

**NOTICE OF PUBLIC RULEMAKING HEARING**  
**BEFORE THE**  
**COLORADO MINED LAND RECLAMATION BOARD**

**SUBJECT MATTER AND SCOPE OF RULEMAKING HEARING**

The Colorado Mined Land Reclamation Board (“Board”) will consider promulgation of new rules and amendments proposed by the Division of Reclamation, Mining and Safety (“Division”) to the Mineral Rules and Regulation of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations. 2 CCR 407-1.

The proposed new rules and amendments are primarily to implement Senate Bill (“SB”) 08-228 concerning prospecting, codified at § 34-32-113, C.R.S; House Bill (“HB”) 08-1161 concerning uranium mining, codified at §§ 34-32-103, 110, 112, 112.5, 115, 116, and 121.5, C.R.S; and SB 08-169 concerning fees, codified at § 34-32-127, C.R.S. In addition, the proposed rules implement fees that the General Assembly set in 2007 in SB 07-185, codified at § 34-32-127, C.R.S.

The Board will also consider other proposed changes to its rules that correspond or conform to the proposed changes required for the implementation of the above-cited legislation and also amend areas of the existing rules that need clarification, correction or to reflect new information or current practice or procedure. The proposed new rules and amendments include proposed changes to the Board’s existing Rules 1 through 8. **Please note that the Board may accept, reject or modify any or all of the Division’s proposed new rules and amendments, or may propose its own new rules and amendments.**

For the specific language of the new rules and amendments proposed by the Division for the Board’s consideration, please refer to the Division’s Proposed New Rules and Amendments filed with this notice. The Division’s Proposed New Rules and Amendments are also set forth in their entirety at the Division’s website at <http://mining.state.co.us/Rulemaking.htm>, or copies are available at the Division’s office located at 1313 Sherman Street, Room 215, Denver, Colorado 80203, for 25 cents a page or \$ 5.00 for a CD. Please make written requests for copies of the Division’s Proposed New Rules and Amendments to Irene Stanton at the above-cited address or at [Irene.Stanton@state.co.us](mailto:Irene.Stanton@state.co.us).

**Throughout the formal rulemaking process, the Division’s website will provide formal notice to interested persons and parties regarding important dates, pre-hearing orders, filing deadlines, and other information concerning the rulemaking hearing and process.**

The Board will consider the promulgation of the following list of proposed new rules and amendments; this list is not exhaustive. In addition, modifications to other Board rules

may be necessary to conform with the new rules and amendments and to make clarifying changes.

## **Rule 1 General Provisions and Requirements—Permit Process**

- Rule 1.1** Definitions
- Rule 1.2** Scope of Rules and Activities that Do Not Require a Reclamation Permit
- Rule 1.3** Public Inspection of Documents
- Rule 1.4** Application Review and Consideration Process
- Rule 1.5** Fees
- Rule 1.6** Public Notice Procedures
- Rule 1.7** Submission of Comments and Petitions for a Hearing
- Rule 1.8** Amendments and Technical Revisions to a Permit Application
- Rule 1.10** Amendments to a Permit
- Rule 1.11** Conversions
- Rule 1.12** Permit Transfers and Succession of Operators
- Rule 1.13** Cessation of Operations
- Rule 1.14** Termination

## **Rule 2 Board Meetings—Permit Application hearings, Decisions and Appeals**

- Rule 2.6** Prehearing Procedures – Motions, Witness and Exhibit Lists
- Rule 2.8** Hearings
- Rule 2.9** Reconsideration of Board Decisions

## **Rule 3 Reclamation Performance Standards, Inspection, Monitoring, and Enforcement**

- Rule 3.1** Reclamation Performance Standards

## **Rule 4 Performance Warranties and Financial Warranties**

- Rule 4.2** Financial Warranty Liability Amount
- Rule 4.17** Release of Performance and Financial Warranties for Mining Operations
- Rule 4.18** Public Notice and Filing of Written Objections Regarding a Request for Release of Financial Warranty.

## **Rule 5 Prospecting Operations**

- Rule 5.1** Notice of Intent to Conduct Prospecting Operations
- Rule 5.2** Confidentiality
- Rule 5.6** Annual Report
- Rule 5.7** Final Report
- Rule 5.8** No Waiver of Administrative Requirements

## **Rule 6 Permit Application Exhibit Requirements**

- Rule 6.1** Requirements for Specific Operations
- Rule 6.3** Specific Permit Application Exhibit Requirements – 110 and Non In Situ Leach Mining Operations 110d Limited Impact Operations
- Rule 6.4** Specific Exhibit Requirements – 112, 112 ISL or 110 ISL Reclamation Operation and 112d Designated Mining Operations

