

# SMALL MINER EXCLUSION STATEMENT – SUMMARY

Statute: 82-4-301, et seq., MCA

Rule: ARM 17.24.101, et seq.

## A. Types of Activities Regulated:

1. Mining operations  $\leq 5$  acres of total surface disturbance, including roads (unless the operator bonds for the roads).
2. May have 2 mine sites of  $\leq 5$  acres of total surface disturbance as long as they are  $\geq 1$  mile apart at their closest points.
3. Types of activities may include, but are not limited to: Open Pit, Placer, Underground, Rock Picking, etc.
4. An operator may not hold a Small Miner Exclusion Statement (SMES) in addition to an operating permit that exceeds 100 acres of permitted disturbance.

## B. Application Requirements:

1. The applicant must sign a SMES, available at the DEQ, which consists of a signed and notarized affidavit stating that the applicant will stay within the requirements or conditions of the exclusion;
2. Must submit an adequate map, preferably a seven and one-half minute quad map, showing the exact location of the site.
3. Must submit a one page plan of operations;
4. DEQ will accept a copy of the USFS operating plan as long as an adequate map is provided.

## C. Review Procedure:

1. Once the DEQ receives and reviews a SMES application, it will be determined if an on-site visit is to be scheduled among the DEQ, the applicant, and usually a representative from the appropriate federal agency, to calculate the amount of reclamation bond required for the project.
2. DEQ has the authority to require a maximum of \$10,000 reclamation bond for placer and dredge mines. They may recover costs over the \$10,000 limit by filing for the additional amount in District Court.
3. Joint bonds with the DEQ and the federal agency are accepted to avoid duplicate bonding. The applicant must agree to post the bond, reclaim any damaged land and not be in default of another reclamation law.
4. The operator must post a performance bond and obtain approval for the design, construction, operation and reclamation of any hard rock tailings impoundment.
5. An operating permit is required for that portion of a SMES operation that uses metal leaching agents.

## D. Fees: There is no application or annual renewal fee for a SMES. However, an annual renewal form is required to maintain SMES status.

## RECREATIONAL MINING SUMMARY

Statute: 82-4-301, et seq., MCA      Rule: ARM 17.24.101, et seq.

- A. Recreational miners are not regulated by the State provided the miner:
1. Does not use motorized excavating equipment;
  2. Does not use blasting agents;
  3. Does not disturb more than 100 sq. ft. of surface, or dig more than 50 cubic yards of material at any site;
  4. Does not leave un-reclaimed sites that are less than 1 mile apart;
  5. Does not use mercury;
  6. Does not use cyanide or other metal leaching agents.
- B. Application Requirements:
1. An operator using a suction dredge must obtain a discharge permit (MPDES) from the Water Protection Bureau.
  2. The Water Protection Bureau issues a state wide permit for suction dredges with an intake  $\leq 4'$ , at a cost of \$25 for Montana residents and \$100 for non-residents, and a like amount for annual renewal.
  3. Suction dredges must also obtain a 310 permit from the County Conservation District.
  4. Suction dredges with an intake  $\geq 4'$  must also complete a Small Miner Exclusion Statement with the Environmental Management Bureau.
  5. If a site is located on US Forest Service land (USFS) or on the lands of the Bureau of Land Management (BLM), then you will need to contact the office closest to the site to determine their requirements.
- C. Permitting Procedure:
1. Water Protection Bureau: 406-444-3080 OR [www.deq.mt.gov/wqinfo/MPDES/RecSuctionDredge.asp](http://www.deq.mt.gov/wqinfo/MPDES/RecSuctionDredge.asp)
  2. County Conservation District: 406-329-3511 OR [www.macdnet.org/conservationdistrictdirectorycontact.htm](http://www.macdnet.org/conservationdistrictdirectorycontact.htm)
  3. Environmental Management Bureau: 406-444-4953
  4. US Forest Service: 406-329-3511 OR [www.fs.fed.us/rl/](http://www.fs.fed.us/rl/)
  5. BLM: 406-896-5000 OR [www.mt.blm.gov/lib/directory.html](http://www.mt.blm.gov/lib/directory.html)

DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL MANAGEMENT BUREAU  
PO BOX 200901  
HELENA MT 59620-0901  
PHONE: (406)444-2461 FAX: (406)444-1499

PLAN OF OPERATIONS  
SMALL MINER EXCLUSION STATEMENT

NAME AND MAILING ADDRESS OF SMES HOLDER

COUNTY(S) of mine site:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Type of Mining Operation (Circle One):

Placer      Open Pit      Underground      Rock Picker

Type of equipment to be used:

Minerals to be mined:

What are your plans for the coming mining season and how many acres do you estimate will be disturbed?

Please give section, township and range of your mine site(s) in the space below:

Landowner(s):

**\* Include a map that clearly shows your mining location. A seven and a half minute quad map is preferred.**

**PLEASE READ AND THEN SIGN THE AFFIDAVIT ON THE BACK OF THIS FORM IN FRONT OF A NOTARY PUBLIC. THEN MAIL IT TO THE ADDRESS IN THE UPPER LEFT CORNER OF THIS PAGE.**

State of Montana

County of \_\_\_\_\_ ss.

# AFFIDAVIT

The undersigned person, firm, or corporation, being duly sworn, states and agrees that he (it), in consideration for his (its) exemption from the permit and license requirements of Part 3, Chapter 4, Title 82, MCA:

- (1) Will not, from this day forward, pollute or contaminate any stream as a result of mining operations on his (its) part or under his (its) direction. The terms "pollution" and "contamination" are defined in Section 75-5-103 MCA;
- (2) Will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (3) Will provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department; and
- (4) If the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.
- (5) A person conducting activities under a Small Miner Exclusion Statement must comply with the Noxious Weed Management Act. For more information on the Noxious Weed Management Act, contact the County Weed Supervisor or the County Weed Board in the county where you are operating.

Further, the undersigned hereby certifies as follows:

For small-miner exemptions obtained after September 30, 1985:

- (a) If the small miner is a natural person, that:
  - (i) No business association or partnership of which he is a member or partner has a small-miner exemption; and
  - (ii) No corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) If the small miner is a partnership or business association, that:
  - (i) None of the associates or partners holds a small-miner exemption; and
  - (ii) None of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or
- (c) If the small miner is a corporation, that no officer, director or owner of record of 25% or more of any class of voting stock of the corporation:
  - (i) Holds a small-miner exemption;
  - (ii) Is a member or partner in a business association or partnership that holds a small-miner exemption;
  - (iii) Is an officer, director or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Phone

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

# THIS MAY NOT BE THE ONLY LICENSE OR PERMIT YOU NEED BEFORE MINING

Permits are required by state, federal, and local agencies to assure consideration of other resources, provide for reclamation, and protect water quality for downstream users. This list may not be all inclusive, however, it should get you started in the right direction.

- I. **State Level:** Montana Department of Environmental Quality (DEQ) issues two types of permits:
  - A. Permits to operate issued by DEQ's Environmental Quality Bureau (EMB)  
Contact: **DEQ-EMB, Hard Rock Mining Program**, PO Box 200901, Helena, MT 59620-0901  
(406) 444-2461
    1. Exploration License: activity to assess the mineral viability of a site
      - a. Usually drill holes and trenches
      - b. No more than 10,000 short tons may be taken for testing
      - c. License is statewide and can be for multiple sites as long as each site has a Plan of Operations, a Clear Location Map, and a Bond in place for reclamation
    2. SMES (Small Miner Exclusion Statement)  $\leq 5$  acres of total surface disturbance at any given time per site; use of mechanized equipment/blasting, and  $> 100$  sq. ft. of disturbance
      - a. No more than 2 sites at any given time
      - b. Each site must be at least 1 mile apart at their nearest points
      - c. DEQ can only bond "placer" operations under a SMES
      - d. Types of operations may be placer, open pit, quarry, rock picking, underground, etc.
    3. Operating Permit
      - a.  $> 5$  acres of total surface disturbance at any given time
      - b. Types of operations may be placer, open pit, quarry/multiple quarry, rock picking, underground, etc.
  - B. Permits that protect water quality issued by **Water Protection Bureau (WPB)**  
Contact: DEQ-WPB, PO Box 200901, Helena, MT 59620-0901  
(406) 444-3080
    1. Montana Pollutant Discharge Elimination System (MPDES)
      - a. Applies to all water discharged to surface and ground water
      - b. Mining activity and road construction that disturbs significant acreage (*i.e.*  $> 5$  acres)
    2. Storm Water Pollution Prevention Permit (SWPPP)
      - a. Required if any surface disturbance has the potential to contribute sediment or pollutants (*i.e.* fuel) to State waters during a storm event
      - b. There is no minimum acreage – it applies to all surface disturbance
    3. 3A Authorization: Necessary for short-term violation of water quality standards (turbidity)
    4. Suction Dredge Permit
      - a. Necessary for small scale ( $\leq 4$ " intake) suction dredging operations
      - b. Permit is site specific and may have restrictions

## II. Federal Level:

- A. **U.S. Forest Service (USFS)** for operations located on USFS land  
Contact: (406) 629-3511 or [www.fs.fed.us/r1/](http://www.fs.fed.us/r1/)
  1. Notice of Intent is required for operations that do not use mechanized equipment
  2. Plan of Operations is required for any operations using mechanized equipment
  3. Bonding is determined by proposed surface disturbance and government reclamation costs
- B. **Bureau of Land Management (BLM)** for operations located on BLM land  
Contact: (406) 896-5000 or [www.mt.blm.gov/lib/directory.html](http://www.mt.blm.gov/lib/directory.html)
  1. Causal Use that causes negligible disturbance, no notification required
  2. Notice is required for all operations disturbing less than 5 acres per year
  3. Plan of Operations is required for disturbances larger than 5 acres
- C. **U.S. Army Corp of Engineers** requires a 404 Permit before placement of dredge or fill-material in water of the United States including wetlands.  
Contact: (406) 441-1375 Helena, MT
- D. **Conservation Districts** require 310 Permit if activity alters, modifies, or affects the bed and banks of a perennial stream. A bond may be required.  
Contact: (406) 443-5711 or [www.macdnet.org/conservationdistrictdirectory.htm](http://www.macdnet.org/conservationdistrictdirectory.htm)
- E. **Department of Natural Resources and Conservation (DNRC)** Water Rights Bureau may require an application for water rights if you use water in your operation.  
Contact DNRC at 1424 9<sup>th</sup> Ave, PO Box 201601, Helena, MT 59620-0601 (406) 444-6610

## WHY SIGNATURES ARE NOTARIZED

“Notarizations are performed to protect against document fraud.”

Four facts notaries certify to prevent forgeries:

1. The document signer personally appeared before the notary. It is impossible to notarize a signature unless the signer personally appears before the notary. No exceptions. No loopholes. **Thus the dates should match.**
2. The signature was made by the person who personally appeared before the notary.
3. The identity of the signer was positively verified by the notary.
4. The signature was made willingly and freely.

Note: The leading cause of notarial liability is the performance of a false notarization at the direction or insistence of an employer or supervisor. Employers can be liable for wrongful notarizations and for demanding they be made.

*Prepared by:*

The Montana Department of Environmental Quality  
Permitting & Compliance Division - Hard Rock Program  
Post Office Box 200901  
Helena, Montana 59620-0901

# MONTANA HARD ROCK & PLACER MINING REQUIREMENTS

Telephone: (406) 444-4953

Fax: (406) 444-1374

[revised July 1999]

**The Law:** **Montana Metal Mine Reclamation Act**  
Title 82, Chapter 4, Part 3, et seq., Montana Codes Annotated (MCA)  
[Enacted in 1971 & subsequently amended]

**The Rules:** **Rules & Regulations Governing the Metal Mine Reclamation Act**  
Administrative Rules of Montana (ARM)  
Title 17, Chapter 24, Subchapter 1 et seq.

**Authority:** The Metal Mine Reclamation Act applies to all lands within Montana: federal, state, and private (except for Indian lands).

Where federal lands are involved, the applicant must also obtain approval from the appropriate federal agency before activities can begin (U.S. Forest Service or U.S. Bureau of Land Management). Check with the applicable federal office closest to the project area.

For state-owned (school trust) lands, the applicant must obtain a state mineral lease & approval from the Montana Department of Natural Resources & Conservation, Trust Land Management Division, Minerals Management Bureau - Telephone: (406) 444-2074.

The Department of Environmental Quality's Hard Rock Program, issues four types of permits under the ***Metal Mine Reclamation Act (MMRA)***:

## I. **Small Miner Exclusion Statement (SMES)**

This is not actually a permit or license per se, but an "exclusion" from obtaining an operating (full-scale mining) permit as the name implies. It consists of a signed and notarized affidavit stating that an operator will stay within the requirements or conditions of the exclusion. An SMES basically excludes small operators from the stricter requirements of the MMRA if they meet several conditions. Those conditions are:

- A. The operator will conduct an operation resulting in not more than 5 acres of surface disturbance (including roads, except that access roads may be bonded for reclamation at the operators option, and thereby not counted against the 5 acres), or two operations which disturb and leave unreclaimed less than 5 acres per

operation if the respective mining properties are:

1. the only operations engaged in by the person or company;
  2. at least one mile apart at their closest point;
- B. The operator cannot pollute or contaminate any stream.
- C. The operator provides appropriate protection for human and animal life at underground mine sites through the installation of bulkheads placed over safety collars, and the installation of doors on portals.
- D. The operator provides DEQ with an appropriate map of his/her operation, and files a renewal annually that describes what has been done in the past year, and what is proposed for the coming year.
- E. The operator must comply with the Noxious Weed Management Act. For more information about this Act, please contact the Montana DEQ's Hard Rock Program or your county Weed District office.
- F. For Small Miner Exclusion Statements obtained after September 30, 1985, a small miner may not obtain or continue an exclusion unless he/she annually certifies in writing that:
- a) the small miner is a person or legal entity that:
    - (i) no business association or partnership of which he/she is a member or partner has a small miner exclusion;  
*-AND-*
    - (ii) no corporation of which he/she is an officer, director, or owner of record of 25% or more of any class of voting stock has a small miner exclusion;

*-OR-*
  - b) if the small miner is a partnership or business association, that:
    - (i) none of the associates or partners holds a small miner exclusion;  
*-AND-*
    - (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small miner exclusion;

*-OR-*
  - c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:
    - (i) holds a small miner exclusion;  
*-OR-*
    - (ii) is a member or partner in a business association or partnership that holds a small miner exclusion;



-OR-

- (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small miner exclusion.

**Placer Mining and the SMES:** A reclamation bond, not to exceed \$10,000.00, is required for all small *placer* mining operations. Note that this bonding authority is only extended to small placer operations which began after July 1, 1989, and does not apply to small hard rock operations (e.g., open pit, underground, etc.). The MMRA also allows DEQ to recover costs over and above the \$10,000.00 limit by filing for the additional amount in district court.

The Department will hold such a bond on private, state or some federal lands controlled by the Bureau of Land Management (since the BLM has limited bonding authority). On National Forest lands, the Forest Service would generally hold an adequate bond to cover all disturbances, regardless of the amount. If the placer operation occurred on both National Forest and private land, DEQ would bond the private land portion. Under this authority, reclamation of placer operations would have to commence within 6 months of cessation of mining. This does not include seasonal closures.

**Cyanide or other metal leaching solvent use and the SMES:** A small miner who intends to use cyanide or other metal leaching solvent as an ore-processing reagent shall obtain an operating permit for that part of the small miner's operation in which the cyanide or other metal leaching solvent ore-processing reagent will be used or disposed of. Please refer to section IV of this document (below) for additional information.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

**Exploration and the SMES:** An SMES is for small-scale *mining* only, and *cannot be used for exploration*. In the MMRA, "mining" is defined as the extraction of ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing. "Exploration" is defined as all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization of those lands.

**Obtaining an SMES:** An SMES can be obtained by writing, stopping by, or calling the Hard Rock Program at DEQ's Main Office in Helena:

Montana DEQ - Hard Rock Program  
1520 East 6th Avenue  
PO Box 200901  
Helena, Montana 59620-0901

Telephone: (406) 444-4953  
Fax: (406) 444-1374

## II. Exploration License (Hard Rock & Placer)

A State *Exploration License* is required for activities that fit the definition of *exploration* as follows:

*Exploration means all activities that are conducted on or beneath the surface of lands that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for*

***production and economic exploitation; and all roads made for the purpose of facilitating exploration...*** (¶82-4-303(7) MCA)

An Exploration License is a statewide license, and only one is issued per individual or legal entity. However, an unlimited number of individual exploration projects can be permitted under a license. **Each** project proposed for coverage under an Exploration License must be individually approved and bonded by DEQ. To initially obtain an Exploration License, a specific project must be proposed. Any additional projects are considered amendments to the license. (For example, some of the larger companies may have several dozen projects statewide, all under one license. DEQ has permitted and bonded each individual project, keeps separate files on them, and keeps a general file that holds the license itself and tracks the bond for each project.) Hand sampling with a pick and shovel for geochemical purposes, geophysical surveys, or mapping does not require State licensing or approval. A good rule of thumb is, if the exploration is mechanized (drilling, dozing, backhoe, adit/shaft excavation, etc.), a license and bond are required.

DEQ does not have any standard "fill in the blanks" form for filing an exploration plan of operations as some federal agencies do, but basically requires (usually in letter form) the same level of information as is found in a U.S. Forest Service Plan of Operations. DEQ accepts photocopies of Forest Service operating plans, as long as adequate maps are provided. DEQ distributes a free document entitled: **Montana Hard Rock & Placer Exploration License Program Manual**. This manual, among other things, discusses the level of detail required in a plan of operations and provides an "example" of a typical exploration plan. The exploration manual is available upon request from DEQ's Helena office. (Please see "Obtaining an Exploration License" below.)

**The Process:** When an exploration plan is submitted to DEQ, it is first checked to see if the level of information provided is adequate. If it is not, the applicant is notified of additional information required. If the proposed project is wholly or partially on federal land, the applicant is advised to also notify the appropriate U.S. Forest Service (USFS) Ranger District or U.S. Bureau of Land Management (BLM) office. If the project is wholly or partially on state-owned (school trust) land, the applicant is advised to also notify the appropriate Montana Department of Natural Resources & Conservation (DNRC) office. A site visit is then scheduled with the applicant, and a representative of the USFS, BLM or DNRC (if applicable public lands are involved). Bond is usually calculated during the site visit. Once the bond is submitted, DEQ approval can be granted. (For those portions of operations proposed for public lands, the operator cannot legally begin until the appropriate state or federal land-management agency also grants approval.)

**Bonding & Bond Release:** DEQ is required *by law* to hold bond on all exploration projects. The amount of bond required is determined by calculating the amount of money it would take for DEQ to implement the operator's reclamation plan, using standard reclamation and construction techniques and rates. Bond release is generally (but not always) done in two stages. Once the operator has recontoured and seeded all of the disturbances, a partial bond-release inspection can be scheduled with applicable agency personnel. If the "dirt work" (recontouring) looks good and appears stable and well-seeded, a partial release would be granted (usually 50-65%). The remaining bond is then held to ensure adequate weed-free vegetative growth and erosion-control, and is usually released after 1 or 2 growing seasons.

The USFS and some BLM offices also have bonding authority. On National Forest lands, DEQ and the USFS calculate a bond that is acceptable to both agencies. The bond is made out to both agencies and can be submitted to either agency. The bond cannot be released until both DEQ and the USFS approve of the reclamation. Bond release inspections are generally made jointly by DEQ/USFS personnel for projects on National Forest lands.

For projects on public lands administered by the BLM, a bond that is acceptable to both DEQ and BLM is calculated

and DEQ usually holds the bond for both agencies. (BLM has limited bonding authority.) The bond cannot be released until both DEQ and the BLM approve of the reclamation. Bond release inspections are generally made jointly by DEQ/BLM personnel for projects on public lands administered by the BLM.

For state-owned (school trust) lands, the bonding procedure and conditions listed for the BLM (above) apply to the Montana DNRC, as that agency also has limited bonding authority.

**Obtaining an Exploration License:** An Exploration License can be obtained by writing, stopping by, or calling the Hard Rock Program at DEQ's Main Office in Helena:

Montana DEQ - Hard Rock Program  
1520 East 6th Avenue  
PO Box 200901  
Helena, Montana 59620-0901

Telephone: (406) 444-4953  
Fax: (406) 444-1374

### III. Operating Permits (full-scale mining permits)

An individual or company is required to obtain an Operating Permit for mining if the conditions of an SMES cannot be met. The time required to obtain an Operating Permit can be quite variable, and depends upon many factors (i.e. the size and nature of the proposed project, the proposed project location, the number of agencies with jurisdiction, etc.). In general, relatively small projects with a low environmental impact potential can take 3 to 6 months; medium-sized, moderate-impact projects can take 6 to 12 months; large, high-impact potential projects can take 1 to 3+ years. Regardless of the size or impact potential of a proposed project, however, a potentially time-consuming unknown always exists: the public's perception of, or reaction to, a specific proposal. Generally, as public controversy surrounding a proposed project increases, so does the amount of time it takes to complete the required environmental analysis process.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

An application for an Operating Permit consists of three major parts:

- 1) Environmental Baseline information (hydrology, soils, vegetation, wildlife, cultural, etc. -- i.e., what is there now); For some disciplines (such as hydrology and wildlife), *at least one full year of baseline data is required*. It is *strongly recommended* that potential applicants meet informally with DEQ's Hard Rock Program staff to discuss site-specific informational needs prior to initiating baseline studies.
- 2) Operating Plan (type of mining/milling operation, reagents used, equipment used, tons/day, types of liners and installation procedures, location of all facilities, etc.);
- 3) Reclamation Plan (states reclamation objectives and how they would be implemented).

