

CHAPTER 6. AGGREGATE MINED LAND RECLAMATION
ARTICLE 1. ADMINISTRATION

27-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Aggregate" has the same meaning prescribed in section 27-441.
2. "Aggregate mining" has the same meaning prescribed in section 27-441.
3. "Aggregate mining facility" means property that is owned, operated or managed by the same person for aggregate mining. Property that is not contiguous but is within the same geographical area and operated as a single aggregate mining complex is considered to be a single aggregate mining facility.
4. "Aggregate mining unit" means an individual portion of an aggregate mining facility that encompasses one or more surface disturbances.
5. "Division" means the division of mined land reclamation in the office of the state mine inspector.
6. "Existing aggregate mining unit" means an aggregate mining unit, other than a new aggregate mining unit, that continued operations after April 1, 1997.
7. "Existing exploration operation" means an exploration operation that is ongoing as of the effective date of the initial rules adopted by the inspector pursuant to this chapter.
8. "Exploration operations" means activities that create surface disturbances outside an aggregate mining facility and that are conducted to determine the presence, location, extent, depth or

grade of aggregate, including constructing access roads and drill pads.

9. "Inactive aggregate mining unit" means an aggregate mining unit that has not been operated after April 1, 1997 and for which there is a current identifiable owner or operator other than the federal or state government.
10. "Inspector" means the state mine inspector.
11. "Maintenance" means an activity to preserve or repair the function of previously disturbed land, including grading roads, repairing berms or dams and dredging sedimentation basins.
12. "New aggregate mining unit" means an aggregate mining unit at which surface disturbances begin after the effective date of the initial rules adopted pursuant to this chapter.
13. "New exploration operation" means an exploration operation that begins after the effective date of the initial rules adopted pursuant to this chapter.
14. "Reclamation" means measures that are taken on surface disturbances at exploration operations and aggregate mining units to achieve stability and safety consistent with postaggregate mining land use objectives specified in the reclamation plan.
15. "Soil" means topsoil, suitable substrata or other plant growth media that will sustain vegetation.
16. "Stability" means the condition of land with respect to its erosion potential and ability to withstand seismic activity.

17. "Surface disturbance" means clearing, covering or moving land by means of mechanized earthmoving equipment for aggregate mining and exploration but does not include surveying, assessment and location work, seismic work, maintenance and other such activities that create a de minimis disturbance.

27-1202. Coordination of programs and activities

A. The state mine inspector shall employ staff who have the necessary and appropriate experience in aggregate mining and reclaiming aggregate mined lands.

B. Except as provided by subsection C, the authority to administer aggregate mined land reclamation is conferred on the state mine inspector as provided in this chapter.

C. Subsection B of this section does not apply to a city or town that adopted an ordinance before January 1, 2005 requiring aggregate mined land reclamation. This section does not affect the legal status of nonconforming uses in a city or town.

D. The requirements of a reclamation plan under this chapter and a floodplain use regulation for the same aggregate mining unit or exploration operation, including any financial assurance requirements, shall not contradict or be redundant or inconsistent with the requirements of this chapter.

E. This chapter does not supersede the requirements of a county flood control district to maintain stability and the flood carrying capacity of the floodplain.

F. This chapter does not supersede the requirements of title 49 or any other applicable federal, state or local law.

27-1203. Exemption for state lands; agreements for coordination with other governmental agencies and landowners

A. This chapter does not apply to any activity that occurs on state land and that is regulated pursuant to chapter 2, article 5 of this title.

B. The state mine inspector may enter into agreements pursuant to title 11, chapter 7, article 3 with the state land department, the United States bureau of land management, the United States forest service and other agencies that manage public lands and take other appropriate measures to coordinate the review and approval of reclamation plans, including designating a lead agency for reclamation plan review and action. The inspector shall avoid redundant, inconsistent or contradictory reclamation, inspection, administration, enforcement and financial assurance requirements.

27-1203.01. Exemption for limited, intermittent-use projects

A. The regulatory and reclamation provisions of this chapter do not apply to an aggregate mining unit that is intermittently used for specific governmental projects if it meets all of the following conditions:

1. The aggregate mining unit consists of:

(a) A surface disturbance of not more than twenty contiguous acres.

(b) A single pit of not more than ten acres.

2. The aggregate mining unit is subject to the requirements of the clean water act (33 United States Code chapter 26).

3. The depth of excavation will not exceed twenty-five feet below the lowest existing surface elevation.

4. The aggregate material removed from the excavation is used solely for governmental projects and not for any private commercial purpose.

5. At the end of the specific project use, the unit will be reclaimed in a manner consistent with the requirements of the owner of the land and all safety conditions prescribed by law.

B. This section does not supersede the requirements of a flood control district to maintain the stability and the flood carrying capacity of the floodplain.