## **Rule 7 Designated Mining Operations**

- Rule 7.1** General Provisions
- Rule 7.2** Determination of Designated Mining Operations
- Rule 7.3** Environmental Protection Facilities – Design and Construction Requirements

## **Rule 8 Emergency Notification and Response Plans**

- Rule 8.1** Situations that Require Emergency Notification by the Operator
- Rule 8.2** Operator’s General Notification Responsibilities for Reporting Emergency Conditions
- Rule 8.3** Emergency Response Plan for Designated Chemicals and Uranium or Uranium By-Products
- Rule 8.4** Emergency Response Authority of the Office
- Rule 8.8** Emergency Response Cost Recovery

## **STATUTORY AUTHORITY FOR PROPOSED NEW RULES AND AMENDMENTS**

The General Assembly delegated broad rulemaking authority to the Board respecting the administration of the Act at § 34-32-108, C.R.S. In addition, the General Assembly passed several pieces of legislation in 2008, which set forth new statutory requirements and increased the regulatory authority of the Board and the Division. Specifically, the Legislature passed Senate Bill (“SB”) 08-228 concerning prospecting, codified at § 34-32-113, C.R.S; House Bill (“HB”) 08-1161 concerning uranium mining, codified at §§ 34-32-103, 110, 112, 112.5, 115, 116, and 121.5, C.R.S; and SB 08-169 concerning fees, codified at § 34-32-127, C.R.S. In addition the General Assembly set new fee amounts in 2007 in SB 07-185, codified at § 34-32-127, C.R.S. Further authority for the proposed new rules and amendments is found at §§ 34-32-112.5 and 116.5, C.R.S., concerning designated mining operations.

## **INCORPORATION BY REFERENCE**

The Division does not believe that its Proposed New Rules or Amendments incorporate by reference any material as defined in § 24-4-103(12.5), C.R.S. However, in an abundance of caution, to ensure that the Board may consider and adopt regulations regarding the standards set forth in HB 1161, the following material may be incorporated by reference:

1.) Colorado Department of Health and Environment, Water Quality Control Commission, The Basic Standards for Groundwater, Regulation #41, 5 CCR 1002-41.

Regulation #41 includes both the statewide radioactive materials standards and Tables 1 through 4 of the basic standards for groundwater established by the Colorado Water Quality Control Commission.

### **DATE AND TIME FOR COMMENCEMENT OF RULEMAKING HEARING**

**Date:** On **April 15, 2010**, the Board will commence the rulemaking hearing. On such date, the Board will receive oral public comment by non-parties. (The Board will hear non-rulemaking matters on April 14). The Board may thereafter continue the rulemaking hearing to subsequent Board meetings, as necessary. Please note that the Board may schedule times to receive oral public comment by non-parties on dates in addition to April 15, or during or in addition to other regularly scheduled Board meetings. Please refer to the Division's website for updates.

**Time:** 1:00 p.m. to 9 p.m. (the meeting may end earlier depending on participation).

**Place:** Embassy Suites Hotel, 4705 Clydesdale Parkway, Loveland, CO 80538.

Telephone number: (970) 593-6200. Directions: Take I-25 (North/South) to Crossroads Boulevard (Exit 259). Hotel and conference center are on the east side of I-25.

### **PUBLIC PARTICIPATION ENCOURAGED**

The Board encourages all interested persons to participate in the rulemaking hearing by providing their comments, opinions, or recommendations regarding the matters to be addressed in this rulemaking, either orally at the hearing or in writing prior to the hearing. Although oral testimony or comments from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony or statements will be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Board for review prior to the hearing. **Please see the requirements and deadline of March 1, 2010, for submission of written public comment set forth below. Also, please note the March 12, 2010 deadline set forth below for the submission of Prehearing Statements and Alternate Proposed Rules by parties.** Oral testimony or statements at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Board questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status generally will not be permitted. Organized groups of individuals are urged to identify one spokesperson and to eliminate redundancy in their presentation of evidence and statements.

**Please note: All individuals who submit or make written or oral public comments to the Board must provide the Division in writing with their name, mailing address, e-mail address, and telephone number.**

**The deadline for filing written public comments is March 1, 2010. Please submit written public comments (including name, mailing address, e-mail address, and telephone number) to:**

Colorado Mined Land Reclamation Board  
Attn: Irene Stanton  
1313 Sherman Street, Room 215  
Denver, CO 80203

To the extent technology and availability allow, the rulemaking hearing will be streamed live over the internet so that interested people who are unable to attend the hearing in person may listen to the public hearing. Any live stream will be found at the Division's website at <http://mining.state.co.us/Rulemaking.htm>

### **PARTY STATUS**

To participate as a "party" to this hearing a written request for party status must be submitted and include the following information:

- (1) Name of the applicant and its representative (if different);
- (2) Mailing address, e-mail address, and telephone and facsimile numbers of the applicant or its representative; and
- (3) A brief summary of the interest of the person in the proposed new rules and amendments, and a description of the general nature of the evidence to be presented in the course of the proceedings.