**The Process:** Once a plan is submitted, DEQ has 60 days to either call it complete (which doesn't mean the plan is approved, just that there is enough information to begin preparation of the appropriate environmental analysis document and make an informed permit decision), or incomplete. If the application is deemed incomplete (which is usually the case the first time around) a certified (or registered) "completeness review" (or "deficiency") letter is mailed on or before the 60th day. The letter "stops the clock", and contains additional informational requirements and questions to which the applicant must respond.

If the proposed project involves federal lands, the permitting and environmental analysis process become a joint state/federal action (i.e., both DEQ and the USFS and/or BLM must permit the mining operation), and a joint completeness review letter is sent within that 60-day time period. The letter contains compiled questions and comments from both DEQ/USFS (and/or BLM) technical staff, and is signed by both the appropriate DEQ and federal officials. If the proposed project involves state-owned (school trust) lands, DEQ interacts similarly (as discussed above for the federal agencies) with the Montana DNRC.

The company can take as much time as it wants preparing a response. Once they respond, the clock starts again; this time, however, DEQ has only 30 days to review the resubmitted permit application. (DEQ has signed agreements with most of the other state and federal agencies that have some degree of permitting authority, that compels those agencies to meet DEQ's statutory time frames for reviewing Operating Permit applications.) Following this 30-day review period, the application can either be called complete, or a second completeness review letter is issued. This process continues until the application is deemed complete by the agencies. Once again, "complete" does *not* mean the company gets a permit - it means that enough information (technical and otherwise) has been supplied by the applicant for the agencies to carry out the environmental analysis process (write an Environmental Assessment [EA] or Environmental Impact Statement [EIS]) and make an informed permit decision.

Once the EA or EIS is complete, the permit is either:

- 1) Approved as submitted;
- 2) Denied\*;
- 3) Approved with conditional mitigations or stipulations.

If approved, a bond is then calculated based upon the applicant's reclamation plan which is approved by the agencies. Once the bond is submitted and approved, the permit is signed and activities can begin.

**\*A NOTE on Permit Denial:** Under the *Metal Mine Reclamation Act*, a permit can *only* be denied for one or more of the following four reasons:

- 1) The proposed plan of operations would violate the Montana Water Quality Act; **-OR-**
- 2) the plan would violate the Montana Air Quality Act; **-OR-**
- 3) the reclamation plan is inadequate to meet standards; **-OR-**
- 4) the applicant is presently in violation of the MMRA, or any Montana or federal law or rule pertaining to mined land reclamation, water quality or air quality and is *not* working towards correcting the violation.

If a permit is denied, the applicant may reapply with a new plan. (Please see: §§ 82-4-351, 82-4-335 (8) & (9), 82-4-352 MCA)

#### IV. Small Miner (SMES) Leaching Permits

Small miners who use cyanide or other metal leaching solvents must obtain an Operating Permit for only that portion of their operation where cyanide or other metal leaching solvents are used. Section 82-4-305(7) MCA reads:

*"A small miner who intends to use a cyanide or other metal leaching solvent ore-processing reagent [for vat or heap leaching] shall obtain an Operating Permit [mining permit] for that part of the small miner's operation in which the cyanide or other metal leaching solvent ore-processing reagent will be used or disposed of".*

To obtain an Operating Permit (in this case, an **SMES Leaching Permit**), the applicant must submit an application that contains adequately-detailed information regarding environmental baseline, operating plans, and a reclamation plan. The legislature intended this new **SMES Leaching Permit** to be somewhat less cumbersome to apply for than a full-scale Operating Permit application, in recognition of the limited resources available to most small miners. The legislature has provided some funding for an additional Hard Rock Program employee to spend part of the time assisting small miners with these applications.

That portion of the small miner's permit area where cyanide or other metal leaching solvent is used (i.e., the leach pads, ponds, Merrill-Crowe or carbon plant, leaching vats, LAD areas, detoxification system/circuit, etc.) will be bonded for full reclamation/water treatment costs by DEQ. The mining area (pit, adits, waste rock dumps) and associated roads, etc. will still fall under the SMES and its requirements and are not bonded by DEQ. The 5-acre limitation does not apply to those cyanide or other metal leaching solvent facilities that are fully permitted and bonded under the SMES Leaching Permit.

#### V. Other Important Rules: Hard Rock/Placer Mining & Ore Processing

- A. **Custom Mill/Reprocessing Rules:** Adopted on May 21, 1990, these rules gave DEQ the authority to permit and bond custom hard rock and placer milling/processing operations and the remaining and reprocessing of old waste rock and tailings. Prior to this date, DEQ only permitted and bonded ore-processing mills when they were associated with a particular mine (that was also being permitted and bonded), and had no authority over the remaining of waste rock or tailings. Therefore, custom mill and remaining operations that began prior to the effective date were excluded (grandfathered) from the new rules, and remain excluded until the operator proposes major changes. Cyanide mills *are not* grandfathered, and must be permitted and bonded regardless of when they began operations.
- B. **Blasting Rules:** Adopted on September 30, 1990, these rules require DEQ to investigate formal complaints regarding safety and/or property damage as the result of the use of explosives by a mining operation. The rules outline a specific complaint procedure that must be followed. If the preponderance of evidence gathered by the Department indicates that a company or individual's blasting has damaged property and/or created a safety hazard off-site, DEQ will issue an appropriate order to mitigate the situation. If the order is ignored, DEQ must then implement noncompliance procedures. *The rules do not give DEQ the authority to require compensation for any damage that has occurred. The Department's findings can, however, be used by the complainant to sue the operator for property damages.*
- C. **SMES Placer and Dredge Mining Rules:** Adopted on February 18, 1991, these rules give DEQ a \$5,000 maximum bonding authority for placer mines first operated on July 1, 1989 or later. The maximum bond is

\$10,000 for those mines first operated on July 1, 1997 or later. The rules also outline best management practices that are minimally necessary to avoid water quality degradation. These rules also describe standards for bond release and outline the procedure for bond forfeiture and SMES revocation.

- D. **SMES Leaching Permit Rules:** Adopted on February 18, 1991, these rules require that a small miner intending to operate a cyanide or other metal leaching solvent ore-processing facility obtain an Operating Permit and post an adequate reclamation bond for that part of the operation where cyanide or other metal leaching solvent is used (ponds, leach pads, leaching vats, Merrill-Crowe or carbon plant, LAD areas, detoxification facilities/circuits, etc.). The rules outline the types of information required in baseline study plans, operating plans, and reclamation plans. Bonding is required, and the amount of bond must cover the actual cost of reclamation if it had to be performed by DEQ.

**NOTE:** Copies of the *Montana Metal Mine Reclamation Act*, the *Rules & Regulations Governing the Metal Mine Reclamation Act*, and other pertinent informational material and forms are available free of charge by contacting the Department at:

Montana DEQ - Permitting & Compliance Division  
Hard Rock Program  
1520 East 6th Avenue  
PO Box 200901  
Helena, Montana 59620-0901

(406) 444-4953 Telephone (406) 444-1374 Fax

## VI. Other Permits/Certificates That May Be Required

- A. **Surface Water Discharge Permit (MPDES):** This permit -- called a Montana Pollutant Discharge Elimination System permit, or MPDES permit -- is issued by the Montana DEQ's Permitting & Compliance Division, and is required for all point-source discharges to State surface waters, regardless of any permits that are issued by other programs or agencies. Substantial application and maintenance fees are required for an MPDES permit. For those proposed discharges that are directly related to a hard rock or placer mining or exploration project, Hard Rock Program hydrologists will assist the applicant in obtaining an MPDES from DEQ.

Obtaining an MPDES permit generally takes about 60-180 days, due to the required public comment periods. Requirements of the permit usually include pre-operational, operational, and post-operational water quality monitoring for specific parameters, depending on the specific site and proposed activity. For more information about surface water discharge permits, please contact the Montana DEQ at the address and phone/fax numbers found throughout this document.

- B. **Groundwater Discharge Permit (MGWPCS):** This permit -- called a Montana Groundwater Pollution Control System permit or MGWPCS - is issued by the Montana DEQ's Permitting & Compliance Division, and is for discharges directly to groundwater, such as through a percolation pond or land application

discharge (LAD) system. It is also required when the possibility exists of a discharge to groundwater by a "sealed" impoundment, such as a tailing pond or a heap leach pad/pond system. Substantial application and maintenance fees are required for a MGWPCS permit.

An MGWPCS, or groundwater discharge permit, is required *only* if a hard rock or placer operator is proposing a discharge to groundwater *and is operating entirely under a Small Miner Exclusion Statement (SMES)*. This separate permit is *NOT* required if the operator holds an Operating Permit (including an SMES Cyanide Permit) or an Exploration License. An Operating Permit or Exploration License supersedes the requirement for a groundwater discharge permit, because groundwater discharges permitted under an Operating Permit or Exploration License would be subject to the same level of review and monitoring as those permitted under a separate groundwater permit. Since an SMES is not actually a permit, but an exclusion from one, all SMES operations with actual or potential discharges to groundwater must have a groundwater permit. For more information on groundwater discharge permits, please contact the Montana DEQ at the address and phone/fax numbers found throughout this document.

- C. **Montana Streambed Preservation Act - 310 Permit:** A *310 Permit* is issued by the County Conservation Districts, in cooperation with the Montana Department of Fish, Wildlife & Parks. It is only required for certain perennial streams, and is necessary when an applicant intends to ford a stream, install a culvert, or install a bridge. It is also required for stream alteration or diversion. For more information, please contact the Conservation District in the county where the operation is proposed.
- D. **Dredge/Fill - Federal Clean Water Act - Section 404 Permit:** A federal *Section 404 Permit* is issued by the U.S. Army Corps of Engineers. This permit is required whenever an operator proposes to remove material from (dredge), or place material in (fill), [waters of the United States]. This is defined on land as the area between the [ordinary high water marks]. This law also applies to wetlands. Some of the requirements of Section 404 permitting are redundant with the requirements of the 310 Permit (described in Subsection C, above). For more information, please contact the U.S. Army Corps of Engineers' Montana Office in Helena at (406) 441-1375.
- E. **Air Quality Permit:** An Air Quality Permit is issued by the Montana DEQ's Permitting & Compliance Division under the authority of *Montana Air Quality Act*. It is required when emissions from a project are expected to exceed certain threshold values for various parameters. Generally, if emissions of any pollutant, including fugitive dust, exceed 25 tons/year, an Air Quality Permit is required. An annual fee, based upon a facilities total emissions, is required. In most cases, an Air Quality Permit is only needed for larger developments (e.g., large open-pit mines, or mines with a sizeable tailings impoundment or onsite, large-scale ore refinement plants, etc.). They are rarely required for exploration operations. By virtue of their relatively small maximum allowable size and tonnage, small mines operating under an SMES are excluded. For more information, please contact the Montana DEQ's Permitting & Compliance Division at the address and phone/fax numbers found throughout this document.
- F. **Water Rights:** Operators always need to secure the necessary water rights/permits when using water in their processing or operation. [One-shot-only] users, such as drillers who may need a limited amount of water in a water truck or pipe diversion, can generally take the water as long as consideration is given to downstream water users and streambanks are not altered or a sedimentation problem created. It is strongly recommended that an operator contact a local landowner and inquire about water sources. For more information on specific requirements for water rights and usage, please contact the Montana Department of Natural Resources & Conservation (DNRC) - Water Resources Regional Office nearest to your project area:

Billings (406) 657-2105  
Bozeman (406) 586-3136  
Glasgow (406) 228-2561  
Havre (406) 265-5516  
Helena (406) 449-0944  
Kalispell (406) 752-2288  
Lewistown (406) 538-7459  
Missoula (406) 721-4284

- G. **Montana Major Facility Siting Act:** Although the *Montana Major Facility Siting Act* covers such things as power plants and pipelines, its primary application to the mining industry usually involves new power transmission lines for larger operations. ***It ONLY applies to new power transmission lines that exceed 69 kilovolts.*** Some of the larger mines require this power capacity, and along with the local power company, must obtain a Facility Siting Permit from the Montana DEQ. ***A change in this law now exempts construction of a power line between 69 and 115 kilovolts from this Act if the applicant has the support of at least 75% of the landowners involved.*** For more information, please contact the Montana DEQ's Permitting & Compliance Division at the address and phone/fax numbers found throughout this document.
- H. **Hard Rock Mining Impact Act:** According to sections 82-4-335 (5) & (6) [MCA] of the *Metal Mine Reclamation Act (MMRA)*, prior to issuing an Operating Permit, DEQ must first certify that an applicant is in compliance with the various requirements of the *Montana Hard Rock Impact Act (HRIA)* (§90-6-301 et seq. MCA). The *Hard Rock Impact Act (HRIA)* only applies to large-scale hard rock and placer mineral developers that would employ over 75 employees. **It does NOT apply to exploration programs.**

Basically, if an Operating Permit applicant is proposing an operation that would employ over 75 people, the applicant must enter into negotiations with a local committee (near the proposed mine area) made up of local officials and individuals. The negotiations center on the HRIA's requirements for the pre-payment of taxes by the applicant to mitigate socio-economic impacts to the local area caused by an influx of people to work at the mine. Socio-economic concerns usually include local school capacity, water & sewage infrastructure, road maintenance, and other related issues. This process is overseen by the ***Hard Rock Mining Impact Board***, which is attached to the ***Montana Department of Commerce***. For more information regarding the *Hard Rock Mining Impact Act*, please contact:

Montana Department of Commerce  
Local Government Assistance Division  
Hard Rock Mining Impact Board  
1424 Ninth Avenue  
PO Box 200523  
Helena, Montana 59620-0523  
Telephone: (406) 444-4478

## VII. Mining Claims and Assessment Work on Federal Lands



While the Montana Department of Environmental Quality has no authority in regards to mining claims and annual assessment work for unpatented and open federal lands (except for issuing permits for exploration and mining operations), this section was added due to the numerous inquiries received by DEQ every year regarding this subject. DEQ regulates surface disturbances related to mining or mineral exploration in Montana. It is up to the applicant to make sure he/she has the legal authority to access the property and claims where the work is to be performed. All questions regarding staking claims, claim ownership, annual assessment work, filing, etc. should be directed to the appropriate federal Bureau of Land Management (BLM) office listed below:

U.S. Department of the Interior  
Bureau of Land Management  
Montana State Office  
222 N. 32nd Street  
P.O. Box 36800  
Billings, Montana 59107  
Telephone: (406) 255-2885

U.S. Department of the Interior  
Bureau of Land Management  
Lewistown District Office  
Airport Road  
P.O. Box 1160  
Lewistown, Montana 59457-1160  
Telephone: (406) 538-7461

U.S. Department of the Interior  
Bureau of Land Management  
Butte District Office  
P.O. Box 3388  
Butte, Montana 59702-3388  
Telephone: (406) 494-5059

U.S. Department of the Interior  
Bureau of Land Management  
Miles City District Office  
P.O. Box 950  
Miles City, Montana 59301-0950  
Telephone: (406) 232-4331

## VIII. Exploration & Mining on State-Owned (School Trust) Lands

Prior to accessing Montana's state-owned (school trust) lands for the purposes of mineral reconnaissance, prospecting, exploration or mining, the operator must first secure a mineral lease and approval from the **Montana Department of Natural Resources & Conservation (DNRC) - Trust Land Management Division**. This requirement is in addition to specific exploration and mining permits that also must be obtained from the Montana DEQ. Think of DNRC as the agency charged (by the Montana Constitution) to manage the state's surface and mineral resources for the School Trust Fund, to ensure a maximum return to the fund from these lands within legislative operational and environmental sideboards. The Montana DEQ issues permits under statutes related to mine reclamation, water quality, air quality, and other environmental resources; much of DEQ's authority in these areas encompasses all types of land (state, federal & private). When exploration or mining-related activities are proposed on state land, DEQ works closely with DNRC during the permit process.

For more information regarding mineral activities on state-owned lands, please contact:

**Montana Department of Natural Resources & Conservation (DNRC)**  
**Trust Land Management Division**  
**Minerals Management Bureau**  
1625 Eleventh Avenue  
PO Box 201601  
Helena, Montana 59620-1601

(406) 444-2074 Telephone  
(406) 444-2684 Fax

# HARD ROCK MINING RULES & REGULATIONS

## Rule Chapter: 17.24

Chapter Title: RECLAMATION

Environmental Quality

Hard Rock Mining

<http://sos.mt.gov/ARM/>

Printed August 31, 2009 from Secretary of State website

### 17.24.101 GENERAL PROVISIONS

(1) The Act and this subchapter provide that no person may engage in exploration for, or mining of minerals on or below the surface of the earth, engage in ore processing, reprocessing of mine waste rock or tailings, construct or operate a hard rock mill, use cyanide or other metal leaching solvents or ore-processing reagents, or disturb land in anticipation of any of these activities without first obtaining the appropriate license or permit from the department. Prior to receipt of an exploration license or operating permit the applicant, other than a public or governmental agency, shall deposit with the department a reclamation performance bond in a form and amount as determined by the department in accordance with [82-4-338](#), MCA. The license or permit may be issued following receipt and acceptance of the reclamation performance bond, and, at such time, operations may commence.

(2) Section [82-4-390](#), MCA, provides that open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited, except that a mine in operation on November 3, 1998, may continue operating under its existing operating permit or any amended permit that is necessary for continued operation of a mine.

(3) The mining of certain substances is excluded from the Act and this subchapter. See definition of "mineral" in ARM [17.24.102](#).

(4) A small miner who signs an agreement described in [82-4-305](#), MCA, and does not violate the Act and this subchapter, is excluded from certain requirements of the Act as they relate to mining, except as noted in [82-4-305](#), MCA. See definition of "small miner" in ARM [17.24.102](#). All exploration operations, regardless of size, must comply with the requirements of [82-4-331](#) and [82-4-332](#), MCA, and ARM [17.24.103](#) through [17.24.107](#). See definitions of "exploration" and "mining" in ARM [17.24.102](#).

(5) The Act and this subchapter do not apply to a person engaging in a mining activity described in [82-4-310](#) (1) and (2), MCA. The Act and this subchapter apply to a person who, on land owned or controlled by that person, is allowing other persons to engage in mining activities whose activities cumulatively exceed the activity described in [82-4-310](#) (1), MCA.

(6) Subject to the exclusions set forth in the Act and pursuant to the definitions of "surface mining", "mining", "exploration" and "mineral" in the Act, placer or dredge mining, and rock quarrying are included in the application of the Act.

(7) As used in this subchapter, the term "operator" includes a licensee, a permittee, and a small miner. The Act covers the operator's employees and agents as well as subcontractors and the subcontractor's employees and agents. The operator is liable for violations of the Act by its employees, agents and subcontractors (drilling, construction, maintenance or otherwise) and the subcontractor's employees and agents when they are working on the project for which the permit or license was issued or which is subject to an exclusion.

(8) Common use pits and quarries on federal land which are available to the general public for the exclusive or nonexclusive procurement of rock or stone and which are administered by the responsible federal agency under appropriate regulations are not subject to these rules, pursuant to [82-4-309](#), MCA.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-305](#), [82-4-309](#), [82-4-320](#), [82-4-331](#), [82-4-332](#), [82-4-335](#), [82-4-361](#), [82-4-362](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99; **AMD**, 2000 MAR p. 473, Eff. 2/11/00; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

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### 17.24.102 DEFINITIONS

As used in the Act and this subchapter, the following definitions apply:

(1) "Act" means Title 82, chapter 4, part 3, MCA.

(2) "Alternate reclamation" means the return of lands disturbed by mining or mining-related activities to a postmining land use other than that which existed prior to mining. Alternate reclamation must be stable, must have utility and must comply with Title 75, chapters 2, 5, and 6, MCA.

(3) "Bulkhead" means a door, fence or other construction which allows periodic entry to an adit or shaft, adequately secured and locked so that animals and unauthorized persons are denied entry.

(4) "Beneficial use" means use of water as defined in [85-2-102](#), MCA.

(5) "Collateral bond" means an indemnity agreement for a fixed amount, payable to the department, executed by the operator and supported by the deposit with the department of cash, negotiable bonds of the United States (not treasury certificates), state or municipalities, negotiable certificates of deposit or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States or other surety acceptable to the department.

(6) "Disturbed and unreclaimed surface" means, as used in the definition of "small miner" and ARM [17.24.101\(4\)](#), land affected by mining activities, including reprocessing of tailing or waste material, that has not been restored to a continuing productive use, with proper grading and revegetative procedures to assure:

(a) slope stability;

(b) minimal erosion;

(c) adequate vegetative ground cover (if in keeping with reclaimed use);

(d) that no mine discharge water, ground water or surface water passing through a disturbed area will pollute or contaminate any state waters.