C. This section does not apply to aggregate mining units that are within the exterior boundaries of an incorporated city or town or that are in an unincorporated area of a county that is surrounded on all sides by one or more incorporated cities or towns.

27-1204. Rules; contributions

A. The inspector shall adopt rules consistent with this chapter for the reclamation of surface disturbances at exploration operations and aggregate mining units and for the administration of this chapter.

B. To accomplish the purposes of this section, the inspector may accept monies for deposit in the aggregate mining reclamation fund received from the federal government or other governmental agencies. The state shall separately account for monies received pursuant to this subsection that are deposited in the aggregate mining reclamation fund.

27-1205. Certificate of disclosure of violations; remedies; definition

A. The following persons shall file a certificate of disclosure with the division of mined land reclamation as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this chapter and who has been convicted of a felony involving laws related to mined land reclamation within the five year period immediately preceding execution of the certificate.

2. A person who is engaged in an activity subject to regulation under this chapter and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to mined land reclamation.

B. The certificate of disclosure prescribed by this section shall contain the following:

1. Identification of the person, including present full name, all prior names or aliases, full birth name, present house address and all prior addresses for the immediately preceding five year period, date and place of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and place, the court and public agency involved and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of the corporation.

D. Initial certificates shall be delivered to the division within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of the person's fiscal year as reported on the initial certificate.

E. By February 1 of each year, the state mine inspector shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

F. Instead of the certificate of disclosure prescribed by this section, a corporation may submit to the division copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form", within ninety days after filing the annual report. The initial submission shall include 10-K forms for the preceding five years.

G. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to section 27-1322, section 27-1324, subsections B and C and section 27-1325.

H. For the purposes of this section, "person" means:

1. A natural person.

2. Any public or private corporation, its officers, directors, trustees, incorporators and persons who control or hold over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation.

3. A partnership, including all general partners and limited partners who control a ten per cent or more beneficial interest in the partnership.

4. An association or society of persons.

5. A limited liability company including all members who have a ten per cent or more interest in the limited liability company.

6. The federal government and any of its departments or agencies.

7. This state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

27-1221. Surface disturbances created by new exploration operation or aggregate mining unit

Beginning January 1, 2007, an owner or operator of a new exploration operation or new aggregate mining unit shall not create a surface disturbance of more than five contiguous acres until a reclamation plan and financial assurance mechanism for the exploration operation or aggregate mining unit are approved by the state mine inspector or are otherwise authorized by this chapter.

27-1222. Surface disturbances created by existing exploration operation or aggregate mining unit; extension; continuing operations

A. An owner or operator of an existing exploration operation or existing aggregate mining unit with surface disturbances of more than five contiguous acres shall submit a reclamation plan to the state mine inspector on or before January 1, 2007.

B. An owner or operator may petition the inspector for an extension of time to submit a reclamation plan. The inspector shall grant the extension on a showing of good cause, including the need to coordinate the preparation and submission of a reclamation plan with other permits and approvals required for the exploration operation or aggregate mining unit.

C. The owner or operator of an existing exploration operation or existing aggregate mining unit may continue operations, including creating surface disturbances, until the inspector takes final action on the reclamation plan and financial assurance mechanism.

D. The reclamation of surface disturbances created in whole or in part before the effective date of this chapter and the initial rules adopted pursuant to this chapter may present special technical and economic constraints that are not encountered for new surface disturbances. The inspector shall consider the nature and extent of the existing surface disturbances, relevant site-specific circumstances and the technical and economic practicability of reclaiming such surface disturbances. The inspector shall not require the removal or relocation of existing aggregate mining units to satisfy the reclamation requirements of this chapter.

27-1223. Creating surface disturbances of five acres or less

A. Nothing in this chapter shall prevent an owner or operator of an exploration operation or aggregate mining unit from creating a surface disturbance of five contiguous acres or less.

B. From and after December 31, 2006, the state mine inspector may require either or both of the following in the case of a series of surface disturbances of five contiguous acres or less by the same owner or operator if the series of surface disturbances in aggregate constitute more than five acres:

1. A reclamation plan under article 3 or 4 of this chapter.
2. A financial assurance mechanism under article 5 of this chapter.

27-1224. Inactive aggregate mining units

A. At an inactive aggregate mining unit, the following are not subject to the requirements of this chapter:

1. Voluntary reclamation measures that are not required by federal or state law, regulation or permit.
2. Actions that are required to comply with other local, state or federal laws, regulations, permits, orders or decrees.
3. Maintenance activities.

B. Exploration operations and aggregate mining and other associated activities at an inactive aggregate mining unit are subject to the requirements of this chapter only with respect to new surface disturbances created by those operations and activities.

