

# APPENDIX A

## Mined Land Reclamation Board

### Proposed Draft Regulations Implementing Senate Bill 2014-076

December 15, 2014

1313 Sherman Street, Room 318  
Denver, Colorado

# RULE 1: GENERAL PROVISIONS AND REQUIREMENTS - PERMIT PROCESS

## 1.1 DEFINITIONS

- <sup>110(1)(a)(III)</sup>  
~~and~~ (2)
- (27) “110 Limited Impact Operation” ~~applies to~~ means any mining operation which:
- (a) affects ~~five (5) acres or less than~~ and requires a permit issued under section 34-32-110(1)(a)(III), C.R.S. ~~ten acres~~ for the life of the mine (referred herein as 110(1) permit); and is not an in situ leach mining operation or a designated mining operation; or
  - (b) affects less than ten (10) acres and requires a permit issued under section 34-32-110(2), C.R.S. for the life of the mine (referred herein as 110(2) permit), extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year; and is not an in situ leach mining operation or a designated mining operation.
  - ~~(c) — is not an in situ leach mining operation.~~
- 110 (28) “110 Limited Impact Permit” shall mean a permit issued to a Limited Impact Operation pursuant to section 34-32-110(1)(a)(III) or (2), C.R.S.
- <sup>110(1)(a)(I)</sup> (55) “Two Acre Limited Impact Operation” means any mining operation, other than a Designated Mining Operation pursuant to a permit issued under section 34-32-110(1)(a)(I), C.R.S., which:
- (a) the permit application for such operation was filed prior to July 1, 1993;
  - (b) affects less than two (2) acres for the life of the mine; and
  - (c) extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year;
  - ~~(c) — does not extract sand, gravel, or quarry aggregate for sale;~~
  - ~~(d) — is not located in or adjacent to a stream channel;~~
  - ~~(e) — does not use designated chemicals, cause acid mine drainage,~~

~~or does not have toxic or acid-forming materials within the Permit area; and~~

~~(f) the permit application for such operation was filed prior to July 1, 1993.~~

(55.1) By July 1, 2015 an Operator issued a two acre limited impact permit pursuant to section 34-32-110(1)(a)(I), C.R.S. shall file with the Office:

a) evidence of the source of the person's legal right to enter and initiate a mining operation on affected land; and

b) a financial warranty that complies with sections 34-32-110(3) and 34-32-117(4), C.R.S.

## 1.4 APPLICATION REVIEW AND CONSIDERATION PROCESS

### 1.4.1 Applications -General Provisions

112(1) and 110 (1) Application forms, attachments, maps and fees shall be submitted in accordance with the specific requirements for each permit type, except that Designated Mining Operations shall also submit an Environmental Protection Plan as outlined in Subsection 6.4.21 of these Rules and in addition, all In Situ Leach Mining Operations shall also submit Exhibits set forth in Subsections 6.4.21 (unless exempt), 6.4.22, 6.4.23, 6.4.24, and 6.4.25.

(5) All application forms shall contain the following information:

112(2), 110(1)(a)(III) and (2)(a) (b) the name, address, and telephone number of the Owner of the surface of the affected land and the source of the Applicant's legal right to enter and initiate a mining operation on the affected land;

110(1)(a)(III)(D) and (2)(a)(IV) (e) a statement that the operations will be conducted in accordance with the terms and conditions listed in the application, as well as with the provisions of the Act and these Rules, as amended, in effect at the time the Permit is approved or amended; and

### 1.4.2 Specific Application Requirements – 110(1), 110(2), 110 ISL and

## Non-In Situ Leach 110d Limited Impact Permit Applications

112(2),  
110(1)(a)(III)  
and (2)(a)

112.5(3)(d) and  
103(3.5)(a)(III)

- (1) All general application requirements outlined in Subsection 1.4.1, shall be required for 110(1), 110(2) and 110d Limited Impact Operations; except that any application for a 110 in situ leach mining operation must be filed and shall be considered as a 112d-3 permit application pursuant to section 34-32-112.5(3)(d), C.R.S. and Rule 1.4.4; however, if such in situ leach mining applicant is granted an exemption from designated mining operation status, the application shall be labeled a “110 ISL” operation and the applicant need not comply with the designated mining operation requirements but must still comply with all in situ leach mining application requirements in Rule 1.4.4. The process for Office and Board consideration of 110 ISL shall follow those set forth in Rule 1.4.8, and the two hundred and forty (240) day deadline for a decision shall apply.