(7) "Exclusion" means a statement filed by a small miner pursuant to [82-4-305](#), MCA.

(8) "Exploration" includes pilot ore processing plants or sites and associated facilities constructed for the sole purpose of metallurgical or physical testing of ore materials, not to exceed 10,000 short tons, to aid in determining the development potential of an ore body.

(9) "Permit area" is the disturbed land as defined in [82-4-303](#), MCA, and a minimal area delineated around a disturbance area for the purposes of providing a buffer adjacent to all disturbances, and for the purposes of controlling public access to areas permitted under [82-4-335](#), MCA. Monitoring wells are not required to be within a contiguous permit boundary, but must be permitted. Other activities are to be included within the permit boundary as follows:

(a) Access roads must be included within the permit area from the point of departure with a public road to the mine site.

(b) Utilities are required to be permitted only within the permit area.

(c) Work camps are not required to be permitted. (However, they are regulated under Title 75, chapter 5, MCA.)

(10) "Placer or dredge mining" includes, but is not limited to, mining by hydraulic giant, ground sluice, rocker or sluice box methods, the use of a dry land dredge, trommel or washing plant, and bucket type floating dredges, all as referred to in Mining Methods and Equipment Illustrated, Montana Bureau of Mines and Geology, Bulletin 63, 1967.

(11) "Plan of operations" means the plans required under [82-4-335](#) through [82-4-337](#), MCA, including the reclamation plan defined in [82-4-303](#), MCA, plus the approved operating, monitoring and contingency plans required in an application for an operating permit.

(12) "Pollute or contaminate any stream" means, as used in [82-4-305](#), MCA, to conduct any mining or reprocessing of tailing or waste in a manner that will result in deterioration of water quality as specified by standards listed in ARM Title 17, chapter 30, et seq., pursuant to the Montana Water Quality Act, Title 75, chapter 5, et seq., MCA. Any future revisions of these standards adopted in accordance with the provisions of the Montana Water Quality Act, as amended, apply to this definition.

(13) "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved postmining land use which has stability and utility comparable to that of the premining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with [82-4-336](#), MCA. The term "reclamation" does not mean restoring the landscape to its premining condition. Reclamation, where appropriate, may include, but is not limited to:

(a) neutralizing cyanide or other processing chemicals;

(b) closure activities for ore heaps, waste rock dumps, and tailing impoundments;

(c) closure activities for surface openings;

(d) grading, soiling and revegetating disturbed lands;

(e) removal of buildings and other structures that have no utility in regard to the approved postmine land use;

(f) other steps necessary to assure long-term compliance with Title 75, chapters 2 and 5, MCA; and

(g) other steps necessary to protect public health and safety at closure.

(14) "Revision" means a change to an operating permit that is exempt under [82-4-342](#), MCA, from the requirement to prepare an environmental assessment or environmental impact statement.

(15) "Significantly affect the human environment" means an affect on the human environment that meets the criteria of ARM [17.4.608](#).

(16) "Small miner" is defined in [82-4-303](#), MCA.

(17) "Surety bond" means a surety agreement for a fixed amount, payable to the department, executed by a corporation licensed to do business as a surety in Montana, and guaranteeing performance of the obligations of the Act, the rules and the appropriate permit, exclusion or license.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-303](#), [82-4-305](#), [82-4-309](#), [82-4-310](#), [82-4-331](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99; **AMD**, 2000 MAR p. 473, Eff. 2/11/00; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

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### **17.24.103 EXPLORATION LICENSE--APPLICATION AND CONDITIONS**

(1) To secure an exploration license an applicant shall:

(a) pay a filing fee of \$100 to the department;

(b) submit an application for an exploration license, complete with a notarized signature, in duplicate to the department upon forms prepared and furnished by it;

(c) submit an exploration plan of operations and a map or sketch in sufficient detail to locate the area to be explored as well as the actual proposed disturbances, and to allow the department to adequately determine whether significant environmental problems would be encountered. The plan of operations must state the type of exploration techniques that would be employed in disturbing the land and include a reclamation plan in sufficient detail to allow the department to determine whether the specific reclamation and performance requirements of ARM [17.24.104](#) through [17.24.107](#) would be satisfied;

(d) agree to reclaim any surface area disturbed by the applicant during exploration operations, all as may be reasonably required by the department, unless the applicant shall have applied for and been issued an operating permit for the lands so disturbed;

(e) submit a reclamation performance bond with the department in a form and amount determined adequate by the department in accordance with [82-4-338](#), MCA; and

(f) not be in default of any other reclamation obligation mandated by the Act or rules implementing the Act.

(2) On approval by the department, the applicant will be issued an exploration license renewable annually by filing an annual report on a form provided by the department and payment of the renewal fee of \$25.

(3) An exploration licensee is subject to and must agree to the provisions of ARM [17.24.104](#) through [17.24.107](#) for reclamation of surface areas disturbed by exploration operations. Because of the inherent difficulties of promulgating regulations of state-wide applicability, the department will allow variance from the following provisions of this rule, if a written request submitted prior to commencement of the subject disturbance is accompanied by the landowner's or land administrator's written consent to the variance and is sufficient to convince the department that the public interest and the intent of the Act are best served by allowing such variance.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, the licensee may not depart from an approved plan without previously obtaining from the department verbal or written approval of the proposed change.

**History:** [82-4-321](#), MCA; [IMP, 82-4-332](#), MCA; Eff. 12/31/72; [AMD, 1994 MAR p. 2952](#), Eff. 11/11/94; [TRANS, from DSL, 1996 MAR p. 2852](#); [AMD, 1999 MAR p. 640](#), Eff. 4/9/99; [AMD, 2002 MAR p. 3590](#), Eff. 12/27/02.

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### **17.24.104 EXPLORATION (TEMPORARY) ROADS**

(1) Insofar as possible, all roads must be located on benches, ridge tops and flatter slopes to minimize disturbance and enhance stability.

(2) Road widths may not exceed a 14 foot single lane standard. Turn-outs may be constructed according to the licensee's needs, but the turn-out area may not exceed 30 feet in total width.

(3) No road may be constructed up a stream channel proper or so close that material will spill into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked and if no damage is done to the stream or adjoining landowners. No alteration that affects more than 100 linear feet of the channel of a flowing stream may be approved by the department without advice from the Department of Fish, Wildlife and Parks. Any stream channel alterations must comply with Title 75, chapter 5, MCA.

(4) Road gradients must be kept low except for short pitches to take advantage of topography. Maximum sustained grades may not exceed 8%. Pitch maximum may not exceed 12% and may not be over 300 feet in length.

(5) Insofar as possible, the licensee must keep road cuts reasonably steep to minimize surface disturbances. Cut slopes may not be steeper than 1:1 in soil, sand, gravel, or colluvium; 1/4:1 in lake silts, or more than 0:1 in rock. Where necessary to prevent significant sloughing or slumping, the top of road cuts must be rounded back to a more gentle slope. In selecting a slope angle, to prevent slope failure the licensee should consider at least the following factors: the nature of the material, compaction, slope height and moisture conditions.

(6) A ditch must be provided on both sides of a throughcut and, with the exception of outsloping roads, on the inside shoulder of a cut-fill section, with ditch relief cross drains (water bars) being spaced according to grade. Water must be intercepted before reaching a switchback or large fill, and be routed and released below the fill or switchback, not over it.

(7) Streams must be crossed at or near right angles unless contouring down to the stream bed will result in less potential stream bank erosion. Structure or ford entrances and exits must be constructed to prevent water from flowing down the roadway.

(8) Culverts must be installed at prominent drainage ways, small creeks and springs. Upon abandonment of the road, culverts must be removed and the drainage way reopened. Such culverts must be sufficient to handle runoff expected from a statistical five-year storm and, where necessary, the area adjoining the culvert must be protected from erosion by adequate, inert rock riprap.

(9) Trees and vegetation may be cleared for only the essential width necessary to maintain soil stability and to serve traffic needs. Trees must be felled prior to road construction. When sideslopes are 15% (8.5°) or less, trees and other vegetative debris from clearing operations must be completely disposed of, stockpiled at specified areas, or used as a sediment filter below the road cut. When sideslopes are steeper than 15% (8.5°), trees and vegetative debris shall be piled neatly below and parallel to the toe of the fill.

(10) Drainage facilities (such as culverts and water bars) must be installed as road construction progresses.

(11) Adequate diagonal drainage barriers (i.e., water bars, drain dips or similarly effective features) must be placed at the following specified intervals:

<u>Grade (%)</u>	<u>Maximum Spacing (feet)</u>
0 - 2	200
3 - 8	150
9 - 12	80

(12) Roads must be outsloped whenever possible. If roads are to be used during snow season, insloping with proper drainage consideration is acceptable for vehicle safety reasons.

(13) Snowplowing must be done in such a manner that runoff water will not be trapped between the snow berms and flow down the road.

(14) Materials which slough or slump onto the road bed or into the roadside drainage ditch before the licensee completes the exploration project must be disposed of on the road bed or on the fill material in a manner that will not obstruct any of the drainage facilities previously described.

(15) All fill and cut slopes, with the exception of rock faces, must be seeded or planted or both during the first appropriate season following construction of the road.

(16) The department may waive any of the criteria in this section if the applicant proposes methods or technologies that achieve the same or better environmental protection than that expected under the given criteria.

**History:** [82-4-321](#), MCA; [IMP, 82-4-332](#), MCA; Eff. 12/31/72; [AMD, 1994 MAR p. 2952](#), Eff. 11/11/94; [TRANS, from DSL, 1996 MAR p. 2852](#); [AMD, 2002 MAR p. 3590](#), Eff. 12/27/02.

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#### **17.24.105 CONDUCT OF EXPLORATION OPERATIONS**

(1) All suitable practically salvaged soil and soil material must be salvaged prior to any other site disturbance, and either stockpiled or used for immediate reclamation.

(2) Except for samples, drilling mud, water and other fluids as well as waste cuttings from drilling operations must be confined to the drill site by the use of storage tanks or sumps or must be disposed of in accordance with a plan approved by the department.

(3) Drill sites must not be constructed in natural flowing streams.

(4) Areas disturbed by removal of vegetation or grading must be kept to the minimum size necessary to accommodate the exploration operation.

(5) Insofar as possible, trenches, discovery pits and other excavations must be located out of natural flowing streams.

(6) Spoil from pits, trenches, shafts, adits, or other excavations must not be located in drainage ways. The lower edge of the spoil bank must be at least five vertical feet above high flow level. Exceptions may be made when it is not physically practical to place spoil at least five vertical feet above the high flow level.

(7) If an artesian aquifer is intercepted during a drilling operation, the drill hole must be plugged at depth (top to bottom) prior to removal of the drill rig.

(8) Oil, grease, hydraulic fluid and other petroleum products must not be released on the exploration site. If a release occurs, the contaminated material must be removed immediately and disposed of at a proper disposal site.

(9) Exploration adits, shafts, and other excavations must be secured from unauthorized entry throughout the life of the operation to ensure public safety.

(10) Pilot ore processing plants or sites, as defined in ARM [17.24.102](#), and permitted under an exploration license, are subject to all applicable requirements of [82-4-335](#) through [82-4-337](#), MCA.

(11) The department may require interim revegetation for the purposes of erosion control on all exploration disturbance areas.

**History:** [82-4-321](#), MCA; [IMP, 82-4-332](#), MCA; Eff. 12/31/72; [AMD, 1994 MAR p. 2952](#), Eff. 11/11/94; [TRANS, from DSL, 1996 MAR p. 2852](#).

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#### **17.24.106 EXPLORATION DRILL HOLE PLUGGING**

(1) Except as provided in (3) of this rule, all exploration drill holes must be plugged at the surface five to ten feet with cement.

(2) Except as provided in (3) of this rule, exploration drill holes must be plugged with bentonite or a similar compound from the bottom of the hole to within five to ten feet of the surface, and with cement from the top of the bentonite to the surface if one or more of the following conditions apply:

(a) two aquifers are intercepted;

(b) one aquifer is intercepted and an existing or potential beneficial use (domestic, agricultural or fish/ wildlife water supply) exists;

(c) one or more artesian aquifers are intercepted causing either surface flow or significant water rise in the hole; or

(d) the potential exists for downward water loss from an aquifer (cascade effect) as determined by the department.

(3) Exceptions to (1) and (2) of this rule may be granted by the department if:

(a) shallow placer holes are drilled using a churn or percussion drill or similar equipment in alluvium in which the holes will be obliterated as the drill stem is withdrawn, leaving no evidence of the hole;

(b) the drill hole contained no water, is not geologically likely to contain water and the hole is to be destroyed during mining or mining related disturbances;

(c) the drill hole is developed into a water well, monitoring well, or piezometer with the written agreement of the land owner and to the specifications of the appropriate state agency; or

(d) other site-specific hydrogeological and topographic situations necessitate exceptions.

(4) All flowing or artesian drill holes must be plugged prior to removing the drill rig from a hole unless removing the drill rig is necessary to the hole plugging operation. If the flow is not completely stopped, after exhaustion of all methods, the operator must:

(a) obtain a discharge permit from the Department of Environmental Quality; or

(b) develop a water well in compliance with the requirements of other applicable local, state and federal statutes, including water rights. In addition, the land owner must concur, the amount and use of flow must be compatible with the approved postmining land use, and the water quality must meet standards set under the Title 75, chapter 5, MCA.

(5) In areas and geological formations of known artesian well potential, bonding for drill sites must be adequate to ensure artesian hole plugging.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-302](#), [82-4-332](#), [82-4-355](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from [DSL](#), 1996 MAR p. 2852; [AMD](#), 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.107 RECLAMATION REQUIREMENTS--EXPLORATION**

(1) Upon completion of the drilling operation, drill cuttings or core must be removed from the site, disposed of down the hole, or buried. Drilling mud and other nontoxic lubricants must be removed from the site or allowed to percolate into the ground prior to backfilling the sump.

(2) Unless the hole is completed under [ARM 17.24.106](#)(3) (c) , collar pipe or casing must be removed or cut off below ground level.

(3) Access roads constructed by the licensee to accommodate the exploration project must be returned to a stable slope that approximates the original contour to the extent possible. Where this is not possible (as determined by the department) , compacted surfaces must be ripped or otherwise loosened, drainage structures must be installed in accordance with [ARM 17.24.104](#)(11) , and the roads must be closed to access by use of locked gates, kelly humps/dips, or other effective method. Exceptions may be made in accordance with the provisions of [ARM 17.24.103](#)(2) . This requirement may be waived by the department if the landowner requests in writing that the access road be left in place for an identified, alternative, feasible and practicable purpose.

(4) Drill sites constructed by the licensee must be returned to a stable configuration that approximates the original contour to the extent possible. Where the department determines that this is not possible, compacted surfaces must be ripped or otherwise loosened and appropriate drainage must be provided. This requirement may be waived by the department if the landowner requests in writing that the drill site be left in place for an identified, feasible and practicable purpose.

(5) When such actions will not obscure significant evidence relating to the possible presence of an ore deposit or physically hinder further development of the claim, all trenches, bulk sample or discovery pits, and other excavations must be backfilled with the excavated spoil material. If, following a site investigation and discussions with the licensee, the department confirms the necessity for the excavation to remain open, backfilling requirements may be postponed providing the licensee remains in compliance with [82-4-331](#) , and [82-4-332](#) , MCA, and [ARM 17.24.103](#), [17.24.105](#), [17.24.151](#), and [17.24.153](#).

(6) Upon termination of the exploration project, the first 25 feet of all adits must be backfilled with waste rock or riprap which will not contribute to the degradation of any discharge water. Shafts must also be backfilled or otherwise securely sealed upon project termination. If, following a site investigation and discussions with the licensee, the department confirms the necessity for an adit or shaft to remain accessible for possible future exploration or development, the adit or shaft must be secured with a steel bulkhead or other equally effective method to prevent unauthorized entry and ensure public safety.

(7) All refuse, buildings, railroad track, and other facilities associated with the exploration project must be removed and disposed of in proper disposal sites. Exceptions may be made by the department if the licensee desires



to mine the area and is in compliance with [82-4-332](#) (4) , MCA. This requirement may also be waived by the department if the landowner requests in writing that specific facilities be left in place for an identified, alternative, feasible and practicable purpose.

(8) All compacted surfaces associated with exploration adits, shafts, pits and associated facilities shall be ripped or otherwise loosened prior to soil replacement.

(9) Unless other reclamation practices are approved by the department, waste dumps associated with new adits excavated for the purposes of underground exploration must be contoured to allow for soil replacement and successful vegetation establishment. When existing, caved (sloughed) adits are reopened for the purposes of exploration and the caved material can be confined to the existing portal pad or waste dump without requiring expansion, contouring is not required. However, the licensee shall provide for appropriate drainage in the portal area, and the portal pad and waste dump must be stabilized with vegetation or by employing other stabilization methods determined acceptable by the department.

(10) Where feasible, soil and soil materials salvaged during construction must be reapplied over all disturbance areas.

(11) Where feasible, all disturbed areas must be revegetated with a seed mixture that is approved by the department.

(12) Appropriate revegetation must be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

(13) In the event that any of the above revegetation efforts are unsuccessful, the licensee must seek the advice of the department and make a second attempt, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-332](#), MCA; [Eff. 12/31/72](#); [AMD](#), 1994 MAR p. 2952, [Eff. 11/11/94](#); [TRANS](#), from [DSL](#), 1996 MAR p. 2852.

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#### **[17.24.108](#) EXPLORATION RECLAMATION DEFERRED**

(1) The department may defer the reclamation requirements of acreage disturbed under an exploration license if that acreage is proposed for incorporation into a complete plan of operation that is being prepared or has already been submitted as part of an application for an operating permit.

(2) The licensee shall comply with the following conditions of a reclamation deferral:

(a) a current exploration license shall be maintained;

(b) a current and adequate bond shall be maintained;

(c) the licensee shall be actively pursuing an operating permit or have filed a valid exclusion; and

(d) the licensee shall observe any interim monitoring or reclamation requirements as may be reasonably required by the department.

(3) The department shall cancel the deferral and issue an order to reclaim if the licensee fails to meet any of the conditions outlined in (2) , listed above.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-331](#), [82-4-332](#)(4), [82-4-338](#), MCA; [NEW](#), 1994 MAR p. 2952, [Eff. 11/11/94](#); [TRANS](#), from [DSL](#), 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, [Eff. 4/9/99](#).

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#### **[17.24.115](#) OPERATING PERMITS: RECLAMATION PLANS**

(1) The following provisions must be addressed in the reclamation plan:

(a) land disturbed by development or mining activities must be reclaimed for one or more specified uses, including, but not limited to: forest, pasture, orchard, cropland, residence, recreation, wilderness, industry, habitat (including food, cover or water) for wildlife or other uses. Proposed reclamation need not reclaim subject disturbed areas to a better condition or different use than that which existed prior to development or mining. The applicant must describe:

(i) current uses(s) of area to be disturbed;

(ii) current and proposed uses of nearby land that by its proximity may influence or guide the choice of a reclaimed use of the disturbed area;

(iii) pertinent climatic, topographical, soil, water and wildlife data that govern choice of proposed use of the reclaimed land.

(b) With the use of cross-sections, topographic maps or detailed prose, the proposed topography of the reclaimed land must be adequately described. As specific situations warrant, proper grading must provide for adequately designed contour trenches, benches and rock-lined channelways on disturbed areas. The applicant must submit evidence to assure the department that upon partial or complete saturation with water, graded fill, tailings or spoil slopes will be stable. The proposed grading methods must be described. Where practicable, soil materials from all disturbed areas must be stockpiled and utilized.

(c) The operator must establish vegetative cover commensurate with the proposed land use specified in the reclamation plan.



(d) Where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices shall not interfere with other landowner's rights or contribute to water pollution (as defined in Title 75, chapter 5, MCA) .

(e) All water, tailings or spoil impounding structures must be equipped with spillways or other devices that will protect against washouts during a 100 year flood.

(f) Upon abandonment, water from the development or mining activities shall be diverted or treated in a manner designed to control siltation, erosion or other water pollution damage to streams and natural water courses.

(g) All operations shall be conducted so as to avoid range and forest fires and spontaneous combustion.

(h) Proper precautions must be taken to assure that exposed cuts and tailings or spoil disposal areas will not be subject to wind erosion to the extent that airborne detritus becomes a public nuisance or detriment to the flora and fauna of the area.

(i) In a reclamation plan, the applicant shall provide the department with sufficiently detailed information regarding method(s) of disposal of mining debris, including mill tailings, and the location and size of such areas.