27-1225. Remedial response to governmental orders

A. An owner or operator is not required to provide notice or obtain approval of a reclamation plan or financial assurance mechanism under this chapter before creating a surface disturbance pursuant to a remedial action in response to a government order to prevent or mitigate an actual or potential release of pollutants into the environment.

B. The owner or operator shall update the reclamation plan and financial assurance mechanism within six months after completing the emergency or remedial measure.

27-1226. Initiation, extension and completion of reclamation

A. Beginning January 1, 2007, if a surface disturbance cannot be practicably reclaimed concurrently with an exploration operation or at an aggregate mining unit, reclamation shall be initiated:

1. Within one year after completing the exploration operation or aggregate mining unit.
2. Within one year after cessation of aggregate mining activity.
3. As required by applicable federal law.

B. The state mine inspector shall extend the period in which to initiate reclamation under subsection A, with up to three subsequent five year extensions, if the owner or operator of an exploration operation or aggregate mining unit demonstrates a reasonable likelihood that the project or operation will resume, based on a consideration of factors, including:

1. The presence of additional aggregate being mined or other commodities in commerce.

2. Historical fluctuations in the value of the commodity being mined or other commodities present if they can be mined using the same disturbances.

3. The design life of any process components existing at an aggregate mining unit.

C. Once initiated, the final reclamation measures shall be performed as stated in the approved reclamation plan unless the exploration operation or aggregate mining unit is reactivated.

27-1227. Substantial changes to approved reclamation plan

A. The state mine inspector must approve any substantial change to an approved reclamation plan as provided by this section before the change is implemented.

B. The owner or operator of the exploration operation or aggregate mining unit shall submit a notice of a proposed change to the inspector describing the purpose and scope of the proposed change and whether it constitutes a substantial change to the approved reclamation plan. The inspector shall notify the owner or operator submitting a notice of a proposed change to an approved reclamation plan whether the proposed change constitutes a substantial change within fifteen days after receiving the notice.

C. If the inspector determines that the change is substantial, the inspector shall require the owner or operator to submit an amendment to the plan for approval. The inspector shall approve or disapprove the amended plan within ninety days after receiving the amended plan.

D. The inspector shall define substantial change by rule.

E. Before implementing a substantial change in an approved reclamation plan, the owner or operator shall submit to the inspector a revised financial assurance mechanism to account for the substantial change.

27-1228. Transferring an approved reclamation plan

A. A reclamation plan may be transferred from one person to another, by operation of law or otherwise, if the current owner or operator notifies the state mine inspector in writing before the transfer. The notice shall include:

1. The name, address, telephone number and statutory agent of the person to whom the plan will be transferred.
2. The effective date of the proposed transfer.
3. A proposed financial assurance mechanism.
4. Other information the inspector may determine to be necessary by rule.

B. The inspector may deny a transfer on determining that the proposed financial assurance mechanism does not comply with article 5 of this chapter or that the transferee is not capable of operating in compliance with this article, the rules adopted pursuant to this article or the conditions established in the plan. The inspector shall issue notice of and the reasons for the denial within fifteen days after receiving the proposed transfer. Except as provided in section 41-1092.08, subsection H, a final administrative denial of the plan transfer is subject to judicial review pursuant to title 12, chapter 7, article 6.

C. On receiving the approved financial assurance mechanism from the transferee the inspector shall release the financial assurance mechanism provided by the transferor.

27-1229. Notice of plan or substantial change; new exploration operations; new aggregate mining units

A. The state mine inspector shall schedule and conduct a public meeting on a proposed reclamation plan for a new exploration operation or new aggregate mining unit or substantial change to an approved reclamation plan within forty-five days after receiving a proposed reclamation plan or a substantial change to an approved reclamation plan that the inspector deems to be complete. The inspector shall conduct the meeting in the county in which the exploration operation or aggregate mining unit is located.

B. The inspector shall give at least thirty days' notice of the meeting. The notice shall briefly describe the proposed reclamation plan or substantial change and shall designate where the plan or change may be accessed. The notice shall be:

1. Filed with the secretary of state.
2. Sent by first class mail to cities and counties located within five miles of the exploration operation or aggregate mining unit.
3. Sent by first class mail to the department of water resources, department of environmental quality, multi-county water conservation districts and agencies that own or manage lands on which the exploration operation or aggregate mining unit is located.

4. Sent by first class mail to property owners within one mile of an exploration operation or aggregate mining unit located in a county with a population of less than eight hundred thousand persons or within one-half mile of an exploration operation or aggregate mining unit located in any other county.

5. Posted in five conspicuous public locations within one mile of the exploration operation or aggregate mining unit.

C. The exploration operation's or aggregate mining unit's designated representative shall attend the public meeting and respond to questions that relate to information in the reclamation plan or substantial change.

