

A Landowner's Guide

To Managing Small Gravel Pits

By Tony Waldron and Kent Holsinger, Esq.

Understanding the Permitting Process

Mastering Continued Permit Compliance

A Landowner's Guide to Managing Small Gravel Pits

Table of Contents

Introduction	3
Background and Legal Basis for Mining Permits.....	3
Permitting.....	4
Site Management & Inspections	5
Inspections	6
Signs and Markers	7
Off Site Damage.....	7
Financial Warranty	7
Reclamation Plan/Compliance.....	8
Revegetation	8
Topsoil	9
General Mine Plan Compliance	9
Annual Report	11
Compliance Notebook.....	13
Temporary Cessation.....	13
Mining Health and Safety Administration Requirements (MSHA)	16
Emergency Notification by Operators and Emergency Response Authority of the Office	16
Conclusion	19
Annual DRMS Annual Report Checklist Items.....	21

INTRODUCTION

Now that you have a permit for a gravel mining operation, what are the best management practices to maintain compliance? This landowner's guide will provide direction for avoiding many of the most common oversights or mistakes which can lead to the citation of problems, enforcement actions and/or civil penalties.¹

Background and Legal Basis for Mining Permits

The Mined Land Reclamation Act, C.R.S. § 34-32, was first signed into law in 1977. Under the Mined Land Reclamation Act, the Colorado Mined Land Reclamation Board (MLRB or the Board) and the Division of Reclamation, Mining and Safety (DRMS or Division) Minerals Program issue and enforce Mining and Reclamation Permits for all non-coal mines in the State of Colorado.

The MLRB is a multi-interest citizen board which establishes the regulations, standards and policies that guide the DRMS. The Board was created in 1976 by the Colorado General Assembly. Members are appointed by the Governor and confirmed by the legislature, serving terms of four years. The composition of the Board is established by the Mined Land Reclamation Act and consists of five members with experience in mining, conservation and agriculture, along

with a member of the Department of Natural Resources and a member of the State Conservation Board. The Board meets once a month and acts in an adjudicatory capacity in addressing applications with objections, notices of violations, and other matters pertaining to all mining throughout the state.

In order to carry out the statutory requirements of the Mined Land Reclamation Act, the MLRB has delegated authority to the DRMS Minerals Program staff to review new mine permit applications, amendments, and technical revisions to permits, permit transfers, notices of temporary cessation, and annual reports; respond to inquiries and holds discussions with the general public, industry, environmental groups, and media and work with local, state, and federal government agencies. Staff also inspects active mine sites, reviews prospecting sites and ensures financial warranties are posted for the actual cost of reclamation.

In 1995, the original Mined Land Reclamation Act was bifurcated into two separate but related acts which separated out Hardrock Mining from Construction Materials Mining. The resultant Acts are now the Colorado Mined Land Reclamation Act (C.R.S. § 34-32-101 *et seq.*) (pertaining to Hardrock Mining) and the Colorado Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 *et seq.*) (pertaining to Construction Materials).

¹ This guide was developed to assist landowners with management of small gravel mining operations and assumes that a permit has already been issued to initiate mining. However, the guide does include a short summary of the legal basis for why a permit is required to mine in Colorado.

For the purposes of this guide, all references will be to the latter Act (Act), and the rules promulgated therefrom, the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Act for the Extraction of Construction Materials (Rules). The Act is the legal basis for requiring a permit and the Rules provide additional guidance to assist both applicants and the Division in applying for and receiving a permit, followed by executing the mining and reclamation plan, and ultimately seeking a final performance and financial warranty release of the permit once the site has been fully reclaimed. A person *must* obtain a mining and reclamation permit before conducting mining on any lands within the State of Colorado, including Federal, State, local, or private property. There are four types of permits issued by the Division, along with Notices of Intent to Conduct Exploration. These are as follows:

- 110- A regular construction materials permit disturbing less than 10 acres
- 112- A regular construction materials permit disturbing more than 10 acres with no upper limit
- 111(1) (a)- A permit which is operated for the sole purpose of obtaining materials for highway, road, utility, or similar construction under a federal, state, county, city, town, or special district contract where the contract calls for work to be commenced and completed within a specifically short time; and which will affect thirty (30) acres or less.

- 111(1)(b)- A special one-time excavation permit that disturbs 30 acres or less but is not performed under a government contract. This type of permit is limited to 20,000 tons and all mining and reclamation must be completed within one year
- Notice of Intent to Conduct Exploration- One time authorization to conduct exploration for construction materials. Required if greater than 1600 square feet is disturbed.

Of the many specific and specialized terms used throughout the body of the Rules, the following three in particular are especially important to know and understand when preparing to apply for a permit.

Mining is defined as the extraction of construction materials.

Mining Operation means the development or extraction of a construction material from its natural occurrences on affected land. The term includes, but is not limited to, open mining and surface operation and the disposal of refuse from underground and in situ mining. The term also includes transportation or processing on **affected lands**.

→ *The Act is the legal basis for requiring a permit and the Rules provide additional guidance to assist both applicants and the Division in applying for and receiving a permit.*

Affected Lands is a very important term and also includes its own definition which states:

“Affected Land” means the surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of such operation.” Further, it provides:

Affected lands include but shall not be limited to private ways, roads, except those roads excluded pursuant to this Subsection 1.1(3) and railroad lines appurtenant to any such area; land excavations, exploration sites, drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise included as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the Board. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded for support the mining operation.



➤ **Early stages of mining activities.**

There are some narrow exemptions for activities where excavation and export of material from a site may not be considered mining such as:

- Very small excavations conducted in support of another activity such as a residential basement excavation;
- Maintenance activities associated with cleaning irrigation canals or storage reservoirs;
- Farmers or ranchers moving material around on their own land to support farming and ranching operations, such as grading a field to improve irrigation or drainage.