(j) Requirements regarding reclamation of stream channels and stream banks must be flexible to fit circumstances of each stream site. Many stream relocations, however, will be permanent and thus will represent the reclaimed condition of stream channels and stream banks. Accordingly, reclamation plans must contain the following provisions should stream channels or banks be permanently relocated:

(i) the relocation channel shall be of a length equal to or greater than the original channel, unless the department after consideration of the local circumstance shall grant a variance;

(ii) the relocation channel shall contain meanders, riffles and pools similar to those in the original channel;

(iii) stream banks shall be rounded to prevent slumping and sloughing and shall be revegetated in keeping with accepted agriculture or reforestation practices the first appropriate season following channel relocation;

(iv) rock riprap shall be used wherever appropriate.

(k) Sections [82-4-332](#) and [82-4-335](#) , MCA, require that maps of the intended development or mining operation(s) accompany applications for permit. Should a copy of such maps, to scale, contain the following additional information (transparent overlays are acceptable) , a separate map need not accompany the reclamation plan:

(i) outline of the area to be disturbed in the first year of operation;

(ii) outline of areas where soil materials will be replaced;

(iii) outline of intended revegetation areas showing plant or seed densities and species chosen;

(iv) location of such structures, drainage features, etc., as may be necessary to prevent erosion of bare slopes and subsequent siltation or other pollution of natural flowing streams or other natural water bodies.

(l) Reclamation shall be as concurrent with development or mining operations as feasible and must be completed within a specified reasonable length of time. Revegetation must be accomplished in the first appropriate season after necessary grading, in accordance with accepted agricultural or reforestation practices.

(m) All facilities constructed as part of the operating permit must be reclaimed for the approved postmine land use. The reclamation plan must provide for removal of buildings and other structures at closure consistent with the postmine land use.

(n) The plan must provide for postmine environmental monitoring programs and contingency plans for the postreclamation permit area. The monitoring programs and contingency plans must be related in scope and duration to the risk to public safety, water quality and adjacent lands they were designed to address.

**History:** [82-4-321](#), MCA; [IMP, 82-4-335, 82-4-336](#), MCA; [Eff. 12/31/72; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 640, Eff. 4/9/99; AMD, 2002 MAR p. 3590, Eff. 12/27/02.](#)

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#### **17.24.116 OPERATING PERMIT: APPLICATION REQUIREMENTS**

(1) Applicant must obtain an operating permit for each mine complex on a form prescribed by the department.

(2) To obtain an operating permit the applicant shall pay a \$500 fee.

(3) In addition to the information required by [82-4-335](#) (4) , MCA, an application for an operating permit must describe the following:

(a) the existing environment;

(b) soil salvage and stockpiling activities and measures to protect soil from erosion and contamination;

(c) provisions for the prevention of wind erosion of all disturbed areas;

(d) the design, construction, and operation of the mine, mill, tailings, and waste rock disposal facilities;

(e) the facilities, buildings, and capacity of mill or processing;

(f) the proposed date for commencement of mining, the minerals to be mined, and a proposed conceptual life of mine operations;

(g) the designs of diversions, impoundments, and sediment control structures to be constructed reflecting their safety, utility, and stability;

(h) the location of access, haul, and other support roads and provisions for their construction and maintenance that control and minimize channeling and other erosion;

(i) the source and volume of incoming ore, tailings, or waste rock;

- (j) the equipment and chemicals to be used in the operation by location and task;
- (k) the general chemical processes and the purpose, amount, and source of water used in the operation and the disposition of any process waste water or solutions;
- (l) the ground and surface water monitoring programs to be implemented and a contingency plan addressing accidental discharges to ground or surface water;
- (m) a fire protection plan;
- (n) a toxic spill contingency plan with certification that notice of the filing of the plan has been provided to the state fire marshal;
- (o) the sewage treatment facilities and solid waste disposal sites;
- (p) the power needs and source(s) , including fuel storage sites;
- (q) the anticipated employment including direct and onsite contract employees;
- (r) the transportation network to be used during the construction and operation phases, including a list of the type and amount of traffic at mine or mill capacity;
- (s) the predicted noise levels by activities during construction and operations;
- (t) the protective measures for archaeological and historical values in the areas to be mined;
- (u) the protective measures designed to avoid foreseeable situations of unnecessary damage to flora and fauna in or adjacent to the area.

(4) The application must include a map or maps to scale of the mine area and area to be disturbed (such map must locate the proposed mine and facilities and must locate and identify streams, and proposed roads, railroads, and utility lines in the immediate area and residences and wells within one mile of the permit area) . All maps provided in the application must have a uniform base, a scale, and a north directional arrow.

(5) The application must include a reclamation plan that meets the requirements of [82-4-336](#) , MCA, and this subchapter.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-336](#), MCA; Eff. 12/31/72; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.117 PERMIT CONDITIONS**

- (1) The following conditions accompany the issuance of each permit:
  - (a) The permittee shall conduct all operations as described in:
    - (i) the plan of operations including the approved operating, reclamation, monitoring, and contingency plans;
    - (ii) any express conditions which the department places on the permit to ensure compliance with the Act or this subchapter promulgated pursuant thereto;
    - (iii) written commitments made by the permittee in response to deficiencies identified by the department during the permit application review process;
    - (iv) mitigation measures mutually developed by the department and permittee pursuant to [75-1-201](#) (5) (b) , MCA; and
    - (v) plans or assumptions used in calculating bond amounts that have been posted by the permittee.
  - (b) If the department issued the permit because the applicant was maintaining a good faith direct appeal in accordance with [82-4-335](#) , MCA, the permittee will immediately submit proof upon resolution of the appeal that the violation has been or is being corrected to the satisfaction of the regulatory agency or the permittee will cease operations.
  - (c) Except as provided in ARM [17.24.144](#)(1) (f) and [17.24.146](#)(2) , the permittee shall maintain in effect at all times a bond in the amount established by the department. Upon failure of the permittee to maintain such bond coverage because of expiration or cancellation of bond, the permit is suspended and the permittee shall cease mining operations until substitute bond is filed with and approved by the department.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-335](#), [82-4-336](#), [82-4-351](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.118 ANNUAL REPORT**

- (1) Each permittee shall file an annual report with the department and pay an annual fee of \$100 within a time period specified in [82-4-339](#) , MCA, until such time as full bond is released. No less than 30 days prior to the permit anniversary date for the annual report, the department shall notify the permittee in writing that an annual report and renewal fee is due.
- (2) The annual report must include the information outlined under [82-4-339](#) , MCA. In addition, the annual report must include:
  - (a) the number of acres of land affected by the operation during the preceding year and cumulatively;
  - (b) the extent of backfilling and grading performed during the preceding year and cumulatively;
  - (c) the area of land planted;
  - (d) the type of planting or seeding;
  - (e) the mixtures and amounts seeded;

- (f) the species, location, and method of planting for site or species specific plantings;
  - (g) the date of seeding or planting;
  - (h) cumulative acres reseeded to date;
  - (i) cumulative acres of completed reclamation and the date each increment was completed; and
  - (j) maps showing the information required in (2) (a) through (i) .
- (3) Each annual report must include an inventory of soils volumes which includes:
- (a) cubic yards salvaged in the preceding year and cumulatively;
  - (b) cubic yards to be salvaged in the coming year;
  - (c) cumulative volume of soils contained in stockpiles; and
  - (d) replaced soil depths and volumes.
- (4) Each annual report for those operations using cyanide or other metal leaching solvents or reagents or having the potential to generate acid must provide a narrative summary of water balance conditions during the preceding year and identify excess water holding capacity at the time of the annual report.
- (5) When incremental bond has been approved, additional bond must be submitted, in the amount required, with the annual report and the status of incremental bonding must be described.
- (6) If changes in facilities have occurred in the preceding year, the annual report must, pursuant to [82-4-339](#) (1) (f) , MCA, update the permit map required under ARM [17.24.115](#). The updated map must depict all approved surface features, as required by the department, in or associated with the permit area, reproduced at a scale applicable for field use.
- (7) If cultural resource mitigations identified in the permit will be ongoing through the life of the operation, the annual report must include an updated cultural resource management table, including a list of sites mitigated and disturbed in the preceding year and sites to be mitigated and disturbed in the coming year.
- (8) If comprehensive water monitoring is required by the permit, each annual report must include an evaluation of water monitoring reports submitted during the preceding year. The evaluation must include trend analyses for those key site-specific parameters required by the department in the permit.
- (9) If site-specific geologic conditions identified in the permit indicate the need for geologic monitoring, each annual report must include monitoring results and must report materials balances as required in the permit.
- (10) If site-specific closure requirements identified in the permit include monitoring for cyanide or other metal leaching solvent or reagent neutralization, acid rock drainage development, or similar occurrences, the annual report must include an evaluation of monitoring and testing data required in the permit for closure under [82-4-335](#) , MCA.
- (11) Each annual report must include the names of key personnel for maintenance and monitoring if the operation is shut down.
- (12) Each annual report must include any other relevant information required by the permit.
- (13) The department shall, by certified mail, notify a permittee, who fails to file an annual report and fee as required by this rule, that the permit will be suspended if the report and fee are not filed within 30 days of receipt of the notice.
- (14) If a permittee fails to file an annual report and fee within 30 days of receipt of a notice, the department shall suspend the permit.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-335](#), [82-4-336](#), [82-4-337](#), [82-4-338](#), [82-4-339](#), [82-4-362](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99; **AMD**, 2000 MAR p. 473, Eff. 2/11/00; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

### **17.24.119 PERMIT AMENDMENTS**

- (1) An application for a major amendment must:
- (a) contain a summary of changes in disturbances, in resources affected, and in construction, operating, reclamation, monitoring, and contingency plans;
  - (b) provide dated replacement or supplemental resource data, plans, and maps as outlined in ARM [17.24.115](#), or cross reference applicable data, plans, or maps in the previously permitted plan of operation, in order to identify the existing environment and resources affected, as well as changes in permit boundaries, in total disturbances, and in construction, operating, reclamation, monitoring, and contingency plans;
  - (c) identify any additional resource data necessary to the evaluation of the proposed amendment;
  - (d) provide an updated or comprehensive facilities map; and
  - (e) clearly indicate on the facilities map all bonding areas subject to pre-July 1, 1974, bonding levels. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.
- (2) For an application for a major amendment, the department shall implement the application, notice and hearing requirements for new permits pursuant to [82-4-337](#) and [82-4-353](#) , MCA, and prepare necessary environmental analyses pursuant to the Montana Environmental Policy Act.
- (3) An application for minor amendment must:
- (a) contain a summary of proposed changes in sufficient detail for the department to determine whether further environmental analysis under Title 75, chapter 1, MCA, is required;
  - (b) contain dated replacement pages and necessary supplemental resource data and plans, and maps in order to identify changes in permit boundaries, total disturbances, and plans;

- (c) contain an updated or comprehensive facilities map;
- (d) contain a statement of the applicant's rationale for asserting nonsignificance pursuant to [82-4-337](#) (7) , MCA;
- (e) identify previous environmental analyses relevant to the amendment; and
- (f) clearly indicate on the facilities map all bonding areas subject to pre-July 1, 1974, bonding levels. No action under this section affects a bond in effect under pre-July 1, 1974, bonding levels.

(4) For a minor amendment, the department shall not implement the application, notice and hearing requirements for new permits pursuant to [82-4-337](#) and [82-4-353](#) , MCA. The department shall provide the permittee with a notice of decision on the adequacy of the minor amendment application within 30 days of receipt of the application.

**History:** [82-4-321](#), [82-4-337](#), [82-4-342](#), MCA; **IMP**, [82-4-337](#), [82-4-342](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.120 PERMIT REVISIONS**

(1) An application for revision must include:

- (a) a general summary explaining the revision;
- (b) a statement of the applicant's rationale for asserting nonsignificance pursuant to [82-4-337](#) (7) , MCA;
- (c) identification of previous environmental analyses relevant to the revision;
- (d) a reference to prior commitments to topsoil salvage, sediment control, reclamation, and other previously approved plans or standards that are applicable to the revision;
- (e) documentation of the adequacy of existing bonding, if appropriate;
- (f) updated replacement pages and permit map for the permitted plan of operations;
- (g) any necessary construction, operating, reclamation, monitoring, and contingency plans; and
- (h) an updated or comprehensive facilities map that clearly indicates all areas subject to pre-July 1, 1974, bonding levels. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.

(2) The department shall provide the permittee with a notice of adequacy of proposed revisions within 30 days of receipt of the application.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-337](#), [82-4-342](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852.

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#### **17.24.121 PERMIT REVIEWS**

(1) At any time during the life of an operation, the department may review an operating permit.

(2) If the department determines that the modification of the reclamation plan is authorized under [82-4-337](#) , MCA, it may require such modification under the procedures of (3) through (6) .

(3) The department shall send an explanation of the need for modification and a conceptual plan for modification to the permittee, by certified mail, and provide opportunity for hearing, pursuant to Title 2, chapter 4, part 6, MCA.

(4) The permittee shall respond to the department with a request for hearing or a proposed schedule for modification or revision, not to exceed one year, within 30 days of receipt of a letter from the department.

(5) The department may extend the one-year time frame or the time for hearing request for good cause documented by the permittee in writing.

(6) A modification must be submitted in the form of an amendment or a revision and the department shall process the applicant's submittal in accordance with ARM [17.24.119](#) or [17.24.120](#).

**History:** [82-4-321](#), MCA; **IMP**, [82-4-337](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99.

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#### **17.24.122 PERMIT ASSIGNMENT**

(1) The department may approve the assignment of a permit if the requirements of (2) and (3) are met.

(2) The permittee shall:

- (a) provide the department with a completed application on a form, provided by the department, which includes:
  - (i) the name and address of the proposed assignee and the name and address of that person's resident agent, if any; and

- (ii) the same information as is required in [82-4-335](#) (4) , (8) , and (9) , MCA, for applications for new permits.

(3) The assignee shall:

- (a) commit in writing to conduct the operations in full compliance with the terms and conditions of the permit; and
- (b) provide sufficient bond to guarantee performance of the Act, this subchapter and the permit.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-335](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852.

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#### **17.24.123 PERMIT CONSOLIDATION**

(1) In order to facilitate management of multiple permits for a contiguous area, a permittee may, with department approval, consolidate permits.

- (2) In order to obtain permit consolidation, the permittee must submit an application containing the following information:
- (a) an explanation of the purpose of the consolidation and a summary of cumulative disturbances;
  - (b) a single map showing the entire proposed permitted area;
  - (c) a table showing the consolidated acreage of permitted areas, total permitted disturbance, and total acreage reclaimed to date;
  - (d) an updated facilities map showing all facilities modifications that have occurred since the issuance of the individual permits. This map may be combined with the permit area map required under (b) above if there is no loss in legibility;
  - (e) a consolidated bonding map showing what areas, if any, are subject to pre-July 1, 1974, bonding levels and showing which bonds cover which areas; and
  - (f) a consolidated operating and reclamation plan and supporting maps, showing, as appropriate, the area to which each plan applies. No action under this subsection affects a bond in effect under pre-July 1, 1974, bonding levels.
- (3) Following consolidation, annual reports must be submitted on the renewal date of the oldest of the permits to be consolidated.

**History:** 82-4-321, MCA; IMP, 82-4-335, MCA; NEW, 1994 MAR p. 2952, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2000 MAR p. 473, Eff. 2/11/00.

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#### **17.24.128 INSPECTIONS: FREQUENCY, METHOD, AND REPORTING**

- (1) The department shall conduct an inspection:
- (a) at least once per calendar year for each permitted operation; and
  - (b) at least three times per year for each active operation that:
    - (i) uses cyanide or other metal leaching solvents or reagents;
    - (ii) has a permit requirement to monitor for potential acid rock drainage; or
    - (iii) exceeds 1000 acres in permit area.
- (2) The department shall provide copies of operating permit inspection reports to any appropriate state or federal land managing agency, if requested by the agency.
- (3) The department shall provide a copy of each report to the operator.

**History:** 82-4-321, MCA; IMP, 82-4-337, 82-4-339, MCA; NEW, 1994 MAR p. 2952, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 640, Eff. 4/9/99; AMD, 2000 MAR p. 473, Eff. 2/11/00.

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#### **17.24.129 INSPECTIONS: RESPONSE TO CITIZEN COMPLAINTS**

(1) Any person may request an inspection by the department of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, the permit, the license, or the exclusion; or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The statement must identify the basis for the allegation or provide corroborating evidence. The statement must be placed in the alleged violator's file and becomes a part of the permanent record. The identity of the person supplying information to the department must remain confidential with the department, if requested by that person.

(2) If the report provides the information required above and the department determines the request to present sufficient evidence to warrant a special inspection, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed.

(3) Within 30 days of receipt of the requestor's written statement, the department shall send the requestor and the alleged violator a written response which includes the following:

- (a) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken;
- (b) if no inspection was made, an explanation of the reason why.

**History:** 82-4-321, MCA; IMP, 82-4-337, 82-4-354, MCA, and Article II, Sec. 9, Montana Constitution; NEW, 1994 MAR p. 2952, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 640, Eff. 4/9/99.

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#### **17.24.132 ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES**

(1) Except as provided in (4), the department shall send a violation letter for a violation of the Act, this subchapter, or the permit, license, or exclusion. The violation letter must be served and must state that the alleged violator may, by filing a written response within a time specified in the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty under (2).

(2) The department may issue a notice of violation and administrative order for a violation identified in a violation letter. The administrative order may assess a penalty, require corrective action, or both.

(3) The alleged violator may, within 30 days of service of the notice of violation and order, respond in writing and may request an informal conference, a contested case hearing, or both, on the issues of whether the violation



occurred, whether the corrective action ordered by the department is reasonable, and whether the penalty assessed is proper.

(4) If a contested case hearing has not been requested within 30 days of the date of service of the order, the notice of violation and order become final. If a contested case hearing has been requested, the board shall hold a hearing, make the findings of fact, issue the decision, and, if a violation is found, order payment of any penalty as provided in [82-4-361](#), MCA.

History: [82-4-321](#), MCA; [IMP](#), [82-4-337](#), [82-4-339](#), [82-4-361](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [AMD](#), 1996 MAR p. 2586, Eff. 10/4/96; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2006 MAR p. 1139, Eff. 5/5/06.

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#### **[17.24.133](#) ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION**

(1) The director shall immediately issue an order suspending the license or permit for each violation of the Act, this subchapter, the license, or the permit, that is creating an imminent danger to the health or safety of the persons outside the permit area.

(2) The director may, after opportunity for an informal conference, suspend a permit or license for a violation of the Act, this subchapter, or the license or permit that:

- (a) may reasonably be expected to create a danger to the health or safety of persons outside the permit area;
- (b) may reasonably be expected to cause significant environmental harm to land, air, or water resources; or
- (c) remains unabated subsequent to the deadline contained in a corrective action order.

History: [82-4-321](#), MCA; [IMP](#), [82-4-357](#), [82-4-361](#), [82-4-362](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [AMD](#), 1996 MAR p. 2586, Eff. 10/4/96; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2006 MAR p. 1139, Eff. 5/5/06.

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#### **[17.24.134](#) ENFORCEMENT: ASSESSMENT OF PENALTIES**

(1) The department shall consider the factors identified in [82-4-1001](#), MCA, in determining the amount of a penalty for a violation.

History: [82-4-321](#), [82-4-361](#), MCA; [IMP](#), [82-4-361](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [AMD](#), 1996 MAR p. 2586, Eff. 10/4/96; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2006 MAR p. 1139, Eff. 5/5/06.

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#### **[17.24.136](#) ORDERS: ISSUANCE AND SERVICE**

(1) Orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

- (a) delivering a copy of the order in person to the violator; or
- (b) sending a copy of the order by certified mail to the violator at the address on the violator's application for a license or permit or exclusion.

(2) Service is complete upon tender of the order in person. Service by mail is complete within three business days after the date of mailing and is not incomplete because of refusal to accept.

History: [82-4-321](#), MCA; [IMP](#), [82-4-341](#), [82-4-357](#), [82-4-361](#), [82-4-362](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [AMD](#), 1996 MAR p. 2586, Eff. 10/4/96; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2006 MAR p. 1139, Eff. 5/5/06.

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#### **[17.24.137](#) NOTICES AND ORDERS: EFFECT**

(1) Reclamation operations and other activities intended to protect public health and safety and the environment must continue during the period of any suspension order unless otherwise provided in the order.

(2) If a suspension order will not completely abate the imminent danger to the health or safety of persons outside the permit or license area in the most expeditious manner physically possible, the director or the director's authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(3) A notice or order may not be vacated because of inability to comply.

(4) If a permit or license has been suspended or revoked, the operator or licensee may not conduct any operations or prospecting pursuant to the permit or license and shall:

- (a) if the permit or license is revoked, complete reclamation within the time specified in the order;
- (b) if the permit or license is suspended, abate all conditions, practices, or violations, as specified in the order.