**Deadline for request for party status: Any request for party status must be submitted to the Board no later than 5:00 p.m. on February 23, 2010, pursuant to the procedures set forth below in this notice.**

The Hearing Officer will review the requests for party status and applicants will be notified of the Officer's decision. The Division will compile a list of names, addresses and e-mail addresses for all persons granted party status, and will post the list on the Division's website.

### **PARTIES' PREHEARING STATEMENTS, REBUTTAL STATEMENTS, AND MOTIONS**

Each party must file and serve, in the manner set forth in this notice, a Prehearing Statement by **March 12, 2010**. Each party's Prehearing Statement must include comments, legal and factual issues, and evidence and argument that the party wants the Board to consider regarding the proposed new rules and amendments. Prehearing Statements are limited to 15 pages excluding written testimony and exhibits.

Any Prehearing Motions must be filed with the Board by **March 12, 2010**.

Any party and Division staff may file and serve a Rebuttal Statement to Prehearing Statements or to Alternate Proposed Rules by **March 23, 2010**. In addition, any party and Division staff may file and serve a response to Prehearing Motions by **March 23, 2010**.

### **PARTIES' ALTERNATE PROPOSED RULES**

In addition to filing a Prehearing Statement, parties may file Alternate Proposed Rules to be adopted by the Board in lieu of or in addition to all or a portion of the Division's proposed new rules and amendments. **Alternate Proposed Rules must be filed and served by March 12, 2010, in the manner provided in this notice. Any comment or response a party wishes to submit to Alternate Proposed Rules shall be included in that party's Rebuttal Statement due March 23, 2010.**

Any person submitting an Alternate Proposed Rule must provide all persons who have been granted party status a copy of the Alternate Proposed Rule and the information required by this notice to accompany such Alternate Proposed Rule. The Alternate Proposed Rule and accompanying information shall be provided to persons who have been granted party status in either an electronic form or paper copy to the addresses listed on the Division's website.

Alternate Proposed Rules may only be considered by the Board if the subject matter of the Alternate Proposed Rules is consistent with and fits within the Subject Matter and Scope of the Proposed Rulemaking as set forth in this notice. Any Alternate Proposed Rule must include the following information:

- (1) An identification of the person or persons submitting the Alternate Proposed Rule;
- (2) A clear statement of the Alternate Proposed Rule;
- (3) A statement of the Board's authority to promulgate the Alternate Proposed Rule;
- (4) A statement describing how the Alternate Proposed Rule is consistent with and fits within the Subject Matter and Scope of the Proposed Rulemaking as set forth in this notice.
- (5) A clear and concise statement of the basis and purpose for the Alternate Proposed Rule. If the rule involves technical issues, the rule must include a detailed, analytical statement of the scientific or technical rationale justifying the proposed rule. If the rule involves legal issues, the rule must include a statement of the legal justification for the rule.

### **FILING AND SERVICE REQUIREMENTS**

All required documents must be received by those entities required to be served as set forth in this notice by 5:00 p.m. on the day they are due. All filings must be served on

the Board in hard copy and electronic copy as follows: Hard copies for the Board - the original and 15 three hole punched copies delivered to Irene Stanton, 1313 Sherman Street, Room 215, Denver, Colorado, 80203; **and**, an electronic copy, preferably in portable document format (*pdf*), to [Irene.Stanton@state.co.us](mailto:Irene.Stanton@state.co.us) for posting on the Division's website. Separate hard copies must also be served on the Department of Law, delivered to each of the following: Jillian Allison, Cheryl Linden, Jeff Fugate and Peter Hack, Colorado Department of Law, 1525 Sherman Street, 7<sup>th</sup> Floor, Denver, Colorado, 80203. Copies to parties may be served by hard copy or electronic mail. The Division will compile a list of all addresses and e-mail addresses for all persons granted party status, and will post it on the Division's website.

### **MANDATORY PREHEARING CONFERENCE**

On December 9, 2009, the Board appointed Board Member Mike King to serve as the hearing officer for the rulemaking. The Hearing Officer will hold a mandatory Prehearing Conference in this matter on:

**Date: April 6, 2010**

**Time: 1 p.m. to 4 p.m.**

**Place: Denver Art Museum, Lower Level Lecture Room, 100 West 14<sup>th</sup> Avenue Parkway, Denver, CO 80204. Telephone number: (720) 865-5000.**

All persons who have been granted party status must participate in this Prehearing Conference, or the Hearing Officer will revoke party status and dismiss any pleading the party has filed including the party's Prehearing Statement, Alternate Proposed Rule and Rebuttal Statement. Additional Prehearing Conferences may be scheduled as necessary.