The Division has developed a process to assist landowners and the Division in determining whether or not a mining permit is required to conduct a proposed excavation activity. This process requires completing an “Is it Mining” questionnaire in order to answer a series of questions about the activity. To be clear, if an activity involves extraction of construction material, processing of this material and

transportation off site for use in a construction activity, it is mining.

Permitting

The Rules lay out the requirements for preparing an application, conducting the review process, and obtaining a mining and reclamation permit. The Rules further define the Division's inspection and enforcement process, as well as the adjudicatory process before the MLRB. The

→ *The exhibits required by Rule 6 contain the information the Division uses to approve or deny an application.*

many elements to this process, as laid out in the Rules, are briefly described below.²

Rule 1 - General Provisions and Requirements-Permitting Process:

This rule covers the definitions and the application review process, along with other actions that can occur once a permit is obtained such as amendments, revisions, transfers, etc.;

Rule 2 - Board Meetings-Permit Application Hearings, Decisions and Appeals: This rule deals mostly with the conduct of Board meetings during the permitting process;

Rule 3 - Reclamation Performance Standards, Inspection, Monitoring and Enforcement: This rule, along with Rule 6, is the most important rule for

permitting and for operation of a mining site after permit issuance. It not only provides guidance for the Division during the permitting process, but also provides direction for the Applicant as to the basic tenets of conducting mining and reclamation throughout the life of the mine;

Rule 4 - Performance Warranties and Financial Warranties: This rule is the legal basis for the Division to be able to ensure mining and reclamation are conducted in accordance with the approved permit and to hold a financial warranty in the amount necessary for the Division to reclaim the site in the event of default;

Rule 5 - Exploration Operations: This rule addresses Notices of Intent to Conduct Exploration that are typically issued prior to permitting in order to evaluate targeted mineral deposits;

Rule 6 - Permit Application Requirements: This rule lays out specific requirements for the permit application exhibits and their content.

Rule 7 - This rule applies to Hardrock Mines only and has been deleted from the Rules.

Rule 8 - Emergency Notification by Operators, Emergency Response Authority of the Office: This rule describes situations which may require emergency notification to the Division, including events such as the imminent failure of an impoundment,

² To gain a full understanding of the permitting process from start to finish, the Act and Rules should be read in their entirety.

embankment, stockpile or slope that poses a reasonable danger to persons or property. The rule further describes emergency notification procedures.

The exhibits required by Rule 6 contain the information the Division uses to approve or deny an application, including mapping requirements, baseline soils analyses, vegetation and wildlife information, mining and reclamation plan specifics, financial warranty calculations, and proof of an applicant's legal right to enter, among others. Rule 3 is used in conjunction with Rule 6 during the permitting process to

more specifically describe the requirements associated with the various elements of the mining and reclamation plans, such as topsoil salvage and materials handling, the revegetation plan, how revegetation success will be measured,

signage requirements, and hydrology requirements.

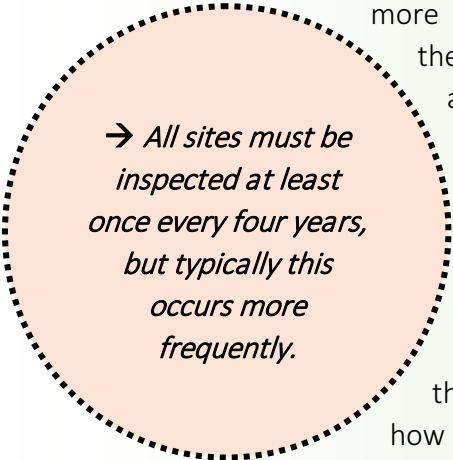
The review process, as described in Rule 1, usually results in a series of exchanges with Division review staff which typically includes changes to some of the original exhibit submittals. Upon approval of the permit, these permit application documents, along with any changes that resulted from the review, become the basis for conducting the mining and reclamation of a site, and, of particular importance, the basis for the Division's inspections of the mining site.

For instance, the maps show the exact location of the permit and affected area boundaries and the mining plan describes how much topsoil will be salvaged and stockpiled for use in reclamation along with the method of mining. The reclamation plan describes the final slopes, topsoil re-application thickness and revegetation plan. Both the mining plan and the reclamation plan are then used to calculate the financial warranty. Once a permit has been issued, implementation of the mining and reclamation plan, as approved, becomes the focus for the Division during their inspections and during any subsequent file reviews. Compliance is based on following the approved plan as closely as possible. As often happens, plans may require modification once implemented. To that end, the Rules provide for a process for modifying the provisions of an existing permit through the submittal of an amendment or technical revision.

Site Management & Inspections

The Division conducts periodic inspections of all mine sites across the state. The frequency is based on size and complexity of mining operations. All sites must be inspected at least once every four years, but typically this occurs more frequently. The Division inspectors are required to notify the permittee/operator of their intent to conduct an inspection—typically at least 24 hours in advance of an inspection in accordance with Division policy. As a result, it is important to maintain updated inspection contact information.

Inspections focus on several areas in order to ensure compliance with the rules and



→ *All sites must be inspected at least once every four years, but typically this occurs more frequently.*

conditions of the permit. Prior to conducting an inspection, the inspector reviews the file, including the approved permit application, paying attention to the mining and reclamation plan together with all maps showing the location, permit boundaries and affected area boundaries. The inspector will also review the financial warranty amount and form of the financial warranty instrument to ensure both are up to date and adequate. Past annual reports will be reviewed and compared with current site observations. Finally, the compliance record of the site will be reviewed to see if there have been any problems or violations issued for this site.