History: [82-4-321](#), MCA; [IMP](#), [82-4-361](#), [82-4-362](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **[17.24.140](#) BONDING: DETERMINATION OF BOND AMOUNT**

(1) The department shall require submission of bond in the amount of the estimated cost to the department if it had to perform the reclamation, contingency procedures and associated monitoring activities required of an operator subject to bonding requirements under the Act, the rules adopted thereunder, and the permit, license or exclusion. This amount is based on the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, MCA, the Act, the rules adopted thereunder, and the approved permit, license or any exclusion and shall include:

(a) costs estimated by using current machinery production handbooks and publications or other documented costs acceptable to the department;

(b) the additional estimated costs to the department which may arise from additional design work, applicable public contracting requirements or the need to bring personnel and equipment to the operating area after its abandonment by the operator;

(c) an additional amount based on factors of cost changes during the preceding five years for the types of activities associated with the reclamation to be performed; and

(d) the additional estimated cost to the department which may arise from management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(2) The total bond amount calculated by the department must be in place and accepted by the department prior to issuance of the permit, license, or exclusion unless:

(a) the applicable plan identifies phases or increments of disturbance which may be individually identified and for which individual, incremental bonds may be calculated. The plan must provide for bonding increments to be submitted with the annual report and must expressly state that the operator, licensee or small miner may not proceed to the next phase or increment until the bond is in place and has been approved in writing by the department; or

(b) mining will proceed through a progression of contiguous pits and the plan provides for concurrent backfill. In this case, the bond must include the amount necessary to backfill the largest volume pit.

(3) An incremental bond proposal must not be accepted if the operator has received a bonding noncompliance, notice of violation for exceeding the small miner or other acreage limitations, or a notice of violation for conducting activities outside the bonded operating area. This prohibition does not apply if the violation is vacated or if a court rules that a violation did not occur.

(4) Unless the provisions of the bond provide otherwise, the line items in the bond calculations are estimates only and are not limits on spending of any part of the bond to complete any particular task subsequent to forfeiture of the bond or settlement in the context of bond forfeiture proceedings.

(5) An operator may submit bond higher than the amount required by the department. The extra amount remains unobligated to any disturbance until applied against disturbances which result from additional activities approved under an operating permit, license, or exclusion.

(6) Bond released from completed activities may not be applied to subsequent activities or increments until the department has inspected the site, provided public notice and opportunity for comment on the release, and approved the request for release in compliance with [82-4-338](#), MCA.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-338](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00; [AMD](#), 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.141 BONDING: ADJUSTMENT OF AMOUNT OF BOND**

(1) The amount of the performance bond must be reviewed for possible adjustment as the disturbed acreage is revised, methods of mining operation change, standards of reclamation change or when contingency procedures or monitoring change.

(2) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every five years. The department may conduct additional comprehensive bond reviews if, after modification of the reclamation or operation plan, and annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary.

(3) If, at the time of an amendment under ARM [17.24.119](#), a comprehensive bond review is completed, the next comprehensive bond review must occur not more than five years after the issuance of the amendment.

(4) The department shall notify the operator of any proposed bond adjustment and provide the operator an opportunity for an informal conference on the adjustment.

(5) For bond reduction requests by the operator for release of undisturbed land, the operator shall submit a map of the area in question, revise the appropriate active operation maps and document that the area has not been disturbed as a result of previous operating activities. The department shall then conduct an inspection of the proposed area before responding to the request.

(6) An operator or an interested party may request an adjustment of the required performance bond amount upon submission of evidence to the department demonstrating that the method of operation or other circumstances will change the estimated cost to the department to complete the reclamation, contingency procedures, or monitoring activities and therefore warrant a change in the bond amount.

(7) A bond filed for an operating permit obtained under [82-4-335](#), MCA, may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department

shall provide reasonable statewide and local notice of the opportunity for hearing including, but not limited to, circulation. The department shall provide a 30-day comment period in the notice. A request for hearing must be submitted to the department in writing within the comment period.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-338](#), [82-4-342](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **[17.24.142](#) BONDING: REPLACEMENT OF BOND**

(1) The department may allow an operator to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability that has accrued against the operator is transferred to such replacement bonds.

(2) The department may not release an existing performance bond until the operator has submitted and the department has approved an acceptable replacement performance bond. A replacement of performance bond pursuant to this rule does not constitute a release of bond under [82-4-338](#), MCA.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-338](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99.

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#### **[17.24.143](#) BONDING: FORM OF BOND**

(1) The form for the performance bond must be as provided by the department. The department shall allow for a surety bond or a collateral bond.

(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single operation, must extend to the entire bonded area.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-338](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99.

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#### **[17.24.144](#) BONDING: SURETY BONDS**

(1) In addition to the requirements of [82-4-338](#), MCA, surety bonds are subject to the following requirements:

(a) The department may not accept a surety bond in excess of 10% of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(b) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation as provided in (a) above.

(c) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, unless that surety is registered with the state auditor and is listed in the United States Department of the Treasury Circular 570 as revised.

(d) A power of attorney must be attached to the surety bond.

(e) The surety bond must provide a mechanism for the surety company to give prompt notice to the department and the operator of:

(i) any action alleging bankruptcy or insolvency of the surety or violation that would result in suspension or revocation of the license of the surety;

(ii) cancellation by the operator; and

(iii) cancellation or pending cancellation by the surety.

(f) Upon incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the operator shall be deemed to be without bond coverage and shall promptly notify the department in the manner described in the bond. The department, upon notification, shall, in writing, notify the operator of a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease mineral extraction, comply with the provisions of [82-4-336](#) (1), MCA, and immediately commence reclamation in accordance with the Act, this subchapter and the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

(g) Whenever operations are abandoned concurrent with cancellation of the bond, the department must reclaim the site and forfeit the bond within two years, consistent with [82-4-341](#), MCA, for any reclamation obligation incurred in the reclamation of the site.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-338](#), [82-4-341](#), [82-4-360](#), MCA; [NEW](#), 1994 MAR p. 2952, Eff. 11/11/94; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **[17.24.145](#) BONDING: CERTIFICATES OF DEPOSIT**

(1) The department may accept as bond an assignment of a certificate of deposit in a denomination not in excess of \$100,000, or the maximum insurable amount as determined by FDIC and FSLIC, whichever is less. The department may not accept a combination of certificates of deposit for one operator on one institution in excess of that limit.

(2) The department may accept only automatically renewable certificates of deposit from a United States bank.

(3) The department shall require the operator to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required pursuant to ARM [17.24.140](#) and [17.24.141](#).



(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks issuing these certificates to waive all rights of setoff or liens against these certificates.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-338](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99.

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#### **17.24.146 BONDING: LETTERS OF CREDIT**

(1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) The letter must be issued by a bank organized or authorized to do business in the United States.

(b) The letter must be irrevocable prior to a release by the department pursuant to [82-4-338](#), MCA.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a notice that the person has failed to comply with a provision of the Act, the rules adopted thereunder, or the permit, license, or exclusion, the failure of which authorizes forfeiture of the bond under the Act.

(d) The letter of credit must provide that, upon expiration, if the department has not notified the bank in writing that substitute bond has been provided or is not required, the bank will immediately pay the department the full amount of the letter less any previous drafts.

(e) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(f) The department may not accept a letter of credit from a bank for any person, on all permits, licenses, or exemptions held by that person, in excess of three times the company's maximum single obligation as provided in (e) above.

(2) If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the operator and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease mineral extraction and shall comply with the provisions of [82-4-341](#), MCA, and shall immediately begin to conduct reclamation operations in accordance with the Act, this subchapter and reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-338](#), [82-4-341](#), [82-4-360](#), MCA; **NEW**, 1994 MAR p. 2952, Eff. 11/11/94; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.150 ABANDONMENT OR COMPLETION OF OPERATION**

(1) For the purposes of administering the Act the department will presume that an operation is abandoned or completed (and thus subject to the reclamation time schedule outlined in [82-4-336](#), MCA) as soon as ore ceases to be extracted for future use or processing. Should the operator wish to rebut said assumption, the operator must provide evidence satisfactory to the department that the operations have not in fact been abandoned or completed.

(2) Documentation of any of the following situations will be adequate evidence of intent not to abandon operations:

(a) the mine or mill work force is on strike while negotiating a new contract;

(b) the mine or mill is shut down because of some failure of the transportation network in moving ore or processed material;

(c) the mine or mill is shut down because of a natural catastrophe and plans to resume operations are being formulated;

(d) the mine or mill is seasonally shut down due to predictable annual variance in the mined product's market or because of inclement weather or seasonal inaccessibility;

(e) the mine or mill is shut down for maintenance or the construction of new facilities;

(f) the mine or mill is forced to temporarily shut down because of violation of other state or federal laws and efforts are being made to remedy the cause of the violation.

(3) At the discretion of the department, the following evidence and any other relevant evidence may be satisfactory to show intent to resume operations:

(a) exhibition of drill core and accompanying assay reports to show that ore minerals still remain in the mine and that they are present in veins or accumulations of sufficient size, grade and accessibility to warrant continued development. Geological, geochemical or geophysical indications of valuable mineralization sufficient to warrant further development or mining will also be considered by the department;

(b) continued employment of a maintenance crew to dewater the mine or replace timbers, etc.;

(c) data recording present and predicted commodity prices, labor and transportation costs, etc., or any other evidence which may show that mining may soon resume on a profitable basis. Board comment: It is recognized that "abandonment or completion of mining" under the operating permit (see [82-4-336](#), MCA) is an action commonly predicated upon complex and changing economic circumstances; that cessation of mining need not mean abandonment or completion; and that short of obtaining an operator's records and examining the mine development drill core, the department may be unable to determine the operator's true intent.

History: [82-4-321](#), MCA; [IMP](#), [82-4-336](#), MCA; Eff. 12/31/72; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### [17.24.151](#) ABANDONED PITS: OBJECTIONABLE EFFLUENTS

This rule has been repealed.

History: [82-4-321](#), MCA; [IMP](#), [82-4-336](#), MCA; Eff. 12/31/72; [TRANS](#), from DSL, 1996 MAR p. 2852; [REP](#), 1999 MAR p. 640, Eff. 4/9/99.

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#### [17.24.152](#) DISCLOSURE OF INFORMATION

This rule has been repealed.

History: [82-4-321](#), MCA; [IMP](#), [82-4-336](#), MCA; Eff. 12/31/72; [TRANS](#), from DSL, 1996 MAR p. 2852; [REP](#), 1999 MAR p. 640, Eff. 4/9/99.

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#### [17.24.153](#) GENERAL COMPLIANCE

(1) The operator shall comply with all federal and state laws, and such rules and regulations as are promulgated by the board under the Act.

History: [82-4-321](#), MCA; [IMP](#), [82-4-336](#), MCA; Eff. 12/31/72; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99.

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#### [17.24.157](#) BLASTING OPERATIONS: COMPLAINT PROCEDURE

(1) Affected parties, who are owners of an interest in real property or individuals who reside within an area subject to property damage or safety hazards related to the use of explosives by an operator may file a signed and dated complaint related to use of explosives associated with hard rock mining or exploration activities as follows:

(a) Complaints must be filed in writing with the department.

(b) Complaints must include the following information:

(i) name, mailing address, street address and phone number of the person or persons filing complaint;

(ii) statement of interest in real property or identification of residence within an area subject to property damage or safety hazards related to use of explosives;

(iii) name of person or company using explosives, if known;

(iv) detailed location of explosives use;

(v) date and time of use;

(vi) if property damage is alleged, type of damage including:

(A) type of structure;

(B) nature of damage;

(C) age of structure;

(D) rationale for correlating damage to use of explosives; and

(vii) if safety hazard is alleged, type of safety hazard.

(c) The department shall respond to all complaints by notifying each person who files a complaint whether the department considers the complaint to be credible. A credible complaint is a complaint addressing all requirements listed in (b) in a manner that is not false or without basis on its face.

(2) The department shall promptly investigate a credible complaint by:

(a) immediately providing the operator with a copy of a credible complaint;

(b) documenting the alleged damage or safety hazard with photographs and engineering reports and interviews as appropriate;

(c) requesting and evaluating all available information from the operation allegedly responsible for the problem;

(d) investigating concurrent activity which may have caused or contributed to the problem identified;

(e) conducting appropriate tests, which may include, but are not limited to:

(i) seismograph and airblast monitoring;

(ii) geologic investigation; and

(iii) evaluation of the structural integrity of the structure; and

(f) making written findings, including, if possible, a determination of whether any of the standards in ARM

[17.24.159](#)(6) (a) , (11) (a) , or (15) (c) , were exceeded.

(3) The department shall mail a copy of its written findings to the complainant and the operator.

History: [82-4-321](#), MCA; [IMP](#), [82-4-356](#), MCA; [NEW](#), 1990 MAR p. 1470, Eff. 7/27/90; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### [17.24.158](#) BLASTING OPERATIONS: PARTICIPATION AND COOPERATION OF PERSONS USING EXPLOSIVES

(1) Whenever the department notifies the operator that it has received a credible complaint pursuant to ARM [17.24.157](#) concerning a use of explosives, the operator shall make available to the department, within 15 days of

receipt of a written request, such information as the department may request, including, but not limited to, the following:

- (a) identification of persons conducting blasting activities and their level of training and experience;
- (b) preblasting survey information, if available;
- (c) blasting schedule and records identifying as accurately as possible location of the blasting sites and timing of blasts; and
- (d) seismograph measurements, if available.

(2) The operator shall make available for interviewing by the department and its consultants all persons involved in the blasting operations.

(3) (a) After the department conducts its preliminary investigation by reviewing the records supplied by the operator using explosives and performs its own appropriate tests, if needed, the department shall do one or more of the following:

(i) if the department's preliminary investigation has determined that property damage or a safety hazard could not have occurred from blasting activities, the department shall give written notification of its findings to all concerned parties;

(ii) if, after its preliminary investigation, the department cannot determine whether property damage or a safety hazard may have occurred as the result of blasting, or if it appears damage or a safety hazard has occurred as the result of blasting, the department shall perform one or more of the following:

- (A) continue to conduct its own tests;
- (B) conduct additional investigations, including, but not limited to, geologic structure, frequency, and delay sequencing; or
- (C) hire a third party consultant to conduct a survey of the blasting operation and, if necessary, structures.

(b) A survey prepared under (a) (ii) (C) must be conducted by a recognized expert on the forces created by blasting and must document the condition of the structure, any blasting damage, any causes for the damage other than blasting, and whether blasting by the operator exceeded the standards contained in ARM [17.24.159](#)(2) (f) (i) , (2) (k) (i) and (2) (o) (iii) . Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems must be limited to surface condition and readily available data. Special attention must be given to the condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(c) The recognized expert must submit the expert's qualifications to the department for review. At a minimum, the expert must:

- (i) have field experience covering at least five previous blasting-related projects; and
- (ii) provide a brief summary of the number and type of preblast and postblast investigations along with any conclusions or recommendations resulting from those investigations.

(d) The department shall require that a written report of the survey be prepared and signed by the person who conducted the survey. If the report finds that the standards were exceeded or that the blasting caused damage or safety hazard, the report must include recommendations of any special conditions or proposed adjustments to the blasting procedure that should be incorporated into the blasting plan to prevent damage or hazard. The department shall provide a copy of the report to the complainant and the operator.

(4) (a) If the third party investigation demonstrates that the operator exceeded the standards contained in ARM [17.24.159](#)(2) (f) (i) , (2) (k) (i) or (2) (o) (iii) , or that the damages or a hazard resulted from blasting by the operator, the operator shall reimburse the department for all reasonable fees and expenses it has paid to the third-party consultant.

(b) The operator may file a response, including proposed mitigation measures, to the written report submitted pursuant to (3) (d) within 15 days from receipt of the report.

(c) The department shall respond to the operator in a timely manner with directives and fees for all reasonable expenses incurred in the third-party investigations.

**History:** [82-4-321](#), MCA; [IMP, 82-4-356](#), MCA; [NEW](#), 1990 MAR p. 1470, Eff. 7/27/90; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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### **[17.24.159](#) BLASTING OPERATIONS: ORDERS OF THE DEPARTMENT**

(1) If the department determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by blasting associated with exploration or mining activities by an operator, the department shall issue an order. In the event the order is not complied with, the department shall issue an order imposing requirements reasonably necessary to prevent property damage or safety hazards.

(2) The department may require as many of the following requirements as are reasonably necessary for this purpose:

- (a) Each operator shall comply with all applicable state and federal laws in the use of explosives.
- (b) All blasting operations must be conducted by experienced, trained, and competent persons who understand the hazards involved.

(c) A record of each blast occurring over a period to be determined by the department, including seismograph records, must be prepared and retained for at least three years and must be available for inspection by the

department on request. Blasting records must be accurate and completed in a timely fashion. The records must contain the following data:

- (i) name of the operator conducting the blast;
- (ii) location, date, and time of the blast;
- (iii) name, signature, and, if applicable, license number and appropriate certification program name of blaster-in-charge;
- (iv) direction and distance, in feet, to the nearest inhabited building or structure either:
  - (A) not located in the permit area; or
  - (B) not owned nor leased by the person who conducts the mining activities;
- (v) weather conditions, including temperature, wind direction and approximate wind velocity;
- (vi) type of material blasted;
- (vii) number of holes, burden, and spacing;
- (viii) diameter and depth of holes;
- (ix) types of explosives used;
- (x) total weight of explosives used;
- (xi) maximum weight of explosives detonated within any eight-millisecond period;
- (xii) maximum number of holes detonated within any eight-millisecond period;
- (xiii) initiation system;
- (xiv) type and length of stemming;
- (xv) mats or other protections used;
- (xvi) type of delay detonator and delay periods used;
- (xvii) sketch of the delay pattern;
- (xviii) number of persons in the blasting crew;
- (xix) seismographic and airblast records, where required, including:
  - (A) the calibration signal of the gain setting or certification of annual calibration;
  - (B) seismographic reading, including exact location of seismograph and its distance from the blast, airblast reading, dates and times of readings;
  - (C) name of the person taking the seismograph reading; and
  - (D) name of the person and firm analyzing the seismographic record.

(d) When blasting is conducted in an area where access is not restricted, warning and all-clear signals of different character that are audible at all points within a range of 1/2 mile from the point of the blast must be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area must be notified of the meaning of the signals through appropriate instructions. These instructions must be periodically delivered or otherwise communicated in a manner that can be reasonably expected to inform such persons of the meaning of the signals.

(e) Blasting must not eject flyrock off property controlled by the operator. Access to the blasting area and to areas where blasting effects, such as flyrock, occur, must be controlled by methods such as signs and fencing to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the operator has reasonably determined:

- (i) that no unusual circumstances, such as imminent slides or undetonated charges, exist; and
- (ii) that access to and travel in or through the area can be safely resumed.

(f) (i) Airblast must be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial, public, or institutional structure, unless the structure is owned by the operator and is not leased to any other person. If a building owned by the operator is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this section.

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<u>Lower Frequency limit of measuring system, Hertz (Hz) (+3dB)</u>	<u>Maximum level in decibels (dB)</u>
0.1 Hz or lower - flat response .....	134 peak.
2 Hz or lower - flat response .....	133 peak.
6 Hz or lower - flat response .....	129 peak.
C-weighted, slow response .....	105 peak dBC.

If necessary to prevent damage based upon the consultant's report, the department shall specify lower maximum allowable airblast levels than those above.

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(ii) In all cases, except the C-weighted, slow-response system, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted system must be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S 1.4-1971 specifications.

These specifications are hereby incorporated by reference. Copies of this publication are on file with the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(iii) The operator may satisfy the provisions of this subsection by meeting any of the four specifications in the chart in (i) .

(iv) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The department may require an airblast measurement of any or all blasts, and may specify the location of such measurements, except as noted in (i) .

(g) Whenever the standards contained in (k) (i) and (o) (iii) have been exceeded, or whenever, based upon the consultant's report, it has been determined to be necessary to protect public safety or property, the department may require modification of blasting activities to protect:

(i) public, private or institution building, including any dwelling, school, church, hospital, or nursing facility; and

(ii) facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid transmission pipelines, gas or oil collection lines, or water and sewage lines or any active or abandoned underground mine.

(h) A blast design, including measures to protect the facilities in (g) must be submitted to the department prior to continued blasting.

(i) Flyrock, including blasted material traveling along the ground, must not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under (e) .

(j) Blasting must be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(k) (i) In all blasting operations, except as otherwise authorized in this subsection, the maximum peak particle velocity must not exceed the following limits at the location of any dwelling, public building, school, church, or commercial, public, or institutional structure:

Distance (D) from the blasting site, in feet	Maximum allowable peak particle velocity (V max) for ground vibration, in inches/ second	Scaled-distance factor to be applied without seismic monitoring (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(ii) Peak particle velocities must be recorded in three mutually perpendicular directions. The maximum peak particle velocity is the largest of any of the three measurements.

(iii) The department shall reduce the maximum peak velocity allowed if a lower standard is required, based upon the consultant's report, to prevent damage or to protect public safety because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(l) If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of (k) does not apply at the following locations:

(i) at structures owned by the operator and not leased to another party; and

(ii) at structures owned by the operator and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(m) An equation for determining the maximum weight of explosives that can be detonated within any eight-millisecond period is in (n) . If the blasting is conducted in accordance with this equation, the peak particle velocity is deemed to be within the limits specified in (k) .