### 1.4.6 Office Consideration – 110(1), 110(2), 110 ISL and 110d Limited Impact Operation Permit Applications

110(6)

- (1) Except as to 110 ISL applications, the Office shall approve or deny a 110(1), 110(2), or 110d Limited Impact application within thirty (30) days of the date the application is considered filed. Applications for 110 ISL mining operations shall be approved or denied within two hundred and forty (240) days from the date the application is considered filed. The date set for consideration by the Office for any 110 application may be extended pursuant to provisions of Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)) or of Rules 1.4.1(7), (9) or (13). Except as to 110 ISL applications, the time for consideration shall not be extended beyond thirty (30) days after the last such change submitted under Rule 1.8. unless requested by the Applicant. For 110 ISL applications, the time for consideration shall not be extended beyond one hundred twenty (120) days unless requested by the Applicant.

115(2)

- (2) In the event that an objection to a 110(1), 110(2), or 110d Limited Impact permit application, submitted in the form of a protest or petition for a hearing, is received by the Office pursuant to the provisions of Rule 1.7, the Office shall proceed to issue its decision by the date set for consideration in Paragraphs 1.4.6(1), 1.4.1(9), 1.4.1(13) or 1.8. However, the Office may set the matter for a hearing before the Board, pursuant to the provisions of Section 1.4.11. As to 110 ISL applications,

if an objection is filed, the Office shall set the matter for hearing before the Board, in which case the Office shall make a recommended decision on the application.

### **1.11.3 ~~Repealed Conversion of a Two Acre Limited Operation~~**

410(7)

~~Any Operator conducting an operation under a Permit issued as a Two Acre Limited Impact Operation who has held the permit for two (2) consecutive years or more and who subsequently desires to expand it to a size in excess of the two (2) acre limitation, may request the conversion of the permit by filing an application for a permit pursuant to Subsections 1.4.1, 1.4.2 or 1.4.5, except that the Applicant need not supply information, materials, and additional materials provided to the Office during the course of the current operation, or resulting from the Office's inspections thereof.~~

## **RULE 2: BOARD MEETINGS - PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS**

### **2.5 DECLARATORY ORDERS (Section 24-4-105, C.R.S.)**

#### **2.5.2 Petition Submission**

- (1) The petition must be submitted, at a minimum, ~~ten seven~~ (107) days prior to the Board meeting at which it is to be considered.
  - (a) At the regularly scheduled Board meeting, the Board will determine in its discretion and without notice to Petitioner, whether to rule upon any such petition.
  - (b) If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the Petitioner of its action and state the reasons for such action.

## RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

### 4.2 FINANCIAL WARRANTY LIABILITY AMOUNT

#### 4.2.2 Specific Provisions – 110(1), 110(2) and Non-In Situ Leach Mining 110d Limited Impact Operations

~~(1) This Paragraph shall be applicable to Financial Warranties provided for Permits applied for pursuant to Section 34-32-110(1), C.R.S., as of July 1, 1993. The Financial Warranty for a Limited Impact Permit shall be in an amount to be determined by the Office.~~

110(3)

(12) Except for in situ leach mining permits, the Financial Warranty for any 110 Limited Impact Permit which is filed pursuant to ~~S~~section 34-32-110(1)(a)(III) or (2), C.R.S., including those which are automatically issued as a result of Office inaction within thirty (30) days pursuant to ~~the Act (S~~section 34-32-110(67), C.R.S.) shall be in an amount determined by the Office pursuant to section 34-32-117(4), C.R.S. to be equal to the estimated cost of reclamation. By July 1, 2015, any Operator issued a two-acre limited impact permit must comply with the financial warranty requirements set forth in section 34-32-117(4), C.R.S. and Rule 4.

(23) Divisions of state government and units of municipal and county government are exempt from submitting Financial Warranties and are not required to provide reclamation costs.