Inspections

The physical inspection will focus on proper signage (identification sign at mine entrance) and clear marking of permit and affected area boundaries; confirming that the mining disturbance is following the approved plan; ensuring all disturbance and ancillary mining activity is contained within the approved affected area; and scrutinizing stormwater drainage control, topsoil salvage and protection, weed management and any reclamation that has been completed. Although it is not possible to anticipate every potential problem that might arise, it is possible to prevent the most common problems and enforcement actions. Each inspection report includes a section called "General Inspection Topics" which includes the following permit and environmental parameters:



➤ Inspection photo of revegetation efforts.

Records, Hydrologic Balance, (meaning both surface water and groundwater including stormwater management, monitoring, etc) Processing Waste/Tailings, General Mine Compliance, Signs and Markers, Overburden/Development Waste, Acid or Toxic Materials, Financial Warranty, Backfilling and Grading, Processing Facilities, Fish and Wildlife, Storm Water Management Plan, Erosion/Sediment Control, Off Site Damage, Roads, Explosives, Topsoil, Revegetation, Reclamation Plan/Compliance, Stipulations.

The inspector will use this as a general guide during inspections and is required to mark each item as inspected, not inspected,

problem or violation. Following are some of the most commonly cited problems/violations from that general list along with suggestions on how to avoid them.

Signs and Markers

Problem: Not maintaining identification sign at public entrance to mine site and not keeping affected area properly marked (see additional comments concerning signs and markers at end of this section).

Solution: Check ID sign each time mine is entered and repair as necessary. Check boundary markers each time mine is visited and replace if damaged or missing. Failure to have the site properly marked leads to inadvertent disturbances occurring outside of the affected area, which is another commonly cited violation.

Off Site Damage

Problem: Affecting or disturbing area outside of the approved affected area. This can occur in several ways and is why the definition of “Affected Area” is so important. Once the affected area is delineated it is imperative that all disturbance and associated mining activities occur within this delineated boundary. This includes storage of overburden and topsoil, processing activities, product stockpiles, equipment storage, stormwater management, etc.

Solution: All disturbances associated with the site must occur within the marked boundaries of the affected area as defined in the approved permit documents. Traffic must stay on designated roads leading to the site and stay within the clearly marked

boundaries once on site. All disturbances associated with mining and reclamation must remain within those clearly marked boundaries.

Financial Warranty

The financial warranty is the amount of money that it would cost the State of Colorado to reclaim the site in the event the operator is not able to meet that obligation. The financial warranty (or bond as it is sometimes called) is calculated with the assumption that the state would be required to reclaim the site in its worst case disturbance and includes mobilizing the necessary equipment to the site to complete the reclamation. The equipment costs are taken from the Caterpillar Inc. production manuals. Typically, the biggest costs associated with reclamation are backfilling and regrading once target minerals are removed, replacing topsoil over these regraded areas, preparing seed beds from the replaced topsoil, and finally, seeding the prepared seed bed.

Problem: For 110 operations the financial warranty is usually calculated to cover the entire permitted area. For 112 operations, this financial warranty is sometimes phased so the entire area is not bonded at one time in an effort to contain the financial warranty amount. For 110 operations problems can arise if the mining plan is not followed, particularly with respect to mining that results in uneven topography or highwalls near the affected area boundaries. This creates the need for more backfilling and grading at the time of reclamation resulting in more financial warranty.

Usually a mining plan is a series of events that occur in a logical sequence.

For example, a mining plan may consist of: salvaging and storing topsoil; removing and storing overburden; removing targeted mining reserves; backfilling and regrading area(s) where mining occurred; replacing overburden and topsoil (or, if overburden is marketed and removed from site, replacing the topsoil); preparing seed beds; and seeding the prepared area. If the approved

backfilling or grading such as developing a highwall that requires significant backfilling.

Solution: Follow the mining and reclamation plan and timetable as closely as possible to what was approved in the original application. If the plan deviates significantly from the plan it can result in an increase to the financial warranty.

Reclamation Plan/Compliance

Problem: Failing to closely follow the approved mining and reclamation plan can lead to problems with the financial warranty, mining and reclamation sequencing, storm water management, erosion and sedimentation, overburden and development waste, processing waste, and tailings, etc. Basically, failure to follow the plan can lead to a system wide failure resulting in citations for problems or violations, which then result in additional bond and/or permitting requirements (i.e., increased costs).

Solution: Review and become familiar with the approved permit's requirements, especially the mining and reclamation plan. If you need to deviate from the approved plan, inform the Division prior to taking such actions and amend or revise the permit as necessary.

Revegetation

Problem: Failing to manage invasive species or noxious weeds.

Solution: Follow weed management plan for controlling all known noxious weeds on the entire site.

The Division may also cite a permittee for failing to establish the approved desirable



➤ **Spreading additional topsoil.**

mining and reclamation plan—which is the basis for calculating the financial warranty—is not followed closely, the financial warranty may become inadequate and must be adjusted. This situation usually results in a problem citation with an opportunity to correct the inadequacy by either posting an increased bond or conducting work to regain compliance with the approved plan. Probably the biggest single issue on smaller sites is the creation of unanticipated

vegetation if a site is in its reclamation phase; however, the Division usually works with the permittee to correct it.

Topsoil

Problem: Failing to salvage topsoil in accordance with the approved mining and reclamation plan and/or failure to protect topsoil once it has been salvaged and stockpiled.

Solution: Closely monitor mining plan to ensure topsoil is properly salvaged in advance of mining, and seed all topsoil stockpiles that will remain in place for more than one growing season with the approved seed mix for topsoil stockpiles.