(n) The maximum weight of explosives to be detonated within any eight-millisecond period may be determined by the formula

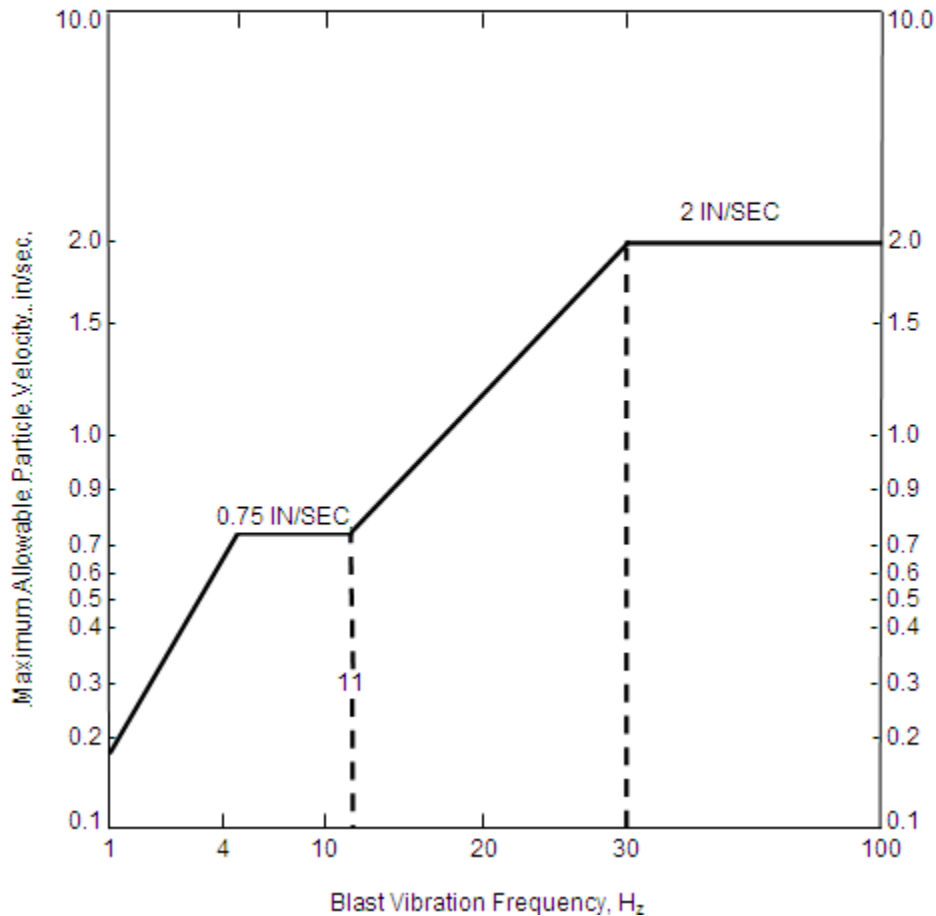
$W=(D/Ds)^2$  where W=the maximum weight of explosives, in pounds, that can be detonated in any eight-millisecond period; D=the distance, in feet, from the blast to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structure, except as noted in (l) ; and Ds=the scaled distance factor, using the values identified in (k) .

(o) (i) Whenever a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limits of (k) are not exceeded, the equation in (n) need not be used. If that equation is not used by the operator, a seismograph record must be obtained for each shot.

(ii) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. The department may not approve the use of a modified equation if the peak particle velocity for the limits specified in (k) are exceeded, meeting a 95% statistical confidence level.

(iii) The operator may use the ground vibration limits in Figure 1 (30 CFR 816.67(d) (4) ) as an alternative to (i) and (ii) , upon approval by the department.

Figure 1: Blasting Level Chart



(iv) The department may require a seismograph record of any or all blasts and may specify the location at which the measurements are to be taken.

History: [82-4-321](#), MCA; [IMP, 82-4-356](#), MCA; [NEW](#), 1990 MAR p. 1470, Eff. 7/27/90; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99.

#### **17.24.165 MILLS AND REPROCESSING OPERATIONS: DEFINITIONS**

As used in this subchapter and the Act, unless the context clearly indicates otherwise, the following additional definitions apply:

(1) "Alternate land use" means, with regard to a mill facility, reclamation of a site to an alternative postmining land use where the following conditions are met:

(a) The proposed postmilling land use is compatible with adjacent land use, and applicable landowner authorization.

(b) Retention of the structure is consistent with the proposed postmining land use. This shall be documented through inclusion of a schedule showing how the proposed use will be achieved within a reasonable time after milling and will be sustained.

(c) Plans for alternate land use must be integrated with the requirements of ARM [17.24.169](#) for the grading and revegetation of the surrounding area.

(d) Plans must document, if appropriate, that financing, attainment, and maintenance of the alternative land use is feasible.

(e) The proposed use will:

(i) not present actual or probable hazard to public health or safety;

(ii) comply with the air and water quality acts; and

(iii) minimize adverse effects on fish, wildlife, and related environmental values.

(2) "Contingency plan" means, with regard to spilled process solution, a plan which includes, but is not limited to, steps for containment, neutralization, and removal, and identification of any associated training needs.

(3) "Description of existing environment" means a description with appropriate maps of the condition of the proposed project area prior to exploration or operation. The description shall provide, but not be limited to, a discussion which characterizes each of the following:

(a) geology;

(b) soils;

(c) vegetation including, but not limited to, canopy cover, diversity, use, and productivity;

(d) wildlife;

(e) hydrology (surface and ground water characteristics, quantity, quality, and use) , including maps which identify springs, seeps, and wells within one mile of the permit boundary and three miles down gradient unless a lesser distance is justified and agreed to by the department;

(f) air quality and climate;

(g) aquatic biology;

(h) land use and ownership;

(i) recreation;

(j) cultural/historic resources identified as a result of inventory and of file searches conducted by the State Historic Preservation Office;

(k) noise;

(l) transportation;

(m) aesthetics.

(4) "Expansion of a mill facility" means disturbance of an area not previously disturbed by the milling operation, and, in the case of a waste dump, tailing impoundment, or similar facility, a change in the design capacity that will result in an increase in land disturbance at an existing mill facility. When disturbance of an area not previously disturbed by the operation occurs at a dump, impoundment or similar facility, the department may regulate the previously disturbed area to the extent necessary to achieve reclamation of the expansion area.

(5) "Facility" means any building, impoundment, embankment, waste or tailings disposal site, or other man-made structure associated with a particular activity. Mill facility means a mill and associated structures, disturbance and development.

(6) "Mill" means any facility for ore, tailings, or waste rock processing and disposal. This term does not include smelting, or refining facilities, sample collection processes, and pilot testing performed pursuant to an exploration license.

(7) "Plan" means that information submitted to the department pertaining to a proposed or ongoing milling related activity which utilized narratives, engineering designs, maps, cross-sections, or other documentation which adequately describes the activity.

(8) "Reclamation" means removal of facilities, unless an alternate land use is approved and the regrading, contouring, and revegetation of disturbed land. For the purpose of ARM [17.24.166](#) through [17.24.170](#), reclamation shall be deemed complete when the disturbed land is restored to a comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. Reclamation of previously disturbed areas is required only to the extent feasible given the pre-existing condition of the site.

(9) "Reclamation to the extent practicable and feasible" means, with regard to reprocessing of waste rock and tailings:

(a) where waste rock and tailings have previously been reclaimed under the Act and this subchapter, compliance with the standards set for an operating permit;

(b) where waste rock and tailings have not previously been subject to the reclamation requirements of the Act and this subchapter and are to be redisturbed under the proposed permit, the following:

(i) reclamation of any reprocessed waste rock and tails and associated facilities consistent with the standards of this definition;

(ii) salvage and replacement of available soil or suitable materials;

(iii) use of suitable materials at the surface of any reprocessed waste rock to the extent practicable;

(iv) grading of slopes to a stable angle, treating with appropriate soils amendments and vegetating with a perennial seed mix;

(v) amending and seeding the regraded site such that utility is improved over that which existed prior to reprocessing;



(vi) preservation of water quality at least to the level that existed prior to reprocessing.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-335](#), [82-4-336](#), [82-4-337](#), MCA; **NEW**, 1990 MAR p. 1008, Eff. 6/1/90; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 1999 MAR p. 640, Eff. 4/9/99.

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#### **[17.24.166](#) MILLS: APPLICABILITY OF RULES TO MILLS**

(1) ARM [17.24.165](#) through [17.24.170](#) apply to all mills under permit pursuant to Title 82, chapter 4, part 3, MCA, on June 1, 1990, to all mills constructed or beginning operation after June 1, 1990, and to the expansion of any mill facility or complex concluded after June 1, 1990. In addition, ARM [17.24.165](#) through [17.24.170](#) apply to mills that were constructed and operated prior to June 1, 1990, and that use cyanide ore processing reagent after May 23, 1996.

(2) For mills under permit on June 1, 1990 existing bond must be upgraded at the time of the next permit amendment, unless the department requires earlier upgrading or an operator chooses to update the mill permit information and bond prior to that time. Prior to updating information, the operator shall meet with the department to determine the appropriateness of the requirements in ARM [17.24.168](#) to the specific situation. Any requirement determined not applicable shall be documented in the permit with the reasons for the determination.

(3) Mills constructed as a part of a new mining operation must be permitted under the mine operating permit using the information required in ARM [17.24.167](#) through [17.24.170](#).

**History:** [82-4-321](#), MCA; **IMP**, [82-4-304](#), MCA; **NEW**, 1990 MAR p. 1008, Eff. 6/1/90; **AMD**, 1995 MAR p. 2498, Eff. 11/23/95; **TRANS**, from DSL, 1996 MAR p. 2852.

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#### **[17.24.167](#) MILLS: OPERATING PERMIT APPLICATION**

(1) Any person wishing to operate a mill or disturb land in anticipation of construction or operation of a mill must obtain an operating permit for each mill complex on a form prescribed by the department before disturbance of land in anticipation of construction or operation of the mill or associated facilities.

(2) Prior to receiving an operating permit, the applicant must:

(a) pay a \$500 filing fee to the department unless the mill application is associated with and submitted concurrently with a new operating permit application submitted under [82-4-335](#), MCA;

(b) indicate the proposed date for commencement of milling and the minerals to be milled and the conceptual life of the mill;

(c) provide a map or maps to scale of the mill area (such map must locate the proposed mill and must locate and identify streams, and proposed roads, railroads, and utility lines in the immediate area and residences and wells within one mile of the permit area). All maps provided in the application must have a uniform base, a scale, and a north directional arrow;

(d) file a reclamation bond pursuant to [82-4-338](#), MCA;

(e) file a plan of operation including construction, operating, monitoring and contingency plans; and

(f) file a reclamation plan.

(3) The department shall provide public notice of mill applications, consistent with [82-4-353](#), MCA.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-335](#), MCA; **NEW**, 1990 MAR p. 1008, Eff. 6/1/90; **TRANS**, from DSL, 1996 MAR p. 2852; **AMD**, 2002 MAR p. 3590, Eff. 12/27/02.

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#### **[17.24.168](#) MILLS: OPERATING PLANS**

(1) An application for an operating permit pursuant to ARM [17.24.167](#) must contain an operating plan that contains each of the following:

(a) a description of the existing environment;

(b) a plan of operations that includes:

(i) all of the matters required by [82-4-335](#) (3) (d) through (k), MCA, excepting the mine map;

(ii) maps enhancing narratives which use the same base and scale as required by ARM [17.24.167](#)(2) (c); where appropriate;

(iii) a description of the design, construction, and operation of the mill, tailings, and waste rock disposal facilities;

(iv) a list of equipment and chemicals to be used in the operation by location and task;

(v) a description of all buildings and identification of mill design capacity;

(vi) a description of topsoil salvage and stockpiling activities;

(vii) a description of the general chemical processes and the purpose and amount and source of water used in the operation and the amount and disposition of any process wastewater or solutions to be disposed;

(viii) a description of the power needs and source(s), including fuel storage sites;

(ix) sewage treatment and facilities and solid waste disposal sites;

(x) a description of the transportation network to be used or built during the construction and operation phases, and a listing of the type and amount of traffic at mill capacity;

(xi) a description of the fire protection plan and the toxic spill contingency plan and a certification that notice of the filing of the plan has been provided to the state fire marshal;



(xii) plans describing the design and operation of all diversions and impounding structures and sediment control. Descriptions shall be detailed enough to provide an accurate depiction of the safety, utility and stability of such structures;

(xiii) a discussion of predicted noise levels by activities during construction and operational phases;

(xiv) a discussion of the potential and known archaeological and cultural values in the area of potential environmental effect for the project and a discussion of how such values are to be given consideration;

(xv) provisions for the prevention of wind erosion of all disturbed areas;

(xvi) a description of the provisions for protection of off-site flora and fauna;

(xvii) plans for the monitoring of ground water and surface water until continuous compliance with water quality standards is demonstrated, and a contingency plan in case of accidental discharge describing remedial action in cases requiring emergency action;

(xviii) a plan for the protection of topsoil stockpiles from erosion and contamination; and

(xix) a listing of known sources and volumes of incoming ore, tailings, or waste rock.

(c) (i) anticipated employment including both direct and onsite contract employees;

(ii) if the mill is proposed to be operated in conjunction with a mine operated by applicant, personnel requirements by location and task for construction and operation phases. (Operations meeting the definition of "large scale mineral development" in [90-6-302](#), MCA, must also comply with the Hard Rock Impact Act, Title 90, chapter 6, part 3, MCA).

(2) Annual reports must be submitted consistent with [82-4-339](#), MCA, and include in addition:

(a) sources and volumes of incoming ore;

(b) volumes of tailings or waste generated;

(c) water monitoring report;

(d) remaining waste and tails capacity.

(3) Plans submitted under ARM [17.24.167](#), [17.24.168](#), and [17.24.169](#), must be consistent with plans filed with other permitting authorities.

**History:** [82-4-321](#), MCA; **IMP**, [82-4-335](#), MCA; **NEW**, 1990 MAR p. 1008, Eff. 6/1/90; **TRANS**, from DSL, 1996 MAR p. 2852.

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#### **17.24.169 MILLS: RECLAMATION PLANS**

(1) An application for an operating permit pursuant to ARM [17.24.167](#) must contain a plan that provides for the reclamation of all the land to be disturbed by the proposed milling operation and associated activities. The plan must, at a minimum, include the following:

(a) all of the requirements of a reclamation plan set forth in [82-4-303](#) (13) (a) and (d) through (h), [82-4-336](#), MCA, and ARM [17.24.115](#);

(b) a regarding plan which leaves all disturbed areas in a stable configuration and which conforms with the proposed subsequent use of the land after reclamation. The department may require the use of cross-sections, topographic maps or detailed narrative, or a combination of these, to ensure that the application adequately describes the proposed topography of the reclaimed land. All reclaimed slopes on materials potentially acid or toxic forming shall be graded to assure future erosion of acid and toxic forming materials offsite is prevented using prudent slope angle and length;

(c) a description of the manner in which the soil materials will be redistributed from the stockpiles to the area to be reclaimed (e.g., truck/loader, scrapers), to provide for adequate revegetation;

(d) a description of the methods by which surface and ground water will be restored or maintained to meet the criteria of Title 75, chapters 5 and 6, MCA, as amended, or rules adopted pursuant to these laws, including methods used to monitor for accidental discharge of objectionable (potential toxic or acid-producing) materials, plans for detoxification or neutralization of such materials, and remedial action plans for control and mitigation of discharges to surface or ground water;

(e) a plan for the reestablishment of vegetation which conforms with the proposed subsequent use of the land after reclamation. Such revegetation plan must consider the following:

(i) The first objective in revegetation is to stabilize the area as quickly as possible after it has been disturbed. Plants that will give a quick, protective cover and those that will enrich the soil must be given priority. Plants reestablished must be in keeping with the intended reclaimed use of the land.

(ii) Appropriate revegetation must be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

(iii) In the event that any of the above revegetation efforts are unsuccessful, the permittee shall seek the advice of the department and make additional attempts, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation;

(f) a schedule describing the manner and deadlines for the removal of facilities including, but not limited to, the removal of buildings or related structures, or a plan meeting the requirements for alternative land use.

(2) The department may require additional measures necessary to ensure that the disturbed area is reclaimed in accordance with the Act.

History: [82-4-321](#), MCA; [IMP](#), [82-4-335](#), [82-4-336](#), MCA; [NEW](#), 1990 MAR p. 1008, Eff. 6/1/90; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### [17.24.170](#) **MILLS: CESSATION OR COMPLETION OF OPERATION**

(1) Milling operations are presumed completed or ceased and thus are subject to the reclamation time schedule outlined in the approved reclamation plan when the mill has ceased operations for a period of two years or more. A permittee may rebut this assumption by providing evidence satisfactory to the department, consistent with [ARM 17.24.150](#)(2), that the operations have not in fact been abandoned or completed.

(2) Reclamation plans must provide that all discharges from completed operations or operations in a state of temporary cessation will be consistent with provisions of [ARM 17.24.151](#).

History: [82-4-321](#), MCA; [IMP](#), [82-4-341](#), MCA; [NEW](#), 1990 MAR p. 1008, Eff. 6/1/90; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### [17.24.171](#) **REPROCESSING OF WASTE ROCK AND TAILINGS**

(1) The provisions of the Act and this subchapter apply to any person who after May 31, 1990, reprocesses tailings or waste rock resulting from previous mining operations. No land disturbed by a reprocessing operation before June 1, 1990, is subject to the Act and this subchapter unless reprocessing or related activities are conducted on the area after May 31, 1990, in which case the department shall require reclamation to the extent practicable and feasible.

(2) A person who institutes a new reprocessing operation after May 31, 1990, who is not a small miner must obtain an operating permit before engaging reprocessing operations or disturbing land in anticipation of these operations.

(3) A person who wishes to continue a reprocessing operation that was conducted at any time during the 12 months immediately preceding the effective date of these rules must, in order to continue those operations no later than December 1, 1990, obtain an operating permit. Operations not conducted within the 12 months immediately preceding the effective date of this rule are considered new operations for the purposes of this rule.

History: [82-4-321](#), MCA; [IMP](#), [82-4-304](#), [82-4-335](#), MCA; [NEW](#), 1990 MAR p. 1008, Eff. 6/1/90; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### [17.24.180](#) **DEFINITIONS**

As used in [ARM 17.24.181](#) through [17.24.189](#), unless the context indicates otherwise, the following definitions apply:

(1) "Commence reclamation within six months" means to commence reclamation within six months or the first seasonal opportunity after mining is not resumed after a seasonal closure;

(2) "Live stream" means a stream with flowing water;

(3) "Pay gravel" means gravels containing sufficient mineralization to be economic;

(4) "Plant" means a support facility, including a wash or processing plant, for a placer or dredge operation;

(5) "Sedimentation" means solid material settled from suspension in a liquid; mineral or organic solid material that is being transported or has been moved from its site of origin by air, water, or ice, and has come to rest on the earth's surface either above or below sea level; or inorganic or organic particles originating from weathering, chemical precipitation or biological activity.

History: [82-4-321](#), MCA; [IMP](#), [82-4-305](#), [82-4-335](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### [17.24.181](#) **SMALL MINER PLACER AND DREDGE BONDING**

(1) A small miner who operates a placer or dredge mine shall post a \$10,000 bond unless the department approves a lower amount based on the criteria below or unless it is documented that a bond for reclamation is posted with another government agency.

(a) Bond must be filed in the form of a surety, payable to the state of Montana or to the state and the appropriate federal agency, a cash deposit, an assignment of certificate of deposit, letter of credit, or other surety acceptable to the department.

(b) The bond must be accompanied by an appropriate map showing the location of the mine, anticipated disturbances, and perennial streams in the vicinity.

(c) A small miner placer or dredge mine operator that posted a bond with the department prior to May 15, 1997, for a mine is not required to post a bond in excess of \$5,000 for that mine.

(2) The department shall reduce the required bonding amount if the small miner submits an operating plan documenting that the cost of reclamation to the department would be less than \$10,000. The information needed to make such a determination includes the following:

(a) a description of the proposed mining operation and foreseeable expansion;

(b) a description of the mine support facilities;

(c) the type of equipment and capacity of the plant;

- (d) an estimate of pit and pond sizes and volumes of all soil, overburden and placer gravel stockpiles;
  - (e) description of mining sequence and maximum acreage to be disturbed and unreclaimed at any one time at the mine being bonded;
  - (f) a description of any water diversions required by the operation;
  - (g) a topographic map locating mine pit, ponds, diversions, roads, process area, and stream drainages and materials storage sites. This map should include a reference to existing locatable monuments or landmarks on the ground, be one inch to 100 feet unless a different scale is approved by the department, and be based on fixed reference points so that all mapped information is interchangeable;
  - (h) the depth of soil, overburden and pay zones to be excavated;
  - (i) the average and maximum rate of pay gravel removal;
  - (j) the length and width of roads and average size of the plant area;
  - (k) any proposal to use suitable settling pond sediments as soil amendment if limited soil is available;
  - (l) a proposed permanent seed mixture and rate of application (lbs/ac) ;
  - (m) characterization of stream channel and riparian conditions for locations where disturbance is proposed;
  - (n) identification of the construction method and materials to be used to reclaim soils, overburden, gravel stockpiles, and other disturbances and to reestablish functioning streams and associated floodplains where stream channels have been disturbed;
  - (o) an erosion control plan which contains the appropriate elements from ARM [17.24.182](#);
  - (p) whenever applicable, a description of the status of 404 permits issued pursuant to the federal Clean Water Act and plans of operation required by federal land management agencies;
  - (q) status of 310 permit compliance, pursuant to [75-7-101](#) , MCA, et seq., and status of Montana pollution discharge elimination permit compliance pursuant to [75-5-401](#) , MCA, et seq.
- History:** [82-4-321](#), MCA; [IMP, 82-4-305\(1\)](#), MCA; [NEW, 1991 MAR p. 445, Eff. 4/12/91](#); [TRANS, from DSL, 1996 MAR p. 2852](#); [AMD, 1999 MAR p. 640, Eff. 4/9/99](#).