#### 4.2.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation ~~Error! Bookmark not defined~~ Permit Operations

## RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

### 6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS – 110(1), 110(2), AND NON IN SITU LEACH MINING OPERATIONS 110d LIMITED IMPACT OPERATIONS

110 The following exhibits ~~may~~shall be required for 110(1) Limited Impact Permits and shall be required for 110(2), and Non In Situ Leach Mining 110d Limited Impact Operations; 110 in situ leach mining permit applications shall comply with 112d permit applications including complying with the requirements of Rule 6.4. If an

in situ leach mining operation has been exempted from designated mining operation status, it still must comply with all exhibits required for in situ leach mining operations.

### **6.3.2 EXHIBIT B - Site Description**

- (a) a description of the vegetation and soil characteristics in the area of the proposed operation. The local office of the **Natural Resources Conservation Service (NRCS)** ~~Soil Conservation Service (SCS)~~ may provide you with this information as well as recommendations for Exhibit D - Reclamation Plan;

## APPENDIX B

### **Statement of Basis, Specific Statutory Authority, and Purpose for New Rules and Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 CCR 407-1**

#### **Limited Impact Mining Operations 110(1) Rulemaking**

Consistent with Section 24-4-103(4), C.R.S., of the Administrative Procedure Act, this statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments (“110(1) Rules”) to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 CCR 407-1 (“Rules”). The 110(1) Rules implement new statutory requirements and authority as well as update existing regulations. The 110(1) Rules are intended to protect the public health, safety and welfare as required by the Mined Land Reclamation Act, Sections 34-32-101 through 34-32-127, C.R.S. (“Act”). They also are intended to foster and encourage the development of the State’s natural resources and the development of a sound and stable mining and minerals industry, and require mining operators to reclaim land affected by such operations so that the affected land can be put to a use beneficial to the people of this State. *See* § 34-32-102, C.R.S.

The Mined Land Reclamation Board (“Board”) promulgated the 110(1) Rules to implement amendments to Section 34-32-110, C.R.S., enacted by the passage of Senate Bill 14-076 (“SB 076”). The 110(1) Rules are also promulgated to make certain Board Rules more consistent, effective, and efficient pursuant to Executive Order D 2012-002. In adopting the 110(1) Rules, the Board relied upon the entire administrative record for this rulemaking proceeding, which informally began on September 24, 2014.

#### **Stakeholder Participation**

The Colorado Division of Reclamation, Mining and Safety (“Division”), as staff to the Board, held a stakeholder meeting regarding the proposed 110(1) Rules on November 20, 2014. The Division invited and accepted written and verbal comments from stakeholders regarding the proposed 110(1) Rules during the stakeholder process. The Division amended the draft proposed rules based on comments received during the stakeholder process.



The Board issued a Notice of Rulemaking Hearing concerning the 110(1) Rules on December 15, 2014. Pursuant to the Notice of Rulemaking, any person or organization was invited to participate in the rulemaking and submit prehearing statements, written comments, or alternate proposed rules.

### **Statutory Authority**

The Board is authorized to promulgate the 110(1) Rules under the following sections of the Act:

- Section 34-32-106(1)(c), C.R.S. (Board has the duty to develop and promulgate standards for land reclamation plans);
- Section 34-32-108(1), C.R.S. (Board has the authority to adopt and promulgate reasonable rules and regulations regarding administration of the Act); and
- Newly amended Section 34-32-110, C.R.S. (Board has authority to issue limited-impact mining permits for mining operations conducted on five acres or less).

### **Identification of Amended Rules**

The Board adopted amendments to Rules 1.1, 1.4, 1.11, 2.5, 4.2, and 6.3.

### **Overview of Purpose and Intent**

The primary reason for adopting the 110(1) Rules is to implement legislation the General Assembly passed in 2014. The proposed rules update the existing rules to correspond to the changes required for the implementation of the legislation and also amend areas of the existing rules that need clarification, correction, or reflect new information or current practice or procedure.

The Board's revisions to the Rules are to implement the new class of Limited Impact Permit created by SB 076. This new class of permit allows small miners to legally proceed with mining operations under the appropriate level of technical review and scrutiny. The five-acre Limited Impact Permit will require: public notice and opportunity for public involvement, proof of legal right of entry, annual reports and progress of reclamation, and a sufficient financial warranty. This new permit creates an opportunity for small scale operators, who presently consider the larger 110(2) permit impractical for small-scale mining operations, to legally conduct mining operations as that term is defined in the Act.