D. If an interested party cannot attend the public meeting, that party may submit written comments to the inspector before the meeting regarding the reclamation plan or substantial change, and the inspector shall consider the written comments.

E. The inspector shall adopt rules to implement the provisions of this section.

27-1230. Notice of plan for existing exploration operations and existing aggregate mining units

A. The inspector shall give notice of a proposed reclamation plan for an existing exploration operation or an existing aggregate mining unit. The notice shall be:

1. Filed with the secretary of state.

2. Sent by first class mail to cities and counties located within five miles of the existing exploration operation or the existing aggregate mining unit.

3. Sent by first class mail to the department of water resources, department of environmental quality, multi-county water conservation districts and agencies that own or manage lands on which the exploration operation or aggregate mining unit is located.

4. Sent by first class mail to property owners with property adjoining the exploration operation or aggregate mining unit.

5. Published once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which the exploration operation or aggregate mining unit is located. If there is no such newspaper, the inspector shall give notice in a newspaper of general circulation that is published in an adjoining county.

6. Posted in five conspicuous public locations within one mile of the exploration operation or aggregate mining unit.

B. The notice shall briefly describe the proposed reclamation plan and shall designate where the plan may be accessed. The notice shall state that any person who may be adversely affected by the plan may file written comments on the plan within fifteen days after the last publication and request a public meeting. If there is sufficient public interest by persons who may be adversely affected by the plan, the inspector shall hold a public meeting in the county in which the exploration operation or aggregate mining unit is located.

C. The exploration operation or mining unit's designated representative shall attend the public meeting and respond to questions that relate to information in the reclamation plan.

D. If an interested party cannot attend the public meeting, that party may submit written comments to the inspector before the meeting regarding the reclamation plan, and the inspector shall consider the written comments.

E. The inspector shall adopt rules to implement the provisions of this section.

27-1231. Public disclosure of information; definition

A. The state mine inspector shall make available to the public any records, reports or information obtained or prepared by the inspector, unless a notice accompanying the information or any part of the information states that the information is a trade secret or is otherwise confidential to the party's competitive position.

B. If the inspector, on the inspector's initiative or following a request for disclosure, disagrees with the trade secret or confidential notice, the inspector may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the party shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The inspector may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing party.

C. The inspector shall make available to the public the following information obtained from any person pursuant to this chapter:

1. The name and address of any plan applicant.

2. The proposed postaggregate mining land use or uses.

3. A general description of the proposed reclamation measures.

D. The inspector may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the inspector or employees of the division of mined land reclamation to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations.

E. For the purposes of this section, "trade secret" means information to which all of the following apply:

1. A person has taken reasonable measures to protect the information from disclosure and the person intends to continue to take those measures.

2. The information is not and has not been reasonably obtainable by legitimate means by other persons without the person's consent, other than by governmental entities and other than in discovery based on a showing of special need in a judicial or quasijudicial proceeding.

3. A statute does not specifically require disclosure of the information to the public.

4. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the person's competitive position.

27-1232. Coordination with other governmental agencies

A. The state mine inspector shall coordinate the review and approval of reclamation plans with the state land department, the United States bureau of land management, the United States forest service and other agencies that own and manage public lands on which exploration operations or aggregate mining facilities are located, within the respective jurisdictions, through memoranda of agreement or cooperative agreements that designate a lead agency for reclamation plan review and action. This coordination is intended to avoid duplication of efforts to inspect exploration operations and aggregate mining facilities and review and enforce reclamation plans. The memoranda of agreement shall also provide that no financial assurance may be required under this article that will duplicate financial assurances required under any other law or agreement.

B. If an exploration operation or an aggregate mining unit is located on land administered by a federal agency, an approved federal reclamation plan and a financial assurance mechanism for the federal land that are consistent with the requirements of this chapter supersede the requirements for a reclamation plan and financial assurance mechanism otherwise required by this chapter.

27-1233. Plan submission fee; aggregate mining reclamation fund

A. The state mine inspector may establish by rule a fee from the owner or operator of each exploration operation and aggregate mining unit at the time the owner or operator submits a plan

under article 3 or 4 of this chapter or submits a substantial change to an approved plan pursuant to this article.

B. The aggregate mining reclamation fund is established consisting of fees collected pursuant to subsection A of this section and monies received pursuant to section 27-1204. The inspector shall administer the fund. Monies in the fund are subject to legislative appropriation and shall be used by the inspector to administer and enforce this chapter. On notice from the inspector, the state treasurer shall invest and divest monies in the fund as provided by section 35-313 and monies earned from investment shall be credited to the fund.