#### **17.24.182 (INTERPRETIVE RULE) OPERATIONAL RECOMMENDATIONS FOR SMALL MINERS**

(1) In order for SMES placer and dredge operators to meet the requirements of [82-4-305](#) (1) , MCA, which requires that the small miner agree in writing not to pollute or contaminate any stream, the department recommends the following best management practices as minimally necessary to assure that operations do not result in water quality violations:

- (a) Mining equipment should not be operated in a live stream or diversion, or in any manner to cause bank caving or erosion of the bank of any live stream or diversion.
- (b) The amount of make-up water should be limited to only the amount required to operate the wash plant with spent water being recirculated back to the wash plant.
- (c) Runoff from undisturbed areas should be minimized through use of temporary berms.
- (d) Adequate temporary berms and/or natural undisturbed areas of vegetation should be placed or left as a buffer zone around diversion ditches and live streams to prevent water quality degradation and erosion of disturbed areas as a result of runoff from a ten-year, 24-hour precipitation event.
- (e) During operations, care should be taken to protect streambanks and streambank vegetation, streambanks, ditches, and diversions should be lined, riprapped, or otherwise stabilized to prevent excess erosion.
- (f) Roads should:
  - (i) be constructed to provide controlled drainage, include culverts, waterbars, and slash filters necessary to facilitate drainage and minimize erosion and be constructed to reduce concentrated flows;
  - (ii) be located on well-drained soils and located back from stream bottoms in order to provide a buffer zone for preventing road sediments from washing into stream channels;
  - (iii) be located outside slide-prone areas characterized by seeps, steep slopes, highly weathered bedrock, clay beds, concave slopes, hummocky topography, and rock layers that dip parallel to the slope;
  - (iv) be constructed to stabilize sloped exposed surfaces by seeding, compacting, riprapping, benching, mulching or other suitable means prior to fall or spring runoff;
  - (v) not be left in an erosive condition over a winter season; and
  - (vi) be used only minimally during wet periods and spring breakup when damage to the roads, which would result in increased sedimentation, is likely to occur.
- (g) Cut-and-fill slopes should be constructed at a stable angle and stabilized by seeding, mulching, benching or other suitable means during the same season as construction.
- (h) Clearing, grubbing or logging debris should not be placed in streams or used for diversions or cause water quality degradation.
- (i) Diversions and impoundments should be sized to pass the ten-year, 24-hour precipitation event. Diversions should be constructed with drop structures or energy dissipators whenever necessary to prevent erosion. Diversion ditch berms should be sloped to account for site-specific conditions, including soils, climate, height of structure and existing natural slopes, and should be revegetated, riprapped, or otherwise stabilized to minimize stream sedimentation.
- (j) Before winter shutdown, a small miner should take the following precautions:

- (i) Diversions should be sized to pass spring runoff (minimum ten-year, 24-hour event) or streams should be returned to original channels.
- (ii) Ponds should have adequate freeboard to prevent over-topping during spring runoff from direct precipitation and over-land flow. Whenever ponds are located within a flood plain and diversions are not sized to pass the ten-year, 24-hour precipitation event, ponds should be filled and reclaimed prior to onset of winter.
- (iii) Soil, overburden, and tailings stockpiles should not be placed near streams, unless necessary, and, or if so placed, should be bermed at the toe to prevent erosion of sediments into streams.
- (iv) Fuel storage tanks should be drained before winter shut down and should be drained and disposed of in a manner which protects adjacent streams.
- (k) Dikes should be constructed around fuel storage areas to prevent a spill or discharge of fuel to any waters.
- (2) A placer or dredge operator who proposes a "project", as that term is defined in [75-7-103](#), MCA, on a perennial stream, must comply with the requirements of the Natural Streambed and Land Preservation Act, as amended, by obtaining a permit required by the appropriate conservation district.
- (3) In order for a SMES placer or dredge operator to meet the reclamation requirements for bond release, the following reclamation planning guidelines should be followed:
  - (a) A reclamation plan, or appropriate waiver, for all roads is necessary.
  - (b) The postmine land use should be identified and a reclamation timetable should be established.
  - (c) Soil should be salvaged from all areas to be disturbed and should be stockpiled for use in reclamation.
  - (d) Site disturbances should be recontoured to a minimum of 3:1 slopes or flatter by backfilling excavated material, unless otherwise approved by the department as achieving comparable stability and utility in the postmining landscape.
  - (e) Soil and approved soil amendments should be redistributed over all areas disturbed by mining.
  - (f) The site should be seeded with perennial nonweedy species.
  - (g) Stream channels should be reconstructed, using coarse placer tails as necessary to dissipate energy. Riprap, temporary synthetic erosion control, or biodegradable revegetation fabrics in combination with permanent vegetation should be used to stabilize streambanks, as necessary. Streams should be reconstructed with grades, pools, and meanders comparable to premine drainage.
  - (h) Clays and fines available on-site should be used to create a relatively impermeable layer beneath reclaimed channels and floodplains.
  - (i) The floodplain should be returned to original contour with the gravel, overburden, and soils replaced to resemble their original stratigraphy.

**History:** This rule is advisory only, but may be a correct interpretation of the law, [82-4-321](#), MCA; [IMP, 82-4-305\(1\), \(3\), \(4\), and \(5\)](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### **17.24.183 COMPARABLE UTILITY AND STABILITY OF RECLAIMED AREAS--STANDARDS FOR BOND RELEASE FOR SMALL MINERS**

- (1) In order for the department to release bond, the area must be reclaimed to a postmining land form and land use that are at least comparable to that of adjacent areas. Reclamation must provide for comparable stability and utility as that of adjacent areas, insure public safety, and prevent pollution of air and water and the degradation of adjacent lands.
- (2) Bond may not be released unless the following reclamation standards for placer and dredging operations are achieved:
  - (a) Pits must be backfilled with overburden and washed gravels unless otherwise approved by the department as part of an alternate postmining land use that provides comparable stability and utility.
  - (b) Excess overburden must also have been appropriately placed and graded.
  - (c) Soils and soil substitutes must have been respread and graded on the backfilled, regraded overburden surface.
  - (d) Slopes must have been reduced to a grade which achieves comparable utility and stability in the postmining landscape.
  - (e) Disturbed areas must have been revegetated with appropriate perennial nonweedy species similar to that of adjacent areas.
  - (f) Roads must have been reclaimed to approximate original contour consistent with the postmining land form and land use in compliance with (1) unless otherwise approved by the department and concurred with by the landowner.
  - (g) Stream and floodplain disturbances must be reclaimed to their approximate premining condition so that comparable beneficial uses, such as fisheries, comparable flow capacity, and fluvial functions are restored. In most instances, this will require removal of berms.
  - (h) Noxious weeds must have been controlled, consistent with county weed board requirements.

**History:** [82-4-321](#), MCA; [IMP, 82-4-305\(3\), \(4\), and \(5\)](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852.

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#### **17.24.184 SMALL MINER BOND FORFEITURE AND SMES REVOCATION**

(1) If a small miner who conducts a placer or dredge operation fails to commence reclamation within six months after cessation of mining or within an extended period allowed by the department for good cause shown pursuant to (4) , or fails to diligently complete reclamation, the department shall notify the small miner by certified mail at the small miner's last reported address that bond will be forfeited and the department will reclaim the site unless the small miner commences reclamation within 30 days and diligently completes reclamation.

(2) The department shall revoke the small miner exclusion statement for any small miner whose bond is forfeited.

(3) Cessation of mining is considered to have occurred:

(a) whenever a small miner notifies the department of intent to cease operations; or

(b) whenever a site has been inactive through one operating season and the operator has failed to seek an extension for good cause shown.

(4) The department may grant an extension only when a site is temporarily stabilized in a manner which assures stability through spring runoff when impact to the environment will be minimized, and when public safety is ensured.

(5) Diligent completion of reclamation will be considered to have occurred whenever:

(a) a site has been graded and seeded in compliance with the requirements of ARM [17.24.183](#) during the first planting season, after cessation of activity; and

(b) reclamation standards are achieved within two years of completion of reclamation.

(6) An extension of time to reclaim must be renewed annually.

(7) A forfeited bond must be used as follows:

(a) Whenever reclamation can be achieved using the amount of the forfeited bond, excess funds must be returned to the small miner.

(b) Whenever the department documents in a written finding that reclamation cannot be achieved using the amount of the forfeited bond, funds may be deposited in the environmental rehabilitation and response account established by [82-4-311](#) , MCA, and reclamation must be conducted as priorities and additional funding allow. Forfeited funds deposited in the account may not be used for reclamation of other sites.

(c) Whenever reclamation costs exceed the bonded amount, the department may issue a notice to the placer or dredge operator that the excess costs are due and payable within 30 days, pursuant to [82-4-305](#) (6) , MCA. The department may bill the operator only for the cost of activities that are reasonably necessary to return the site to comparable stability and utility and to prevent pollution of state waters as defined in Title 75, chapter 5, MCA.

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-305](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00; [AMD](#), 2002 MAR p. 3590, Eff. 12/27/02.

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#### **17.24.185 SMALL MINER METAL LEACHING SOLVENT OR REAGENT APPLICATIONS**

(1) A small miner proposing to operate cyanide or other metal leaching solvents or reagents in a processing facility and mine under a small miner exemption must continue to meet the criteria for a small miner exemption under [82-4-305](#) , MCA, concerning the mining operation. The acreage disturbed by the cyanide or other metal leaching solvent or reagent ore processing operation and covered by the operating permit pursuant to [82-4-335](#) (2) , MCA, is excluded from the five acre limit.

(2) A small miner must obtain an operating permit for cyanide processing facilities and must meet requirements for these facilities imposed by statute and rule unless the facility is grandfathered pursuant to section 4 of Chapter 347, Laws of 1989.

(3) A small miner proposing to use metal leaching solvents or reagents other than cyanide in an ore processing facility must obtain a permit for those facilities pursuant to [82-4-335](#) (2) , MCA, for operations for which a valid small miner exclusion statement had not been obtained prior to May 1, 1999.

(4) To expedite permitting of cyanide or other metal leaching solvent or reagent facilities, the department shall make available to a small miner who has submitted or may submit an application for a permit to operate a cyanide or other metal leaching solvent or reagent ore processing facility appropriate department staff to determine how baseline, operating and reclamation plan requirements may be met in view of conditions and characteristics of the site at which the facility is proposed. The department shall process these permit applications as expeditiously as possible consistent with statutory deadlines for other permit applications and the department's obligations under the Montana Environmental Policy Act.

(5) An application for a small miner cyanide or other metal leaching solvent or reagent ore processing operating permit must contain:

(a) baseline information meeting the requirements of ARM [17.24.186](#);

(b) an operating plan meeting the requirements of ARM [17.24.187](#); and

(c) a reclamation plan meeting the requirements of ARM [17.24.188](#).

**History:** [82-4-321](#), MCA; [IMP](#), [82-4-305](#)(7), [82-4-335](#)(2), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 1999 MAR p. 640, Eff. 4/9/99; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **17.24.186 SMALL MINER METAL LEACHING SOLVENT OR REAGENT BASELINE INFORMATION**



(1) An application for a small miner cyanide or other metal leaching solvent or reagent processing facility permit must include the following baseline information on the existing conditions at the site:

(a) a map showing all wells and springs and surface water that may be impacted by the proposal within one mile of the proposed permit area;

(b) a map showing all known significant cultural resources in the proposed permit area;

(c) analysis of surface and ground water samples for background parameters determined by the department, from selected sites chosen in consultation with department staff;

(d) a map delineating soil units for the proposed permit area based on available information, including that available from the soil conservation district;

(e) a listing of species of game fish within one mile of the proposed permit area;

(f) identification of any hatcheries in the vicinity of the proposed permit area;

(g) baseline precipitation records;

(h) flow data for surface and ground water identified in (a) and (c) above from available sources and water depth for identified wells; and

(i) identification of public water supply systems that withdraw water within five miles downstream from the ore processing facility.

**History: 82-4-321, MCA; IMP, 82-4-305(7), 82-4-335(2), MCA; NEW, 1991 MAR p. 445, Eff. 4/12/91; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2000 MAR p. 473, Eff. 2/11/00.**

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#### **17.24.187 SMALL MINER METAL LEACHING SOLVENT OR REAGENT OPERATING PLANS**

(1) An application for a small miner cyanide or other metal leaching solvent or reagent processing facility permit must include the following information for construction and operation of the facility:

(a) appropriate maps showing the location of the mine and support facilities, cyanide or other metal leaching solvent or reagent-processing facilities, permit boundaries, and perennial streams;

(b) the average and maximum tonnage/day and per year of ore to be processed and the amount of tailings to be generated;

(c) a narrative description of the precious metal recovery process;

(d) number, size and location of any proposed leach pads and ponds, and ore and tailings piles associated with processing;

(e) leach pad, pond, and waste facility designs;

(f) a plan for a leak detection system, including a program and schedule of monitoring for possible leakage which monitors pH, electrical conductivity (EC), cyanide as weak acid dissociable (WAD), other metal leaching solvents or reagents as appropriate, and other constituent levels, for those constituents appropriate to the type of processing proposed;

(g) a remedial action plan for controlling and mitigating discharges to surface waters;

(h) a description of the amount of make-up water required to operate the plant for ore processing;

(i) a plan for disposal of debris generated by clearing, grubbing and logging ensuring that the debris does not impact water quality or water flow;

(j) sediment and erosion controls for surface disturbances related to cyanide processing facilities;

(k) a road design and construction plan that provides controlled drainage, including location and number of culverts, waterbars, and slash filters;

(l) design for and map of adequate berms for placement around diversion ditches and live streams to prevent water quality degeneration and erosion of disturbed areas;

(m) a plan for stabilization of disturbed stream banks to assure that they will not be left in an erosive condition;

(n) a plan to salvage and stockpile soil from all areas to be disturbed by cyanide processing facilities, including stockpiles and wastepiles;

(o) design and construction plans for diversions and sediment impoundments to pass the ten-year, 24-hour precipitation event. A diversion must be constructed with drop structures, or energy dissipators if necessary to prevent erosion. Diversion ditch berms must be sloped to account for site-specific conditions, including soils, climate, height of structure, and existing natural slopes and must be revegetated, riprapped, or otherwise stabilized to prevent stream sedimentation;

(p) a plan for disposal of liquid and solid wastes which includes identification and application areas and the necessary discharge permits;

(q) end-of-season procedures for shutdown of the cyanide processing facility;

(r) a plan for prevention of damage to or for documentation of any significant historic, cultural, archeological and paleontologic feature within the permit areas on state and federal lands;

(s) identification and preliminary evaluation of reasonably feasible alternative facility sites;

(t) a commitment to comply with the operational requirements of this rule;

(u) a map of monitoring site locations which also identifies well depth;

(v) well logs for those wells identified in (u) above; and

(w) a commitment to avoid perennial streams wherever possible; and

(x) for facilities that are exposed to precipitation flows and that carry cyanidated or other metal leaching solvent or reagent solution, a plan that provides for adequate passage of a 50-year 24-hour storm even flow; and  
(y) a plan for preventing wildlife access to facilities with cyanidated or other metal leaching solvent or reagent solutions.

**History:** [82-4-321](#), MCA; [IMP, 82-4-305\(7\)](#), [82-4-335\(2\)](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **[17.24.188](#) SMALL MINER METAL LEACHING SOLVENT OR REAGENT RECLAMATION PLANS**

(1) An application for a small miner cyanide or other metal leaching solvent or reagent ore processing permit must contain a reclamation plan that includes the following:

- (a) the postmine land use;
- (b) a reclamation timetable;
- (c) the proposed method for handling spent ore and disposal of any heavy metal sludge remaining in ponds;
- (d) a plan for monitoring water balance for the ore processing facility;
- (e) a neutralization plan for tailing and solutions;
- (f) a map showing regrading plans for all cyanide or other metal leaching solvent or reagent-processing and related facilities to a stable, minimally erosive slope configuration by backfilling excavated material, consistent with the postmining land use;
- (g) a narrative providing for reclamation of all buildings and structures;
- (h) a plan for reclaiming all associated roads, or an appropriate waiver from the surface owner;
- (i) a revegetation plan including seed mixes, method of seeding and rate of seed application (lbs/ac) ;
- (j) a description of any permanent diversion or stream channel reconstruction process, including use of coarse noncyanidated, nonmineralized tails or borrow material to dissipate energy or riprap streams, or use of synthetic erosion control and revegetation fabrics. Streams must be reconstructed with comparable grades, pools, and meanders to premine drainage;
- (k) a plan for stream channel reconstruction providing that the channel may not be reconstructed through reclaimed tails; and addressing control of drainage from the tails and the adjacent areas to maximize the long-term stability of the tails; and
- (l) monitoring plans for reclaimed sites.

(2) In addition, a processing facility which would constitute a "project", as that term is defined in [75-7-103](#) , MCA, on a perennial stream, must comply with the requirements of the Natural Streambed and Land Preservation Act, as amended, by obtaining permits required by the appropriate conservation district.

**History:** [82-4-321](#), MCA; [IMP, 82-4-305\(7\)](#), [82-4-335](#), MCA; [NEW](#), 1991 MAR p. 445, Eff. 4/12/91; [TRANS](#), from DSL, 1996 MAR p. 2852; [AMD](#), 2000 MAR p. 473, Eff. 2/11/00.

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#### **[17.24.189](#) SMALL MINER METAL LEACHING SOLVENT OR REAGENT PROCESSING FACILITIES PERFORMANCE STANDARDS AND BONDING**

(1) The small miner shall notify the department of completion dates for each of the following phases of construction, and the department shall inspect and file a report on each of these phases:

- (a) foundation preparation;
- (b) compaction testing;
- (c) liner placement;
- (d) installation of leakage detection control systems; and
- (e) installation of monitoring wells.

(2) In addition to the applicable performance standards of ARM [17.24.188](#) and [17.24.101](#), and [82-4-305](#) , MCA, the following are required prior to bond release:

- (a) neutralization of cyanide or other metal leaching solvent or reagent-containing tailing and solutions to those levels considered acceptable under applicable water quality standards;
- (b) submittal of construction reports for tailings, ponds, and other appropriate facilities related to cyanide or other metal leaching solvent or reagent processing, on a monthly basis;
- (c) submittal of as-built designs for those facilities identified under ARM [17.24.187\(1\)](#) (e) , (k) , (l) and (o) , within one month of completion of construction activities.

(3) Bonding for cyanide or other metal leaching solvent or reagent-processing facilities must cover the actual cost of reclamation to the department and the additional estimated cost to the department which may arise from management, operation, and maintenance of the site upon temporary or permanent insolvency or abandonment, until full bond liquidation can be effected. Bonds must be reviewed and, if necessary, adjusted at least once every five years, tied to either the rate of inflation based on the consumer price index, a change in activities, or both, as appropriate.

(4) Bond must be filed in the form of a surety, payable to the state of Montana or to the state and the appropriate federal agency, a cash deposit, an assignment of certificate of deposit, letter of credit, or other surety acceptable to the department.

History: [82-4-321](#), MCA; IMP, [82-4-305\(7\)](#), [82-4-335](#), MCA; NEW, 1991 MAR p. 445, Eff. 4/12/91; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2000 MAR p. 473, Eff. 2/11/00.



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**82-4-301. Legislative intent and findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

**History:** En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201; amd. Sec. 31, Ch. 361, L. 2003.

**82-4-302. Purpose.** (1) The purposes of this part are to:

- (a) fulfill the responsibilities and exercise the powers delegated by Article IX, section 1(3) and 2(1) of the Montana constitution;
- (b) allow mining as an activity beneficial to the economy of Montana;
- (c) allow the production of minerals to meet the needs of society and the economic demands of the marketplace;
- (d) provide for reclamation that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands;
- (e) provide for reclamation that affords some utility to humans or the environment;
- (f) prevent foreclosure of future access to mineral resources not fully developed by current mining operations;
- (g) mitigate or prevent undesirable offsite environmental impacts; and
- (h) provide authority for cooperation between private and governmental entities in carrying this part into effect.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

**History:** En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202; amd. Sec. 1, Ch. 7, Sp. L. May 2000.

**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in [2-15-3502](#).

(4) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(6) "Department" means the department of environmental quality provided for in [2-15-3501](#).

(7) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(8) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in [82-4-310](#).

(9) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(10) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

(11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(12) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(13) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(15) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may

include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of [82-4-336](#).