SB 076 did not modify Section 34-32-113, C.R.S., and did not authorize the Board to reconsider the manner in which it reviews, authorizes, and regulates prospecting

activities, but rather created a new category of permit to address small impact mining operations. Therefore, prospecting as defined in the Act, will continue to be regulated under Section 34-32-113 of the Act and existing Board Rules and is outside the scope of this rulemaking.

## **Amendments and Additions to Rules**

**Rule 1.1(27)** The definition of Limited Impact Operation is amended to incorporate changes enacted in SB 076 creating the 5 acres or less permit category referred to as 110(1) permits. The definition is also amended to clarify the existing regulatory language regarding 110(2) permits to make the definition more consistent and easier to understand in accordance with Executive Order D 2012-002.

**Rule 1.1(28)** The definition of “110 Limited Impact Permit” is amended to clearly include permits issued pursuant to either Section 34-32-110(1)(a)(III), C.R.S., (five acres or less of mining related disturbance) or Section 34-32-110(2), C.R.S., (less than ten acres of mining related disturbance) pursuant to SB 076 and to make the Rule easier to understand in accordance with Executive Order D 2012-002.

**Rule 1.1(55)** The definition of “Two Acre Limited Impact Operation” is revised to conform to the statutory requirements applicable to the mining operation and to clarify the definition in accordance with Executive Order D 2012-002.

**Rule 1.1(55.1)** The Subpart is added to incorporate the requirements of Section 34-32-110(1)(a), C.R.S., which now requires operators that have a permit to conduct Two Acre Limited Impact Operation bring those permits into compliance with the regulatory requirements of 110 permits.

**Rule 1.4.1.** The Rule is amended to conform the regulatory language regarding the requirement to demonstrate legal right of access in a permit application to the language enacted by the General Assembly in SB 076.

**Rule 1.4.2. and Rule 1.4.6.** These two Rules are amended to clarify that the existing requirements apply to both 110(1) and 110(2) permits.

**Rule 1.11.3.** The Subpart is repealed because the Board no longer issues permits for Two Acre Limited Impact Operations referenced in the subpart and there is no longer an ability to convert a Two Acre limited Impact Permit. Operators that currently operate under a Two Acre Limited Impact Permit must bring themselves into compliance as set forth in SB 076 and new Rule 1.1(55.1).

**Rule 2.5.2.** Rule 2.5.2. is amended to require a petitioner to submit its petition for declaratory order ten (10) days prior to the Board meeting at which the petitioner requests the Board hear its petition. Previously, the Rule required the petition for declaratory order to be submitted seven (7) days prior to the meeting. The change conforms the declaratory order requirements to the Board’s meeting notice

requirements, which makes the Board's hearing notice requirements more consistent and easier to understand in accordance with Executive Order D 2012-002.

**Rule 4.2.2.** The Board's amendment of Rule 4.2.2. incorporates requirements adopted by the General Assembly in SB 076 for the financial warranties required for 110(1) permits. As well, the amended rule describes the process by which operators holding a Two Acre Limited Impact Permit can come into compliance with the newly adopted financial warranty requirements adopted in the General Assembly's enactment of SB 076.

**Rule 4.2.5.** The Rule is amended to delete a typographical error.

**Rule 6.3.** The primary purpose of Rule 6.3 is to set forth requirements an operator must include as exhibits with its application for a 110(1) or 110(2) permit. The Rule is amended to state that for 110(1) permits the Division and Board *may* require, on a site-specific basis, any or all of the exhibits listed in Rule 6.3. The Rule requires the exhibits listed to be included with an operator's application for a 110(2) permit.

The Board recognizes the intent of the General Assembly to create a simplified process for operators to secure a Limited Impact 110(1) permit and to that end the Board confirms its delegation of authority to the Division to determine, based on the Division's expert opinion, whether each exhibit listed in Rule 6.3 is required for a the operator's 110(1) permit application. To further simplify the 110(1) permit application process, the Board authorizes the Division to create expedited or simplified forms related to 110(1) permit applications. Such forms will allow for a more efficient and expedited 110(1) application submittal and review process.

### **Effective Date**

The Board adopted the 110(1) Rules, which amend and clarify the Board's Rules, on January 15, 2015 and are effective twenty days after publication of the adopted 110(1) Rules in the Colorado Register.