General Mine Plan Compliance

Problem: Something of a catch-all, this citation usually addresses items such as general pit maintenance. For instance, gravel pits can sometimes become dumping grounds and boneyards for old equipment or trash. The inspector will look at this as a financial warranty issue since this material would need to be hauled off if the state were required to complete the reclamation. Also, inert fill (old concrete, basement excavation material, old asphalt, etc.)

cannot be imported onto a mine site without prior approval from the Division. Rule 3.1.5(9) describes how this process should occur.

→ A permittee must not use gravel pits as repositories for off-site waste.

A second item that might be cited under this inspection topic is improper storage of fuel and lubricants. All fuel and lubricants that are located on a permitted mine site must have secondary containment capable of holding the contents in the event of an accidental spill. In the event of a spill, notification to the Division is required within 24 hours of the spill. See Rule 3.1.13.

Solution: In sum, a permittee must not use gravel pits as repositories for off-site waste such as tree limbs, old equipment, unapproved inert fill, etc. Second, if petroleum products are stored on site, they must have proper secondary containment.

These are just a few of the most frequently cited problems/violations on mine sites across the state. When citing such a problem in the inspection report, the Division inspector will also cite an acceptable corrective action and timeframe to mitigate the problem. If the problem is not corrected in the manner prescribed and in the timeframe cited, the problem can be elevated to a violation. Violations are much more serious and usually lead to an appearance before the Mined Land Reclamation Board where civil penalties can be levied along with corrective actions in a formal board order. If this order is not complied with, it can lead to revocation of the permit and forfeiture of the bond. Needless to say, violations should always be avoided.

During a site inspection, the inspector has the flexibility to cite most non-compliance observations as a problem, which, while serious, can still be resolved by following the corrective actions and the timeframe cited

in the inspection report. The one exception to this flexibility is mining outside of the approved permit/affected area boundaries. This must be cited as a violation and the corrective actions will almost always involve additional permitting requirements in the form of an amendment to the existing permit.

For this reason, it is extremely important to have a durable identification sign at the mine entrance and clearly mark the affected area boundaries with durable markers so it is obvious to anyone visiting the site that they are on a mine site and they know where the boundaries are located. This includes the lines in between the corners or significant direction changes around the perimeter of the permit/affected area. The following rule specifies the requirements for signs and markers:

3.1.12 Signs and Markers

- (1) At the entrance of the mine site the Operator shall post a sign, which shall be clearly visible from the access road, with a minimum size equaling one hundred and eighty-seven (187) square inches, such as eleven (11) inches in height and seventeen (17) inches in width, with appropriate font size, with the following:
 - (a) the name of the Operator and the operation name;
 - (b) a statement that a reclamation permit for the operation has been issued by the Colorado Mined Land Reclamation Board; and
 - (c) the permit number.
- (2) The boundaries of the affected area will be marked by monuments or

other markers that are clearly visible and adequate to delineate such boundaries.

- (a) for Limited Impact 110 Operations and Special 111 Operations the permit boundary for the purposes of this Rule shall be considered the affected area;
 - (b) for Regular 112 Reclamation Operations the area proposed to be disturbed by mining operations for which a Financial Warranty and Performance Warranty have been posted shall be the affected area.
- (3) The Office may approve an alternative plan for identifying the boundaries of the affected land if the Operator includes such a plan in the permit application.

When pits are located where livestock can traverse the site, the markers can be subject to damage from the livestock. For this reason, it is suggested that T-posts not be used to mark the boundaries when livestock are present. Wooden posts at least 6 inches in diameter are usually durable enough to stand up to cattle or horses rubbing on them. Some other suggestions are half buried tires, boulders, small piles of rocks or overburden, or flexible markers such as those used by BLM and USFS. Typical three strand livestock fencing is a good (albeit more expensive) option and can also be used to exclude livestock during vegetation establishment in the reclamation phase. In short, the bottom line is to a) clearly mark the mine entrance and affected area

boundaries and b) keep *all* disturbance within those boundaries.

Annual Report

Pursuant to the Act, permittees are required to submit an Annual Report and pay an Annual Fee on the anniversary date of their permit issuance. Below is the rule describing annual report inclusions. In addition to the report and fee, an Annual Map depicting the permit area, affected areas, and other areas (i.e., topsoil stockpiles, areas re-seeded or reclaimed, newly affected areas, etc.) specific to the operation must also be submitted as part of the Annual Report.

Annual fees must now be filed and paid online through the Division's e-permitting portal. Each permittee must have a viable email which will be used to

notify them of their impending due dates for filing the annual report and paying the annual fee. Fees are based on the type and size of permit (111, 110c, 112c, etc.).

Below is the rule requiring submittal of an annual report.

→ *Permittees are required to submit an Annual Report and pay an Annual Fee on the anniversary date of their permit issuance.*

1.15 ANNUAL REPORT INCLUSIONS

- (1) The Annual Report shall include all information specified on the Annual Report Form, in the



➤ **Material stockpiles.**

format required by the Office, and specifically:

- (a) the Operator shall submit, together with the Annual Report, an updated statement regarding the sufficiency of the value of the Financial Warranty. Additional reasonable data to substantiate the value of the existing Financial Warranty shall be provided if requested by the Office or Board; and
- (b) for any Financial Warranty which is submitted in the form of a Deed of Trust or a Security Agreement, the Operator shall submit, together with the Annual Report, an update by a qualified appraiser indicating any changes in property value, and a statement summarizing any circumstances which may

affect the adequacy of the Deed of Trust or Security Agreement, or the value of the property subject thereto.