(16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

(17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to [82-4-310](#), that engages in the business of reprocessing of tailings or waste materials, that, except as provided in [82-4-310](#), knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under [82-4-335](#) except for a permit issued under [82-4-335](#)(3) or a permit that meets the criteria of subsection (17)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(18) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(19) (a) "Surface mining" means all or any part of the process involved in mining of minerals

by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(20) "Underground mining" means all methods of mining other than surface mining.

(21) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

**History:** En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985; amd. Sec. 1, Ch. 93, L. 1989; amd. Sec. 1, Ch. 346, L. 1989; amd. Sec. 1, Ch. 347, L. 1989; amd. Sec. 1, Ch. 283, L. 1991; amd. Sec. 1, Ch. 637, L. 1991; amd. Sec. 4, Ch. 472, L. 1993; amd. Sec. 380, Ch. 418, L. 1995; amd. Sec. 1, Ch. 272, L. 1997; amd. Sec. 1, Ch. 507, L. 1999; amd. Sec. 1, Ch. 488, L. 2001; amd. Sec. 1, Ch. 365, L. 2003; amd. Sec. 1, Ch. 63, L. 2005; amd. Sec. 1, Ch. 410, L. 2011.

**82-4-304. Exemption -- works performed prior to promulgation of rules.** This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to [82-4-321](#) relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

**History:** En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985; amd. Sec. 1, Ch. 204, L. 1995.

**82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land

disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by

certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in [82-4-303](#)(17)(a)(i) and (17)(a)(ii).

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in [82-4-303](#)(17)(a)(i) and (17)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner



has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under [82-4-360](#);

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to [82-4-361](#);

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to [82-4-362](#), unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to [82-4-335](#);

(b) that has been permitted pursuant to [82-4-335](#) and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.

**History:** En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985; amd. Sec. 2, Ch. 93, L. 1989; amd. Sec. 2, Ch. 346, L. 1989; amd. Sec. 2, Ch. 347, L. 1989; amd. Sec. 2, Ch. 637, L. 1991; amd. Sec. 1, Ch. 598, L. 1993; amd. Sec. 1, Ch. 329, L. 1995; amd. Sec. 2, Ch. 272, L. 1997; amd. Sec. 2, Ch. 507, L. 1999; amd. Sec. 2, Ch. 63, L. 2005; amd. Sec. 1, Ch. 505, L. 2005; amd. Sec. 2, Ch. 410, L. 2011.

**82-4-306. Confidentiality of application information.** (1) Except as provided in subsections (2) and (3), the information obtained by the department from applications for exploration licenses and the information obtained from small miners is confidential between the department and the applicant, except for the name of the applicant and the county of proposed operation. However, all activities conducted subsequent to exploration and other associated facilities are public information and must be conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the department or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the department from exploration license applications and from small miners and that is related to the exploration or mining on state and federal lands when the information identifies the location of exploration and mining activities and describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to \$1,000.

**History:** En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; amd. Sec. 193, Ch. 575, L. 1981; amd. Sec. 3, Ch. 637, L. 1991; amd. Sec. 381, Ch. 418, L. 1995.

**82-4-307. Review of existing files.** Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under [82-4-306](#).

**History:** En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

**82-4-308. Release by waiver.** An applicant may release the department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

**History:** En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2; amd. Sec. 382, Ch. 418, L. 1995.

**82-4-309. Exemption -- operations on federal lands.** This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

**History:** En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

**82-4-310. Exemption -- scale and type of activity.** (1) A person is exempt from this part when the person is engaging in a mining activity that does not:

- (a) use motorized excavating equipment;
- (b) use blasting agents;
- (c) disturb more than 100 square feet or 50 cubic yards of material at any site;
- (d) leave unreclaimed sites that are less than 1 mile apart;

(e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or

(f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

(a) the dredge in use has an intake of 4 inches in diameter or less;

(b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and

(c) the person has obtained for the activity:

(i) project approval pursuant to Title 75, chapter 7, part 1; and

(ii) a discharge permit issued pursuant to [75-5-402](#) and has paid the applicable fee provided in [75-5-516](#)(12).

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1).

**History:** En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224; amd. Sec. 3, Ch. 272, L. 1997; amd. Sec. 3, Ch. 507, L. 1999; amd. Sec. 3, Ch. 468, L. 2003.

**82-4-311. Disposition of fees, fines, penalties, and other uncleared money.** All fees, fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the environmental rehabilitation and response account in the state special revenue fund provided for in [75-1-110](#). Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

**History:** En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 383, Ch. 418, L. 1995; amd. Sec. 4, Ch. 338, L. 2001.

**82-4-312. Hard-rock mining reclamation debt service fund.** (1) There is a hard-rock mining reclamation debt service fund within the debt service fund type established in [17-2-102](#).

(2) The state pledges, allocates, and directs to be credited to the hard-rock mining reclamation debt service fund money from the metalliferous mines license tax, as provided in [15-37-117](#).

(3) Money in the hard-rock mining reclamation debt service fund that is in excess of the amount needed to satisfy the annual principal and interest payment requirements in [82-4-313](#) must be transferred to the hard-rock mining reclamation special revenue account created in [82-4-315](#).

**History:** En. Sec. 1, Ch. 460, L. 2001.

**82-4-313. Hard-rock mining reclamation bonds.** (1) When authorized by the legislature and within the limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell hard-rock mining reclamation bonds of the state in the amount and manner that it considers necessary and proper to finance legally required

reclamation, operation, and maintenance at hard-rock mines upon certification by the director of the department that the reclamation, operation, or maintenance would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of hard-rock mining reclamation bonds may be issued by the board of examiners upon request of the department, at public or private sale, in the denominations and forms, whether payable to the bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from the date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in [17-5-731](#) and this section.

(3) In the issuance of each series of hard-rock mining reclamation bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the hard-rock mining reclamation debt service fund created in [82-4-312](#) will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hard-rock mining reclamation special revenue account created in [82-4-315](#).

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

**History:** En. Sec. 2, Ch. 460, L. 2001.

**82-4-314. Authorization for sale of hard-rock mining reclamation bonds.** The board of examiners is authorized to issue and sell hard-rock mining reclamation general obligation bonds in an amount not exceeding \$8 million upon the request of the department, as provided for in [82-4-313](#). Proceeds of the bonds or notes are allocated to the hard-rock mining reclamation special revenue account provided for in [82-4-315](#) to fund:

(1) legally required reclamation, operation, and maintenance at hard-rock mines that would

otherwise not occur when the director of the department determines that there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient; and  
(2) the costs of issuing the bonds or notes.

**History:** En. Sec. 3, Ch. 460, L. 2001.

**82-4-315. Hard-rock mining reclamation special revenue account.** (1) There is a hard-rock mining reclamation special revenue account within the state special revenue fund established in [17-2-102](#). There must be paid into the account:

- (a) revenue from the sale of hard-rock mining reclamation bonds issued by the board of examiners pursuant to [82-4-313](#) and [82-4-314](#);
- (b) interest income earned on the account; and
- (c) excess money transferred from the hard-rock mining reclamation debt service fund as described in [82-4-312](#).

(2) Funds may be appropriated from the hard-rock mining reclamation special revenue account for the following purposes only:

- (a) state costs of implementing legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient;
- (b) state costs of implementing legally required reclamation, operation, and maintenance neither eligible for nor reasonably expected to be reimbursed from other federal or private funds; and
- (c) state costs related to the implementation of [82-4-312](#) through [82-4-315](#).

**History:** En. Sec. 4, Ch. 460, L. 2001.

**82-4-316 through 82-4-320 reserved.**

**82-4-321. Administration.** The department is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

**History:** En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204; amd. Sec. 384, Ch. 418, L. 1995.

**82-4-322. Investigations, research, and experiments.** The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

**History:** En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205; amd. Sec. 385, Ch. 418, L. 1995.

**82-4-323. Interagency cooperation -- receipt and expenditure of funds.** The department shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the

department requests that they provide. The department may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in [82-4-336](#).

**History:** En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206; amd. Sec. 386, Ch. 418, L. 1995.

**82-4-324 through 82-4-330 reserved.**

**82-4-331. Exploration license required -- employees included -- limitation.** (1) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from the date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a \$25 renewal fee. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in [82-4-360](#);

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to [82-4-361](#);

(c) that person has failed to post a reclamation bond required by [82-4-305](#); or

(d) that person has failed to comply with an abatement order issued pursuant to [82-4-362](#), unless the department has completed the abatement and the person has reimbursed the department for the cost of the abatement.

**History:** En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979; amd. Sec. 3, Ch. 93, L. 1989; amd. Sec. 2, Ch. 598, L. 1993; amd. Sec. 387, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 2001.

**82-4-332. Exploration license.** (1) An exploration license must be issued to any applicant who:

(a) pays a fee of \$100 to the department;

(b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The board shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.



(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with [82-4-338](#).

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

**History:** En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979; amd. Sec. 2, Ch. 137, L. 1991; amd. Sec. 388, Ch. 418, L. 1995; amd. Sec. 4, Ch. 488, L. 2001.

**82-4-333. Repealed.** Sec. 8, Ch. 588, L. 1979.

**History:** En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

**82-4-334. Exception -- geological phenomena.** Upon proper application by the holder of an exploration license, the department may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

**History:** En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979; amd. Sec. 389, Ch. 418, L. 1995.

**82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

- (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;
- (ii) have any water impounding structures other than for storm water control;
- (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;
- (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or
- (v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the

landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;



(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in [90-6-302](#), must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under [90-6-307](#) and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in [90-6-307](#). If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to [82-4-339](#) and [90-6-302](#) and provides notice as required under [82-4-339](#), within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with [90-6-307](#) is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in [82-4-360](#);

(b) that person has not paid a penalty for which the department has obtained a judgment

pursuant to [82-4-361](#);

(c) that person has failed to post a reclamation bond required by [82-4-305](#); or

(d) that person has failed to comply with an abatement order issued pursuant to [82-4-362](#), unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

**History:** En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987; amd. Sec. 4, Ch. 93, L. 1989; amd. Sec. 3, Ch. 347, L. 1989; amd. Sec. 4, Ch. 227, L. 1991; amd. Sec. 1, Ch. 403, L. 1991; amd. Sec. 4, Ch. 637, L. 1991; amd. Sec. 3, Ch. 598, L. 1993; amd. Sec. 390, Ch. 418, L. 1995; amd. Sec. 4, Ch. 507, L. 1999; amd. Sec. 5, Ch. 488, L. 2001; amd. Sec. 2, Ch. 365, L. 2003; amd. Sec. 3, Ch. 63, L. 2005; amd. Sec. 1, Ch. 145, L. 2011; amd. Sec. 3, Ch. 410, L. 2011.

**82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive

solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to

minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

**History:** En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985; amd. Sec. 391, Ch. 418, L. 1995; amd. Sec. 1, Ch. 464, L. 1995; amd. Sec. 2, Ch. 7, Sp. L. May 2000; amd. Sec. 3, Ch. 365, L. 2003; amd. Sec. 1, Ch. 459, L. 2003.

**82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.** (1) (a) The department shall review all applications for operating permits for completeness and compliance with the requirements of this part and rules adopted pursuant to this part within 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial notice must note all deficiency issues, and the department may not in a later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department shall notify the applicant concerning completeness and compliance as soon as possible. An application is considered complete and compliant unless the applicant is notified of deficiencies within the appropriate review period.

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; and

(iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified that there are deficiencies or inadequacies in the application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in [82-4-338](#) and pursuant to the requirements of subsection (1)(h) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(h) Except as provided in subsection (1)(g), a final permit may not be issued until:

(i) sufficient bond has been submitted pursuant to [82-4-338](#);

(ii) the information and certification have been submitted pursuant to [82-4-335](#)(10);

(iii) the department has found that permit issuance is not prohibited by [82-4-335](#)(9) or [82-4-341](#)(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

(i) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(h)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

(3) The final operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has

the authority to address them under the provisions of this part.

(5) (a) The modification of a final operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to comply with the requirements of existing law as interpreted by a court of competent jurisdiction must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to [82-4-342](#) and this section.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed.

**History:** En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985; amd. Sec. 5, Ch. 637, L. 1991; amd. Sec. 5, Ch. 472, L. 1993; amd. Sec. 4, Ch. 598, L. 1993; (4) thru (7)En. Sec. 5, Ch. 598, L. 1993; amd. Sec. 2, Ch. 204, L. 1995; amd. Sec. 392, Ch. 418, L. 1995; amd. Sec. 295, Ch. 42, L. 1997; amd. Sec. 12, Ch. 299, L. 2001; amd. Sec. 1, Ch. 287, L. 2003; amd. Sec. 4, Ch. 63, L. 2005; amd. Sec. 15, Ch. 337, L. 2005; amd. Sec. 4, Ch. 410, L. 2011.

**82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with

a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the



increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under [82-4-335](#) may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect



until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to [82-4-337](#) and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to [82-4-337](#) to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to [75-1-205](#).

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department.

**History:** En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985; amd. Sec. 6, Ch. 637, L. 1991; amd. Sec. 6, Ch. 598, L. 1993; amd. Sec. 1, Ch. 395, L. 1995; amd. Sec. 393, Ch. 418, L. 1995; amd. Sec. 5, Ch. 507, L. 1999; amd. Sec. 11, Ch. 79, L. 2001; amd. Sec. 6, Ch. 488, L. 2001; amd. Sec. 1, Ch. 32, L. 2005; amd. Sec. 1, Ch. 269, L. 2007.

**82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by rules of the board and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of \$100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

- (a) identify the permittee and the permit number;
- (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;
- (c) estimate acreage to be newly disturbed by operation in the next 12-month period;
- (d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under [90-6-302](#)(4);
- (e) update the information required in [82-4-335](#)(5)(a); and
- (f) update any maps previously submitted or specifically requested by the department. The maps must show:
  - (i) the permit area;
  - (ii) the unit of disturbed land;
  - (iii) the area to be disturbed during the next 12-month period;
  - (iv) if completed, the date of completion of operations;
  - (v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and
  - (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

**History:** En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985; amd. Sec. 5, Ch. 227, L. 1991; amd. Sec. 7, Ch. 637, L. 1991; amd. Sec. 394, Ch. 418, L. 1995; amd. Sec. 7, Ch. 488, L. 2001; amd. Sec. 5, Ch. 63, L. 2005.

**82-4-340. Successor operator.** When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may release the

first operator from the duties imposed upon the operator by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

**History:** En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985; amd. Sec. 395, Ch. 418, L. 1995.

**82-4-341. Compliance -- reclamation by department.** (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (8). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in [82-4-336](#) and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to [82-4-338](#). As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the

state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) If at the time of bond review pursuant to [82-4-338](#) no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation.

**History:** En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213; amd. Sec. 3, Ch. 204, L. 1995; amd. Sec. 396, Ch. 418, L. 1995; amd. Sec. 6, Ch. 507, L. 1999; amd. Sec. 8, Ch. 488, L. 2001.

**82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under [82-4-336](#), and bond release for the disturbance, as required under [82-4-338](#).

(2) (a) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in

[82-4-336.](#)

(3) Applications for major amendments must be processed pursuant to [82-4-337](#).

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g); and

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use.

**History:** En. Sec. 3, Ch. 472, L. 1993; amd. Sec. 397, Ch. 418, L. 1995; amd. Sec. 4, Ch. 365, L. 2003; amd. Sec. 5, Ch. 410, L. 2011.

**82-4-343 through 82-4-348 reserved.**

**82-4-349. Limitations of actions -- venue.** (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permit holder or applicant must include the party to

whom the license or permit was issued unless otherwise agreed to by the license or permit holder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

**History:** En. Sec. 1, Ch. 472, L. 1993; amd. Sec. 398, Ch. 418, L. 1995; amd. Sec. 7, Ch. 507, L. 1999; amd. Sec. 32, Ch. 361, L. 2003; amd. Sec. 16, Ch. 337, L. 2005.

**82-4-350. Award of costs and attorney fees.** When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

**History:** En. Sec. 2, Ch. 472, L. 1993.

**82-4-351. Reasons for denial of permit.** (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

**History:** En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985; amd. Sec. 6, Ch. 472, L. 1993.

**82-4-352. Reapplication with new reclamation plan.** A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the department a new plan for reclamation.

**History:** En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215; amd. Sec. 399, Ch. 418, L. 1995.

**82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.



(3) All hearings and appeals under [82-4-337\(4\)](#), [82-4-338\(3\)\(b\)](#), [82-4-341\(7\)](#) and (8), [82-4-361](#), [82-4-362](#), and subsection (2) of this section must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

**History:** En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216; amd. Sec. 12, Ch. 79, L. 2001; amd. Sec. 6, Ch. 410, L. 2011.

**82-4-354. Mandamus to compel enforcement.** (1) A person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in [45-7-202](#).

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform the duties. If the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) A person having an interest that is or may be adversely affected may commence a civil action to compel compliance with this part against a person for the violation of this part or any rule, order, or permit issued under it. However, an action may not be commenced:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or may be adversely affected may intervene as a matter of right in the civil action.

(4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district.

(5) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

**History:** En. Sec. 4, Ch. 345, L. 1985; amd. Sec. 1, Ch. 535, L. 1997.

**82-4-355. Action for damages to water supply -- replacement.** (1) An owner of an interest in real property who obtains all or part of the owner's supply of water for beneficial uses, as defined in [85-2-102](#), from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which



a license is required pursuant to [82-4-332](#) or for which a permit is required pursuant to [82-4-335](#) to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until the operator provides substitute water, except that nothing in this section preempts the application of Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of the operator's senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program or a water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

**History:** En. Sec. 5, Ch. 345, L. 1985; amd. Sec. 8, Ch. 637, L. 1991; amd. Sec. 2734, Ch. 56, L. 2009.

**82-4-356. Action in response to complaints related to use of explosives.** (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible

person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

**History:** En. Sec. 1, Ch. 443, L. 1989.

**82-4-357. Abatement of environmental emergencies.** (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in [75-1-1101](#) to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to [82-4-338](#). Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

**History:** En. Sec. 9, Ch. 637, L. 1991.

**82-4-358 through 82-4-359 reserved.**

**82-4-360. When activity prohibited -- exception.** (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the person's surety completed reclamation on the person's behalf.

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under [82-4-305](#) if:

(a) that person pays to the department:

(i) the full amount of the necessary expenses incurred by the department under [82-4-341](#)(6) for reclamation of the area for which the bond was forfeited;

(ii) the full amount of any penalties assessed under this part; and

(iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and

(b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist.

**History:** En. Sec. 7, Ch. 93, L. 1989; amd. Sec. 400, Ch. 418, L. 1995; amd. Sec. 296, Ch. 42, L. 1997; amd. Sec. 9, Ch. 488, L. 2001.

**82-4-361. Violation -- penalties -- waiver.** (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend

corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than \$100 or more than \$1,000 for each of the following violations and an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is \$5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 for a violation listed in subsection (2)(a) and a penalty of not more than \$5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in [82-4-1001](#).

(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial district, Lewis and Clark County.

**History:** En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985; amd. Sec. 5, Ch. 93, L. 1989; amd. Sec. 2, Ch. 283, L. 1991; amd.

Sec. 4, Ch. 204, L. 1995; amd. Sec. 1, Ch. 271, L. 1997; amd. Sec. 4, Ch. 273, L. 1997; amd. Sec. 2, Ch. 535, L. 1997; amd. Sec. 13, Ch. 79, L. 2001; amd. Sec. 2, Ch. 486, L. 2005; amd. Sec. 26, Ch. 487, L. 2005.

**82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on the licensee or permittee by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of violation or order of suspension within the time limits set in the notice or order, the license or permit may be revoked by order of the department and the performance bond forfeited to the department. The notice of violation or order of suspension must state when those measures may be undertaken and must give notice of the opportunity for a hearing before the board. A hearing may be requested by submitting a written request stating the reason for the request to the board within 30 days after receipt of the notice or order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond may not be forfeited until a final decision is made by the board.

(3) If a permittee fails to pay the fee or file the report required under [82-4-339](#), the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance.

**History:** En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985; amd. Sec. 6, Ch. 93, L. 1989; amd. Sec. 3, Ch. 283, L. 1991; amd. Sec. 7, Ch. 598, L. 1993; amd. Sec. 5, Ch. 204, L. 1995; amd. Sec. 401, Ch. 418, L. 1995; amd. Sec. 14, Ch. 79, L. 2001.

**82-4-363 through 82-4-366 reserved.**

**82-4-367. Long-term or perpetual water treatment permanent trust fund.** (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

- (a) funds transferred from the orphan share account pursuant to [75-10-743](#); and
- (b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be

appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

**History:** En. Sec. 1, Ch. 278, L. 2005.

**82-4-368 through 82-4-370 reserved.**

**82-4-371. Reclamation of abandoned mine sites.** (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or

prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to [82-4-424](#) or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

**History:** En. Sec. 2, Ch. 329, L. 1995; amd. Sec. 2, Ch. 78, L. 2009.

**82-4-372. Filing of lien for abandoned mine reclamation project.** (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.