27-1234. Plan review and evaluation by private consultants; reporting expenditures

A. Subject to section 38-503 and other applicable statutes and rules, the state mine inspector may contract with a private consultant for the purpose of assisting the inspector in reviewing reclamation plans that are submitted under this chapter to determine whether the plans meet the criteria and requirements of this chapter and the rules adopted by the inspector.

B. The inspector shall pay the consultant for the services rendered from the inspector's appropriation under section 27-1233. The inspector shall report to the staff director of the joint legislative budget committee:

1. Expenditures of money for purposes of this section.
2. The name and address of each consultant.
3. The plan submittals that cause the expenditure of the monies.

27-1235. Appeals

A person may appeal a state mine inspector action taken pursuant to this chapter as provided in title 41, chapter 6, article 10.

27-1236. Licensing time frames

Title 41, chapter 6, article 7.1 applies to this chapter.

27-1251. Submission and contents of reclamation plan

A. Beginning January 1, 2007, a person who conducts exploration operations that will create more than five contiguous acres of surface disturbance shall submit a reclamation plan to the state mine inspector. The reclamation plan shall:

1. Identify the county or counties in which exploration operations will be conducted.
2. State the reclamation measures that will be taken to reclaim access roads, drill pads, drill holes, trenches and other exploration workings where the operator conducts exploration operations in this state.

B. An operator may submit a single reclamation plan covering all new and existing exploration operations in this state.

27-1252. Notice of complete, incomplete or denied plan

A. The state mine inspector shall notify the operator that a reclamation plan is administratively complete or incomplete within thirty days after receiving the plan.

B. If the inspector notifies the operator that a plan is incomplete or denied, the inspector shall include a written explanation stating the reasons for denial including recommendations for correcting

incomplete or unacceptable parts of the plan consistent with the requirements of this chapter. The operator must refile the corrected plan within ninety days after notification that the previous plan was incomplete or denied or within a time frame mutually agreed on between the operator and the state mine inspector that would not materially affect the safety of employees or cause undue hardship on an operator.

27-1253. Approval; criteria

The state mine inspector shall approve a reclamation plan for exploration operations within sixty days after receiving a complete plan if the plan provides for the reclamation of surface disturbances at the exploration operations according to the following requirements, as applicable:

1. Exploration access roads that the operator constructs and that will not be part of a postexploration use shall be reclaimed in a timely manner after the exploration is completed. If a governmental unit or agency will accept dedication or conveyance of an access road, reclamation is not required. Reclamation shall include removing culverts, restoring drainage to its general predisturbance configuration, ripping the road surface to reduce compaction and aid revegetation and controlling access of motorized vehicles to the reclaimed area.
2. Holes that are drilled for aggregate exploration purposes, unless completed for water monitoring, withdrawal or other use, shall be plugged, sealed or capped promptly after their use is completed as prescribed by rule by the department of water resources and as

necessary to ensure the safety of persons, domestic animals, livestock and machinery in the area.

3. Drill pads shall be reshaped promptly after completion of drilling to prevent erosion and to establish contours that are generally compatible with the adjacent areas or shall be ripped to reduce compaction and aid revegetation and, if appropriate, seeded to minimize erosion.

4. Mud pits that are used for drilling fluids and produced waters shall be reclaimed after hazardous substances are removed and disposed of, if necessary, and after they are sufficiently dry by reshaping to contours that are generally compatible with the adjacent areas. If it is appropriate to the area, suitable growth media shall be spread and seeded over the pit area.

5. Exploration trenches and pits shall be backfilled and reclaimed as soon as practicable as prescribed in the reclamation plan. If the trench or pit will remain open, measures shall be taken to stabilize the sides to address erosion control and to restrict access. Trench and pit reclamation shall include backfilling, reshaping to contours generally compatible with the adjacent areas and, if appropriate for the area, seeding to reestablish vegetation.

6. Areas that have been cleared by blading with mechanized equipment during exploration operations shall be reshaped after exploration is completed, unless used for a postexploration use, to be generally compatible with the adjacent area. Compacted areas shall be ripped to aid revegetation.

27-1254. Beginning new exploration operations

New exploration operations may begin when both of the following occur:

1. The state mine inspector approves the reclamation plan for the exploration operations.
2. Financial assurance has been submitted to the inspector as required by article 5 of this chapter.

27-1255. Annual renewal

A reclamation plan for exploration operations is renewable annually on:

1. Modification of the plan to address types of surface disturbances that will be conducted during exploration operations but that have not been previously addressed in the reclamation plan.
2. Submission of any additional financial assurance, if necessary.

27-1271. Submission and contents of reclamation plan

A. Beginning January 1, 2006, an owner or operator may submit a single reclamation plan that covers multiple aggregate mining units of an aggregate mining facility.