(c) The Operator shall provide all monitoring information required as part of the approved Reclamation Plan.

(2) An Operator may request a one-time change to a date other than the anniversary date of the permit for the purpose of submitting Annual Reports.

(3) The Annual Report for Special 111(1)(a) Operations shall include a statement as to the date the public road construction project has or will terminate.

Through the submission of the Annual Report, the Division can both ensure the operator is complying with the conditions of the approved permit and collect annual permit fees. Although it may seem onerous, the annual report should be viewed as a tool to assist the permittee/operator in maintaining compliance with the provisions of their permits. Preparing a good annual report can assist the operator by identifying most, if not all, of the potential problems and violations described in the inspection/enforcement section above. To assist the permittee/operator in gathering most of the information required by the annual report (specifically, the field observation portions), and identifying any potential problems/violations, we have developed a checklist to help (provided at the end of this guide). Ideally, the permittee/operator should complete the Annual Report checklist during a routine

inspection of the mine site prior to the Annual Report's due date.

For instance, the Annual Report checklist asks if the identification sign is properly posted in accordance with Rule 3.1.12(1).

While filling out the Annual Report checklist, if the answer to this question is no, obviously the sign needs to be replaced and it must be done prior to

submitting the report and hopefully in advance of any potential site inspection by the Division, thereby heading off any potential problem or violation.

Completing the Annual Report is also a way for operators to become more familiar with the operating provisions of their respective permits. This process will assist in understanding and recognizing if some aspects of the operation are simply not working and need to be modified. For instance, in answering questions about topsoil salvage, storage and stabilization, and in illustrating these items on the annual report map, the operator may realize that not enough topsoil has been salvaged to complete reclamation or that the stockpile location is interfering with the mine site traffic flow.

Essentially, since the Annual Report is a hard and fast requirement, the permittee/operator should use it to their own benefit as a means of identifying inefficiencies or problems with the

→ A permittee or operator should use the Annual Report to identify inefficiencies or problems with the operation of the mine site.

operation of the mine site. The next section will discuss creating a portable site summary notebook containing copies of a few important documents pertaining to each specific mine site. The Annual Report checklist is one of the items which should be included in that notebook.

Compliance Notebook

It is recommended that the permittee/operator create an easily accessible and portable notebook with a select number of important documents and maps. This is, in essence, a reference manual that can be used to quickly assist in explaining or illustrating various aspects of the mine site. A soft-sided expandable binder with fastener clips and labeled dividers/clear cover sheets is ideal for this use, but in the present day a computer can also be used. Documents can easily be added or removed as necessary to keep the notebook current. At a minimum the compliance notebook should contain copies of the following documents and maps: The 4-page permit application; Exhibit A - Legal Description and Location Map; Exhibit C - Mining Plan; Exhibit D - Reclamation Plan; Exhibit E - Mining Plan and Reclamation Plan Maps; Exhibit F - Other Permits and Licenses (Air Emissions, Stormwater, Well Permits, SWSP, Water Discharge Permits, County Special Use Permit, MSHA, Highway Access, Etc.); Exhibit G - Source of Legal Right to Enter (Lease, Ownership Deed, Letter from Landowner, Tax Receipt or whatever document was used to establish this right in the permit application); Exhibit L - Permanent Man-Made Structures and Agreements (if any); the Permit itself; the Performance Warranty; the most current

Financial Warranty and associated Bond Calculation; Weed Control Plan; most recent Annual Report; Annual Report Checklist; and a list of any Revisions or Amendments.

By virtue of the notebook's portable and accessible narratives and maps, the operator can more quickly and easily eliminate confusion or misunderstandings while discussing the operation during site visits with state or county inspectors, clients, contractors, employees, or other personnel. The notebook will prove especially valuable when discussing the specifics of the permit, such as affected area boundaries, topsoil salvage or re-application depths, mining phases, and approved seed mixes.

Temporary Cessation

Mining permits are issued for the "Life of Mine" which is defined in Rule 1.1 (25) as:

"Life of the Mine" means and includes, but is not limited to, those periods of time from when a permit is initially issued, that an Operator engages in or plans to continue extraction of construction materials, complies with the Act and these Rules, and as long as construction material reserves remain in the mining operation. It can include limited periods of non-production or Temporary Cessation. "Life of the mine" also includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the Board and this article, until the Board releases, in writing, the Operator from further reclamation obligations regarding the affected

land, declares the operation terminated, and releases all applicable Performance and Financial Warranties.

At first blush, this definition seems simple enough—the operator mines until the targeted mineral reserves are depleted, successfully reclaims the site within five years of the completion of that mining, requests a performance and financial warranty release, and terminates the permit.

During the life of a mining and reclamation permit, however, sites can enter extended periods of inactivity due to several factors. The primary reason is usually attributed to market conditions, namely, lack of demand. Operators should be aware that an extended period of inactivity can start the clock ticking on the Act's requirement to reclaim the site within five years after mining ceases.

At the time the Act was passed, it was understood that mines can have periods of extended idleness. Therefore, requiring them to be reclaimed when reserves were still present seemed inappropriate. Closure requires time and money and if market conditions improved the operator would not only have to re-permit the site in order to mine, but would re-disturb areas that had been previously reclaimed.

As a result, a concept called **Temporary Cessation** was built into the Act to allow operators to declare periods of inactivity in order to prevent the initiation of the 5-year reclamation timeline. Rule 1.13 describes the General Provisions pertaining to Temporary Cessation, Indications of

Temporary Cessation and Indications Against Temporary Cessation. It further describes the required Notice by Operator and Board/Office Procedures.

