordance with Rule 65 of Chapter 7 of the Colorado Rules of Civil Procedure, as amended.
- (4) Any relief granted by the court to enforce an order based on a violation or failure or refusal to comply with any order or decision issued by the Board or Division under the Act or these Rules shall continue in effect until the completion or final termination of all proceedings for review of such order under the Act, unless, prior thereto, the district court granting such relief sets such order aside or modifies it.

RULE 6 BLASTERS TRAINING AND CERTIFICATION

6.01 GENERAL REQUIREMENTS

6.01.1 Scope

This section establishes the minimum requirements for the blaster training and certification program for the State of Colorado. The objectives of this section are to ensure that all surface blasting operations are conducted by trained and competent persons certified under a program which meets the minimum criteria established by applicable law.

As used in this Rule a certified blaster means a person certified under the requirements of Rule 6 to be directly responsible for the blasting operations in surface coal mining operations and surface blasting operations of underground coal mining operations. A certified blaster shall be familiar with the blasting requirements of Rule 2.05.-3(6)(a) and Rule 4.08.

6.01.2 ***

6.01.3 Duties of Blasters and Operators

(1)-(2) ***

- (3) A certified blaster shall produce on-site or at the mine office his certificate to any authorized representative of the Division or the Office of Surface Mining upon request.

(4)-(6) ***

6.02-6.03 ***

6.04 SUSPENSION OR REVOCATION OF CERTIFICATIONS

(1) The following are grounds for suspension or revocation of blaster certification:

(a)-(e) ***

(f) Failure to present certification upon request of the Division or Office of Surface Mining personnel;

(g)-(h) ***

(2)-(3) ***

RULE 7 DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING

7.01-7.05 ***

7.06 PETITION PROCEDURE

7.06.1 ***

7.06.2 Petition Requirements: Designation

A petition for designation shall be in writing, shall be directed to the Board, and shall contain the following information:

(1) The name, address, telephone number, and notarized signature of the petitioner.

(2)-(4) ***

7.06.3 Petition Requirements: Termination

A petition to terminate an unsuitability designation shall be in writing, shall be directed to the Board, and shall contain the following information:

(1) The name, address, telephone number, and notarized signature of the petitioner.

(2)-(4) ***

7.06.4 to end ***