B. The proposed reclamation plan shall include:

1. The names and addresses of the owner or operator and an individual who will be the regulatory contact.
2. A statement that the owner or operator assumes responsibility for the reclamation of surface disturbances that are attributable to the aggregate mining unit consistent with this chapter and the rules adopted pursuant to this chapter.

3. The current ownership and use of the land included in the aggregate mining unit.
4. The proposed postaggregate mining use of the land.
5. A description of the aggregate mining unit and the proposed surface disturbances that will be created.
6. The existing and proposed final topography, including the final slopes or configuration of overburden or waste rock stockpiles and fine areas.
7. A narrative description of roads that are proposed for the aggregate mining unit.
8. The acreage affected by each type of surface disturbance and a map of the aggregate mining unit area showing each surface disturbance. For previously undisturbed areas, the map shall identify any types of fish and wildlife habitats that will be disturbed.
9. The proposed reclamation measures that are necessary to achieve the postaggregate mining land use, including information concerning:
 - (a) The measures that will be taken to restrict public access to pits and other surface features that may be a hazard to public safety.
 - (b) The measures that will be taken to address erosion control and stability.
 - (c) The measures that will be taken to address revegetation, conservation and the care and monitoring of revegetated areas as provided in this chapter.
 - (d) For surface disturbances for which the proposed postaggregate mining land use objective is designated as grazing, fish or wildlife habitat, forestry or recreation, the type of wildlife or fish habitat to

be encouraged, including measures that will be taken to encourage that type of wildlife or fish habitat, and that those measures will not be incompatible with the fish or wildlife habitat on adjacent lands.

10. A proposed tentative schedule for beginning surface disturbances and beginning and completing the reclamation measures.

11. The estimated costs to perform each of the proposed reclamation measures for purposes of determining financial assurance requirements under article 5 of this chapter.

27-1272. Notice of complete, incomplete or denied plan

A. The state mine inspector shall notify the owner or operator that the plan is complete or incomplete within thirty days after receiving the plan.

B. The inspector shall approve or disapprove a plan for new aggregate mining units within one hundred twenty days after receiving a complete plan.

C. If the inspector notifies the owner or operator that a plan is incomplete or denied, the inspector shall include a written explanation stating the reasons for denial, including recommendations for correcting incomplete or unacceptable parts of the plan consistent with the requirements of this chapter. The owner or operator must refile the corrected plan within ninety days after notification that the previous plan was incomplete or denied or within a time frame mutually agreed on between the owner or operator and the state mine inspector that would not materially

affect the safety of employees or cause undue hardship on an owner or operator.

27-1273. Approval; criteria

A. The state mine inspector shall approve a reclamation plan for aggregate mining units if the plan provides for reclamation measures for surface disturbances that are:

1. Necessary to achieve a safe and stable condition suitable for the postaggregate mining land use objectives stated in the reclamation plan.
2. Compatible with good engineering practices regarding erosion control and seismic activity for the applicable seismic zone.

B. In evaluating the reclamation plan, the inspector shall consider the technical and economic practicability of the proposed reclamation measures, taking into account the site-specific circumstances at the aggregate mining unit and the proposed postaggregate mining land use objectives as stated in the reclamation plan, including:

1. Grazing and other agricultural land use objectives.
2. Developed water resources, water management projects and planned and existing underground water storage facilities.
3. Fish or wildlife habitat.
4. Forestry.
5. Historic preservation.
6. Industrial or commercial uses, including tourism.
7. Recreational uses.
8. Residential uses.
9. Scientific or educational uses.

10. Aggregate mining or remining, except that the proposed postaggregate mining use of aggregate mining or remining does not relieve an owner or operator from complying with or implementing the reclamation plan requirements under this chapter.

11. Water course channelization.

12. Other appropriate postaggregate mining land use objectives.

C. The postaggregate mining land use objective stated in the reclamation plan need not be the same use of the land that existed before the aggregate mining facility was located on the site.

27-1274. Preservation and conservation of soil; exceptions

Before creating a surface disturbance that is stated to be reclaimed by revegetation pursuant to a new aggregate mining unit reclamation plan, the owner or operator shall conserve the soil as reasonably available from the area of disturbance to support the stated revegetation on that specific disturbance as necessary to achieve the postaggregate mining land use objectives stated in the reclamation plan, unless the owner or operator demonstrates one or more of the following factors:

1. There is insufficient soil to make recovery practicable.
2. Recovery of the soil is not practicable due to limitations of topography, thickness of soil or other physical, climatic or biological constraints.
3. Direct revegetation of the disturbance, with or without soil amendments, is reasonably expected to be successful.

27-1275. Features excluded from reclamation plan or allowed to remain following reclamation; public protection measures

A. A reclamation plan may exclude any provision for reclaiming open pits, rock faces or subsidence areas through backfilling or returning material to the open pit, rock face or subsidence area from which it was extracted if it is impracticable and if public access to the open pit, rock face or subsidence area, including any surrounding unstable areas or walls, is restricted by fencing or other institutional controls.