The essence of the Rule is this: "A permit remains in effect so long as the operator continues to engage in the extraction of construction materials and/or the mining operation, and complies with the provision of the Act, and; [c]onstruction materials reserves are shown by the operator to remain in the mining operation."

If these two elements exist but an operator ceases operations for 180 days, or more, they *may* be required to give written notice to the Division that they are entering into temporary cessation of mining operations. This notice must be accompanied by a fee of \$144.00 and include the following:

- (2) The Notice of Temporary Cessation for the initial period shall include the following:
 - (a) the date of cessation;
 - (b) the reasons for non-production or cessation of the mining operation;
 - (c) a plan for resumption of mining;
 - (d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of

→ *Operators should be aware that an extended period of inactivity can start the clock ticking on the requirement to reclaim the site.*

- Rule 3.1 while the mine is in Temporary Cessation; and
- (e) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability.

Upon receipt, the Division will follow Rule 1.13.6 as follows:

1.13.6 Board/Office Procedure

- (1) Upon receipt of the above submission as outlined in Rule 1.13.5(2), the Office will place the Notice of Temporary Cessation on the agenda of the next regular Board meeting and give notice to the Operator, the county and any municipalities within two (2) miles of the proposed operation, by mail.
- (2) The Board, at said meeting and in consultation with the Operator and other interested parties, may take whatever action(s) it deems necessary and are authorized by law, including but not necessarily limited to:
 - (a) acceptance of the Notice of Temporary Cessation as submitted;
 - (b) acceptance of the Notice of Temporary Cessation with modifications and other necessary activities as established by the Board;
 - (c) determination that the mining operation is not in a state of temporary cessation; or
 - (d) continuance of the matter for another month or more to allow the Operator to revise the Notice of Temporary Cessation and/or to allow the

Office staff to conduct a site inspection or otherwise review the matter as necessary.

- (3) When no reclamation or performance standard issues or problems are indicated in the Notice of Temporary Cessation or by field or file inspection, and no concerns are expressed by interested persons, the Notice shall not be placed on the agenda or heard by the Board. In such cases, the county and appropriate municipality will be notified and the fact of the receipt of the Notice by the Office will be acknowledged in the monthly activity report attached to the monthly agenda.

Many mining operations, especially smaller ones, have annual mining campaigns to mine and process materials and then create stockpiles that are sold and hauled off through the remainder of the year. In doing so there exists the possibility that mining or exporting material from the site may not occur for a period of 180 days. **So, when certain mining operations have periods of inactivity exceeding 180 days in their permit year, the operator may include in their permit the information otherwise required when filing a Notice of Temporary Cessation. This can be done at the time of application for a new permit or during a subsequent permitting action such as an amendment or technical revision.** If approved, such notice shall serve as a substitute for Notice of Temporary Cessation with the following conditions:

- (a) The Operator must report to the Board through the Annual Report:
 - (i) the condition of the operation at the time of cessation;
 - (ii) what specific measures have been and will be implemented to comply with reclamation and performance standards; and
 - (iii) plans for resumption of mining.

To bring this section to a close, Notices of Temporary Cessation are issued for five years for the first term, which can be extended for another five years if the operator files a second request and it is approved by the Board. Also, there is currently no limit on the number of times that an operator can file for Temporary Cessation. Meaning, if a site is in Temporary Cessation for only two years of the first term requested and then reactivates for several years and then files to go back into Temporary Cessation, the 5-year period would then begin anew. In other words, there is not a 10-year **cumulative** limit on how long an operation can be in Temporary Cessation. Presently the only limit is that an

operation cannot be in Temporary Cessation for more than two terms of Temporary

Cessation or 10 **consecutive** years without terminating the mining operation and fully complying with the reclamation plan requirements of the Act and Rules. For most small operations with limited extraction, it is recommended that the permittee include the intermittent provision at the time of initial permitting or submit a technical revision to incorporate this into their permits.

Mining Health and Safety Administration Requirements (MSHA)

MSHA requirements are not covered in this document, however, MSHA does track the issuance of a permit from DRMS and operators should be aware of the health and safety requirements associated with operating a mine.

Emergency Notification by Operators and Emergency Response Authority of the Office

It is imperative that the operator of a mining site in Colorado be aware that there are situations requiring emergency notification by the operator to the DRMS Office, and failure to do so can result in a notice of violation in addition to the damage suffered from the need to report such an emergency. Rule 8.1 requires that

➤ Post-reclamation.



operators shall notify the Office, as soon as reasonably practicable, but no later than 24 hours after the operator has knowledge of a failure or imminent failure of any impoundment, embankment, stockpile or slope that poses a reasonable potential for danger to persons or property. The Rule is included here for reference.

RULE 8: EMERGENCY NOTIFICATION BY OPERATORS, AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.1 SITUATIONS THAT REQUIRE EMERGENCY NOTIFICATION BY THE OPERATOR

Operators shall notify the Office, as soon as reasonably practicable, but no later than twenty-four (24) hours, after the Operator has knowledge of a failure or imminent failure of any impoundment, embankment, stockpile or slope that poses a reasonable potential for danger to persons or property

8.2 OPERATOR'S GENERAL NOTIFICATION RESPONSIBILITIES FOR REPORTING EMERGENCY CONDITIONS

8.2.1 Emergency Reporting Procedure

Telephone notice shall be given to the Office staff as follows:

→ Operators must notify the DRMS office within 24 hours after they become aware of an emergency situation.

(a) during regular business hours (8:00 am to 5:00 pm, on working days), the notice shall be given to the Office.

(b) outside regular business hours, or if the Office cannot be contacted,

notice shall be given to the Colorado Department of Public Health and Environment 24 hour Colorado Emergency and Incident Reporting Line. Specify to this agency, that the emergency authority is coordinated through the Division of Reclamation, Mining and Safety, and to activate that Division's response network.

