



FACTSHEET: COLORADO HOUSE BILL 1113: PROTECT WATER QUALITY FROM ADVERSE MINING IMPACTS

On April 4th, 2019, Colorado Governor Polis signed into law House Bill 1113: Protect Water Quality [from] Adverse Mining Impacts. These amendments to the Colorado Mined Land Reclamation Act passed by a wide margin with bipartisan support in both chambers: 44 to 19 in the House, and 22 to 13 in the Senate. Colorado now joins its neighbor, New Mexico, and a small handful of other states that have passed similar legislation.

The bill achieves the following:

- Requires new mines to disclose approximately when water treatment operations would no longer be needed. Mines in Colorado can no longer receive reclamation permits that rely on perpetual water treatment, and the bonds companies must post for water treatment is tied to that timeframe.
- Prohibits self-bonding, or “corporate guarantees.” This ensures that companies put up actual funds or financial assets, rather than a promise to pay later, for their reclamation plans (as well as any short-term water treatment).
- Changes key sentences of the existing law to ensure that bonding expressly takes into account water quality, rather than simply surface reclamation.

In Colorado, all hardrock (metal) mines must receive a permit from the Division of Reclamation, Mining, and Safety (DRMS) – a Division of the Colorado Department of Natural Resources. This permit is based largely on the reclamation liabilities of the mine project, and is required on both public and private lands.

Although DRMS preference has been to avoid permitting mines that carry long term liabilities requiring perpetual water treatment, the agency was not authorized by statute nor rules to enforce an outcome. Legally, the division could not deny a mine permit on grounds of the duration of environmental liabilities after final reclamation despite it being the agency’s



preference. But now, with the amendments signed and a rulemaking impending, DRMS gains this authority.

The end date provision uses the phrase “substantial evidence”, a phrase that is defined in other regulations as well. This means that the state will not accept a basic estimation without substantial evidence to support the anticipated timeline to achieve a maintenance-free mine after final surface reclamation is complete. This enables agencies, civic groups and individuals to contest that evidence and possibly change the mine plan to have a more realistic chance of achieving neutral drainage chemistry by a certain time.

The nature of acid mine drainage and metals leaching is typically either “forever”, or “nothing” – there is little middle ground with modern mining projects. It’s most likely that a company will either propose a mine requiring perpetual treatment or not, which depends on the geochemistry of the project, the mine plan and the type of engineering employed, and the final reclamation plan. What varies is the magnitude of the projected acid mine drainage. For these reasons, instead of requiring a certain time frame of 2, 5, 10, 25 or 50 years or more after closure, the bill allows the company to provide the details and information of this timeframe, as long as it is well defined and the evidence well supported scientifically. In the end, no active treatment is permissible indefinitely, but some details regarding the definition of passive treatment will likely be addressed in the impending rulemaking.

The elimination of corporate guarantees follows several other states that are eliminating the practice after too many bankruptcies and environmental cleanup costs were pushed onto governments, local volunteers and taxpayers. Similar to the state’s preference to avoid perpetual treatment, the state’s preference is also to avoid corporate guarantees; there is only one existing corporate guarantee in the state for extractive projects. The bill codifies this and avoids the chance that a new mine can even apply for a corporate guarantee for reclamation bonds.

While Arizona has several major proposed mines, Colorado currently is only facing a handful of much smaller mine proposals. Fortunately, however, mines undergoing substantial expansions will also need to apply for a revised reclamation permit under DRMS, and if large enough to trigger a plan rewrite, as opposed to a simple “technical revision,” existing mines will also have to comply with the law for any new sources of water pollution. This allows the flexibility for mining companies to continue mining, but if their actions will result in new water pollution, they must use substantial evidence to show that the new sources will not result in a perpetual treatment situation beyond the existing liabilities. This more complex area will be dealt with in the near future with a detailed agency rulemaking that will solidify the intent of the newly-passed legislative amendments to the Mined Land Reclamation Act.