B. The following factors shall be considered in determining whether the reclamation of open pits, rock faces or subsidence areas is impracticable:

1. Cost to perform the reclamation.
2. Topography of the site.
3. Geology and stability of the site.
4. Time required to perform the reclamation.
5. Consumption of resources required to perform the reclamation.
6. Future access to aggregate resources.
7. Regional or local hydrogeology.

C. Buildings and other structures may remain after reclamation if adequate measures are taken to protect public safety.

27-1276. Beginning new aggregate mining units

Beginning January 1, 2007, new aggregate mining units may begin when both of the following occur:

1. The state mine inspector approves the reclamation plan for the aggregate mining unit.

2. Financial assurance has been submitted to the inspector as required by article 5 of this chapter.

27-1277. Annual status report

A. Within sixty days after the anniversary date of approval of each reclamation plan the owner or operator shall submit to the division a status report for the preceding year.

B. The report shall be in a form prescribed by the state mine inspector and shall include:

1. The acreage of surface disturbance during the reporting year and the total acreage of surface disturbance at the mining facility.
2. The acreage of reclamation conducted during the reporting year and the total acreage of reclamation at the mining facility.
3. The status of the aggregate mining operation at the end of the reporting year.
4. Any change in the names and addresses of the owner, operator and the regulatory contact.

C. The inspector may request further information to supplement or clarify the report, but if the inspector does not respond within thirty days after receiving the report, it is considered to be accepted for the purposes of this section.

27-1291. Financial assurance requirements; form

A. On or before January 1, 2007, as required by this chapter, owners and operators of exploration operations and aggregate mining units who create surface disturbances shall provide financial assurance mechanisms to the inspector as provided by this article.

B. Allowable financial assurance mechanisms for purposes of this article include any or a combination of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Cash deposit with the state treasurer.
8. Evidence of ability to meet a corporate financial test or corporate guarantees as provided by 40 Code of Federal Regulations section 264.143(f).
9. Annuities.
10. Bonding pools.
11. Additional financial assurance mechanisms that are acceptable to the inspector.

27-1292. Aggregate mining unit or existing exploration operation

A. The owner or operator of an existing exploration operation or a new or existing aggregate mining unit shall transmit a financial assurance mechanism to the state mine inspector within sixty days after a reclamation plan is approved. The inspector shall take final action on the financial assurance mechanism within thirty days after it is received.

B. In determining the amount of financial assurance to be provided for an existing exploration operation or a new or existing aggregate mining unit, the inspector shall consider the costs of

approved reclamation measures stated in the reclamation plan. In computing reclamation costs, the inspector shall assume that third parties will perform the reclamation measures. The inspector shall reduce the amount of the required financial assurance to the costs of the owner or operator performing the reclamation measures if the owner or operator can demonstrate sufficient financial ability to perform the necessary reclamation or if the owner or operator meets the financial assurance reduction criteria established by rule. Financial ability shall be established by one or more of the financial mechanisms described in 40 Code of Federal Regulations section 264.143(f).

C. Each financial assurance mechanism for an existing exploration or new or existing aggregate mining unit submitted to the inspector shall provide the amount in current dollars equal to the cost to:

1. Perform the approved reclamation measures stated in the reclamation plan on the area of surface disturbance.
2. Provide continued care and monitoring of the areas stated in the reclamation plan for revegetation for no more than three growing seasons without additional supplemental irrigation or other man-induced inputs after performing the reclamation measures unless the supplemental inputs are part of the postaggregate mining land use. Notwithstanding this paragraph, revegetation efforts that are necessary to achieve the postaggregate mining land use objective are considered adequate and complete if the owner or operator has taken reasonable measures to achieve vegetative success. Technical and economic practicability as it relates to site-specific

conditions and the proposed postaggregate mining land use shall be taken into account in making that determination.

D. The inspector shall adjust the amount of financial assurance every five years or more often as necessary to adjust for new areas of planned surface disturbances or inflation or to reflect changed costs resulting from substantial modifications of the reclamation plan.

27-1293. New exploration operation

A. Beginning January 1, 2007, the owner or operator of a new exploration operation shall furnish a financial assurance mechanism to the state mine inspector in an amount equivalent to two thousand dollars per acre of new surface disturbance, unless the inspector approves a cost estimate for an amount less than two thousand dollars per acre.

B. An owner or operator may provide a single financial assurance mechanism for all of its exploration operations conducted in this state.

27-1294. Duplication of financial assurance not required

Financial assurance is not required under this article that duplicates financial assurance that is required under other local, state or federal laws. Evidence of financial assurance under this article that would be duplicated must be filed with the state mine inspector.