8.2.2 Emergency Notification Information Required

Notice required pursuant to this Rule 8 shall contain the following information (to the extent known at the time of the notice, and so long as no delay occurs in reporting results):

- (a) that this is notification of an emergency condition as required by Rule 8;
- (b) the nature of the condition;
- (c) the time and duration of the occurrence and if it is on-going, or urgency of the pending situation;
- (d) any known or anticipated impacts to persons or property;
- (e) precautions and corrective actions taken by the Operator; and
- (f) the Operator's name(s) and contact number(s) for persons to be contacted for further information and response by the Office.

8.2.3 Follow-up Notice Requirements

As soon as practicable after an emergency situation or condition is reported and addressed, the Operator shall provide a written report of the event to the Office. The report shall provide a description of:

- (a) actions taken to respond to and correct the emergency situation or condition;

- (b) any known or anticipated adverse impacts to persons or property;
- (c) name(s), address(s), telephone numbers and e-mail address of the Operator's contact person for additional information and follow-up by the Office;
- (d) monitoring and analyses that are necessary to evaluate the situation and corrective actions, copies of all pertinent data; and
- (e) results of the Operator's investigation to assess the conditions or circumstances that created the emergency situation, and what corrective or protective measures will be taken to prevent a similar event from occurring in the future.

8.3 THIS RULE DELETED, RESERVED FOR FUTURE USE

8.4 EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.4.1 Responsibilities of the Office

The Office may:

- (a) establish an Emergency Response Team, which may include other Offices and Agencies;
- (b) enter properties to take necessary emergency, safeguarding and corrective measures;
- (c) after consultation with, and authorization from the Office, issue a written cease and desist order for the activity(ies) suspected of causing the emergency situation;
- (d) apply to a district court for a temporary restraining order, temporary injunction, or permanent injunction to require cessation of the activity(ies) determined to be causing the emergency situation.

- (e) The Financial Warranty funds shall be available for the state to operate any facilities as may be necessary to terminate an emergency as defined by these Rules.

8.4.2 Office's Determination that an Emergency Exists

The Office may exercise its emergency authority to respond to situations at construction material extraction operations. The determination may be based upon the following:

- (a) the Operator, or another person fails or refuses to stop engaging in any activity not permitted by, or which constitutes a possible violation of the Act, the Rules or permit conditions, and which is presenting an unwarranted risk of serious harm to person or property;
- (b) the Operator or another person, fails or refuses to take corrective actions necessary to contain, control, safeguard, or manage an emergency situation;
- (c) an Operator fails or refuses to respond to a Board Order requiring corrective actions for:
 - (i) any failure or imminent failure of any impoundment, embankment, stockpile, or slope identified in the permit;
 - (ii) any specific Permit condition which is intended to protect persons or property.

8.5 THIS RULE DELETED, RESERVED FOR FUTURE USE

8.6 FOLLOW-UP MONITORING AND REPORTING REQUIREMENTS

The Board or Office may require that a post-emergency situation inspection or

monitoring program be performed to evaluate any possible adverse impacts, and to insure that the corrective actions taken are sufficient to address the circumstances creating the initial emergency situation.

This information is being included in this guide to assist operators in the rare event that a situation arises which would require such notification. This Rule is rarely needed or used by an operator or invoked by the Division, however, mining activities can lead to failures that result in potential danger to both operators and the public as described in section 8.1. If such a situation arises on your mine site, notification to the Division is both essential and required. The Division possesses some significant powers to act in an emergency if necessary, but typically works with the operator to safeguard the situation and facilitate mitigation of the emergency and problem. If an operator is not sure if emergency notification is required, it is best to err on the side of caution and contact the Division.

CONCLUSION

We hope this Guide provides useful information for operators relative to compliance with the Act and DRMS Rules. Please note that statutes and rules can, and regularly do, change. This Guide is not a substitute for a thorough review of the law in effect at the time an issue arises. Please consult with competent legal and/or consulting professionals should questions arise.

➤ **Post-reclamation trails and re-established vegetation.**



DRMS Annual Report Checklist Items

Permit Number: _____

Anniversary Date: _____

General Information

Permittee Name: _____

Operation Name: _____

Permit Number: _____

Fee Due: _____

Permit Acreage: _____

County: _____

Anniversary Date: _____

Current Bond Amount: _____

Permittee Contact Information

Permittee Contact Name: _____

Permittee Company: _____

Permittee Address 1: _____

Permittee City, State, and Zip: _____

Permittee Phone: _____

Permittee Fax (if needed): _____

Permittee Contact Email Address: _____

Permitting Contact Info

Permitting Contact Name: _____

Permitting Company: _____

Permitting Address 1: _____

Permitting City, State, and Zip: _____

Permitting Phone: _____

Permitting Fax (if needed): _____

Permitting Contact Email Address: _____

Inspection Contact Info

Inspection Contact Name: _____

Inspection Company: _____

Inspection Address 1: _____

Inspection City, State, and Zip: _____

Inspection Phone: _____

Inspection Fax (if needed): _____

Inspection Contact Email Address: _____

➔ Confirm that the Permitting Contact information listed is correct. (If it is not correct, the permit Administrator will receive an email notification.)