27-1295. Incremental financial assurance

An owner or operator may provide financial assurance under this article on an incremental basis for planned surface disturbances described in the reclamation plan.

27-1296. Release of financial assurance

A. An owner or operator may apply to the state mine inspector to release all or part of the financial assurance provided under this article. The application shall:

1. Describe the reclamation measures that have been performed.
2. Describe any surface disturbances proposed in the reclamation plan that have not been disturbed.
3. Contain an estimate of the costs of reclamation measures that have not been performed.

B. Within sixty days after receiving a complete application, the inspector shall release all or part of the financial assurance except for any amount that is necessary to perform the reclamation measures identified in the reclamation plan. After the reclamation measures have been performed, the remaining financial assurance shall be released, except that ten per cent shall be retained for the costs of care, monitoring and one reseeding, if necessary, for areas that have been revegetated. The inspector shall release the retained monies after a period of not more than three growing seasons after the supplemental management or other man-induced inputs have been finally removed or as otherwise provided in section 27-1292, subsection B.

27-1297. Rules; release, forfeiture or exercise of financial assurance

A. The state mine inspector shall adopt rules for:

1. Reviewing and acting on applications to release all or part of the financial assurance under this article.
2. Ensuring the implementation of the reclamation plan through forfeiture or exercise of the financial assurance on failure to implement the reclamation plan as required by this article.

B. The rules shall provide for written notice to all principals and sureties on the financial assurance and an opportunity for a hearing.

Article 6, Enforcement

27-1321. Inspections

Beginning January 1, 2007, the state mine inspector may enter and inspect, during normal business hours, any exploration operation or aggregate mining facility that is subject to this chapter to determine compliance with this chapter. The inspector shall give the owner or operator the opportunity to have its representative accompany the inspector. Within thirty days after the date of the inspection, the division shall provide to the owner or operator a copy of any inspection report produced as a result of any inspection of the exploration operation or aggregate mining facility.

27-1322. Compliance orders

A. Beginning January 1, 2007, if the state mine inspector determines that a person is violating this chapter, a rule adopted pursuant to this chapter or any condition of a reclamation plan approved pursuant to this chapter or is causing an imminent and substantial danger to the public safety, the inspector may issue an order requiring compliance either immediately or within a stated period of time.

B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance, if applicable, and the right to a hearing.

C. The inspector shall transmit the compliance order to the alleged violator either by certified mail, return receipt requested, or by hand delivery.

D. At the inspector's request, the attorney general may file an action in superior court to enforce orders issued under this section after the order becomes final. The action shall be filed in superior court in the county in which the alleged violation occurred or in which the inspector maintains an office.

27-1323. Enforcement action on reclamation plan approval

A. The state mine inspector may suspend, withdraw or revoke a reclamation plan approval if the inspector determines that the facility is in violation of any rule adopted pursuant to this chapter.

B. Any action taken under this section shall comply with the requirements of title 41, chapter 6, article 10.

27-1324. Injunctive relief; civil penalties

A. Beginning January 1, 2007, if the state mine inspector has reason to believe that a person is violating this chapter or a rule adopted pursuant to this chapter or that a person is causing an imminent and substantial danger to the public safety, the inspector, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public safety, without regard to whether the person has requested a hearing.

B. A person who violates this chapter or a rule, order or reclamation plan approval adopted or issued pursuant to this chapter is subject to a civil penalty of not more than one thousand dollars for each day of violation, not to exceed fifteen thousand dollars for each violation. At the inspector's request, the attorney general shall file an action in superior court to recover civil penalties as prescribed by this section.

C. An action filed under this section shall be brought in superior court in the county in which the alleged violation occurred or in which the inspector maintains an office.

27-1325. Agency order; appeal

A. An order issued by the state mine inspector pursuant to this article is final unless the defendant requests a hearing pursuant to title 41, chapter 6, article 10 within thirty days after receiving the order.

B. Except as provided in section 41-1092.08, subsection H, a final agency order is subject to judicial review pursuant to title 12, chapter 7, article 6.

27-1326. Violation; classification

A. Beginning January 1, 2007, an owner or operator of an exploration operation or aggregate mining unit shall not:

1. Cause a surface disturbance at an exploration operation or aggregate mining unit in violation of this chapter.
2. Fail or refuse to conduct reclamation according to the terms of a reclamation plan authorized by this chapter.

B. A person who violates this section is guilty of a class 2 misdemeanor.

27-1327. Procurement; aggregate materials; eligibility

Beginning January 1, 2008, a person is not eligible for consideration for award of contracts for the sale of aggregate pursuant to title 41, chapter 23 until that person has an approved reclamation plan pursuant to this chapter.