Annual Report Questions

1. Is the site identification sign posted in accordance with Rule 3.1.12(1)?
Yes ☐ No ☐
2. Is the affected area boundary clearly marked in accordance with Rule 3.1.12(2)?
Yes ☐ No ☐
3. Is the mine site in final reclamation (all material extraction and stockpile removal is complete)?
(If YES, note time limits related to completion of reclamation, Rule 3.1.3.)
Yes ☐ No ☐
4. Please enter the date of last activity at the mine (excavation, processing or hauling). Or, if activity has not yet begun, please indicate so.
No activity yet ☐ Yes, activity has begun ☐ Date of last activity: _____
5. Does the mine operate more than 180 days per year? (If "NO", please review Rule 1.13 to assure that mine is in compliance.)
Yes ☐ No ☐
6. Has this mine been granted approval of TEMPORARY CESSATION Status?
Yes ☐ No ☐
7. Has this mine been granted approval for INTERMITTENT OPERATION?
Yes ☐ No ☐
8. Number of acres currently affected (mining + incomplete and or unreleased reclamation).¹

9. Number of acres that were newly affected during the current report year?

10. Number of acres that were reclaimed during the current report year.

11. Estimated new acreage to be affected in the next report year.

¹ For Nos. 8-13, please note that numeric values must include one decimal place, such as "0.0" for zero acres, or 10.2 instead of 10.23.

12. Estimated acres to be reclaimed in the next report year.

13. Total acres in various stages of reclamation, since permitted mining activities began:

Total acres backfilled:

Total acres graded:

Total acres seeded with approved mix:

Total acres fertilized with approved fertilizer:

Total acres with topsoil replaced:

Total acres mulched with approved mulch:

14. Is weed control being conducted in accordance with an approved Weed Control Plan? (If "YES," indicate the weed species, control area, control type, application rate and treatment date on the report map.)

Yes ☐ No ☐ N/A ☐

15. Is there adequate topsoil reserved for reclamation, based on your approved permit? (If "NO," please explain.)

Yes ☐ No ☐ N/A ☐

16. Is the reserved topsoil vegetated/stabilized in accordance with Rule 3.1.9(1)? (If "NO," please explain.)

Yes ☐ No ☐ N/A ☐

17. If mining has exposed groundwater, is the site in compliance with the approved mining plan and Office of the State Engineer (Well Permit, S.W.S.P., and/or Permanent Augmentation Plan)?

Yes ☐ No ☐ N/A ☐

18. Are all hazardous materials stored within approved spill containment structures?

Yes ☐ No ☐ N/A ☐

19. Is your financial warranty value sufficient to cover the cost to complete reclamation?

Yes ☐ No ☐ N/A ☐

20. Is your basis for legal right to enter still valid?

Yes ☐ No ☐

21. Does your permit require you to submit monitoring information (e.g., groundwater monitoring) annually?

Yes ☐ No ☐ N/A ☐

22. As required by Colorado Mined Land Reclamation Act and/or Colorado Land Reclamation Act for the Extraction of Construction Materials (C.R.S.34-32-116 or 34-32.5-116), attach a map accurately depicting the permit boundary, current affected area boundary and location of the acreages specified in items 8-12 and 15. (Must be a PDF.)

23. Upload any supplemental information. (Must be a PDF.)

24. Rule 5.7 requires submittal of final abandonment reports within 60 days for any drill hole(s) with artesian flows and no later than 12 months for all other completed drill holes. If drill holes are a component of your exploration/prospecting activities, have they been properly abandoned?

Yes ☐ No ☐ N/A ☐

ABOUT THE AUTHORS

Tony Waldron worked for Division of Reclamation, Mining and Safety (DRMS) from 1988-2018 in both the Coal and Minerals Programs. He became supervisor of the Minerals Program in 2011 and provided leadership and direction for the Minerals Program where he was responsible for implementation of DRMS' mission which is to balance the need for mineral extraction with protection of public health, the environment and Colorado's other natural resources, while ensuring that mined lands are reclaimed to a beneficial use. Tony was actively involved with the industry's trade associations, working to address their concerns while advancing the Division's mission. He has a degree in Agronomy- Soil Science with a Minor in Chemistry from Colorado State University (86). He was first exposed to, and gained an appreciation for mining, while working in a large underground molybdenum mine from 1978-1981. While his first passion is agriculture, he understands the need for the responsible extraction of resources and is pleased to apply his expertise towards the successful reclamation of mine sites. Tony currently spends his time working on his small family hay farm in Weld County while continuing to consult on mining, reclamation and native grass seeding projects.

Tony Waldron
Hywal94@gmail.com
(303) 263-6902

Kent Holsinger is the founder and managing partner of Holsinger Law, LLC. Based in Denver, Colorado, the firm specializes in natural resources issues including gravel pit permitting, lands, wildlife and water law. Kent's efforts have been recognized in the Wall Street Journal, New York Times and on National Public Radio among many others.

Kent comes from a ranching family in Colorado's North Park. He helps the family with compliance on their gravel pit. Prior to starting the firm, Kent served as the Assistant Director for Water at the Colorado Department of Natural Resources and worked in Washington, D.C. for U.S. Senator Wayne Allard and Congressman Bob Schaffer.

He has received many honors including: Law Week's People's Choice Award for Best Water Lawyer in Colorado; 5280's Top Lawyers for Agricultural and Rural Law; Who's Who in Energy; and Who's Who in Agriculture. Kent served as president of the Colorado Lawyers Chapter of the Federalist Society and as Vice-Chair to Colorado's Conservation Easement Oversight Commission. He is Secretary to the Board of Directors for Western Energy Alliance and Vice-Chair of Colorado's Aeronautical Board. On June 1, 2019, Kent broke a world record for fastest flight in category between North America's highest airport (Leadville, Colo.) and its lowest (Death Valley, Calif.).

Kent Holsinger
kholsinger@holsingerlaw.com
www.holsingerlaw.com
(303) 722-2828