

Montana Code Annotated 2021

TITLE 82. MINERALS, OIL, AND GAS

CHAPTER 4. RECLAMATION

Part 4. Opencut Mining Reclamation

82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.

82-4-402. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. 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) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut operations. Therefore, it is the purpose of this part:

- (a) to preserve natural resources;
- (b) to aid in the protection of wildlife and aquatic resources;
- (c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut operations;
- (d) to protect and perpetuate the taxable value of property through reclamation;
- (e) to protect scenic, scientific, historic, or other unique areas; and
- (f) to promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502; amd. Sec. 1, Ch. 280, L. 1987; amd. Sec. 8, Ch. 507, L. 1999; amd. Sec. 1, Ch. 325, L. 2001; amd. Sec. 33, Ch. 361, L. 2003; amd. Sec. 2, Ch. 385, L. 2007.

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

- (1) "Affected land" means the area of land and land covered by water that is disturbed by opencut operations. A private road may be included as affected land only with the landowner's consent.
- (2) "Amendment" means a change to the approved permit.
- (3) "Board" means the board of environmental review provided for in **2-15-3502**.
- (4) "Department" means the department of environmental quality provided for in **2-15-3501**.
- (5) "Landowner" means the holder of legal title to land subjected to an opencut operation.
- (6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.
- (7) "Occupied dwelling unit" means a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence.

(8) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of materials, including:

(a) mine site preparation;

(b) (i) removing the overburden and mining directly from the exposed natural deposits; or

(ii) mining directly from natural deposits of materials;

(c) processing of materials mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;

(d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;

(e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;

(f) reclamation of affected land; and

(g) parking or staging of vehicles, equipment, or supplies unless:

(i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or

(ii) the activity is inside the construction disturbance area shown on a construction project plan.

(9) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered by a permit.

(10) "Overburden" means the earth that lies above a natural deposit of materials.

(11) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(12) "Plan of operation" means a plan that:

(a) meets the requirements of **82-4-434**; and

(b) contains a description of current land use, topographical data, hydrologic data, soils data, proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate maps.

(13) "Processing facilities" means:

(a) crushers, screens, and pug mills;

(b) asphalt, wash, and concrete plants;

(c) treatment, sedimentation, or retention areas for processing facilities; and

(d) areas receiving washout from vehicles and equipment using the processing facilities.

(14) "Reclamation" means the reconditioning of affected land to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or industrial development.

(15) "Soil" means the dark or root-bearing surface matter that has been generated through time by the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining plant growth and is recognized and identified as such by standard authorities and methods.

(16) "Water conveyance facilities" means existing diversions, aqueducts, canals, ditches, drains, flumes, headgates, syphons, or other structures or infrastructure actively used to facilitate the beneficial use of a water right under Title 85.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504; amd. Sec. 2, Ch. 280, L. 1987; amd. Sec. 402, Ch. 418, L. 1995; amd. Sec. 9, Ch. 507, L. 1999; amd. Sec. 3, Ch. 385, L. 2007; amd. Sec. 2, Ch. 198, L. 2013; amd. Sec. 2, Ch. 545, L. 2021.

82-4-404. Exemption -- operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

82-4-405. Inapplicability to government. The provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1; amd. Sec. 10, Ch. 507, L. 1999; amd. Sec. 5, Ch. 477, L. 2009; amd. Sec. 3, Ch. 334, L. 2019; amd. Sec. 2, Ch. 428, L. 2021.

82-4-406. Exemption -- opencut operations on federal and state lands. This part is not applicable to operations on certain federal and state lands as specified by the department, provided it is first determined by the department that laws, regulations, or rules administered or issued by the federal or state agency administering or having jurisdiction over the affected land impose controls for opencut operations on those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517; amd. Sec. 4, Ch. 385, L. 2007; amd. Sec. 105, Ch. 324, L. 2021.

82-4-407 through 82-4-420 reserved.

82-4-421. Repealed. Sec. 18, Ch. 385, L. 2007.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505; amd. Sec. 403, Ch. 418, L. 1995.

82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of **82-4-436**;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The department shall:

(a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements necessary to implement this part.

(3) The board shall conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry.

History: En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506; amd. Sec. 404, Ch. 418, L. 1995; amd. Sec. 11, Ch. 507, L. 1999; amd. Sec. 15, Ch. 79, L. 2001; amd. Sec. 2, Ch. 325, L. 2001; amd. Sec. 5, Ch. 385, L. 2007; amd. Sec. 106, Ch. 324, L. 2021.

82-4-423. Repealed. Sec. 18, Ch. 385, L. 2007.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503; amd. Sec. 3, Ch. 280, L. 1987; amd. Sec. 405, Ch. 418, L. 1995; amd. Sec. 12, Ch. 507, L. 1999.

82-4-424. Receipt and expenditure of funds -- disposition of penalties and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of affected land. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All penalties and other money paid under the provisions of this part, except fees provided for in **82-4-437**, must be deposited 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. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511; amd. Sec. 1, Ch. 431, L. 1991; amd. Sec. 406, Ch. 418, L. 1995; amd. Sec. 5, Ch. 338, L. 2001; amd. Sec. 6, Ch. 385, L. 2007; amd. Sec. 6, Ch. 477, L. 2009; amd. Sec. 4, Ch. 334, L. 2019.

82-4-425. Inspection of opencut operations. The department or its representatives may enter upon lands subjected to opencut operations at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with. The department shall attempt to provide reasonable notice to a permitted operator when practicable under the circumstances.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512; amd. Sec. 407, Ch. 418, L. 1995; amd. Sec. 7, Ch. 385, L. 2007; amd. Sec. 3, Ch. 198, L. 2013; amd. Sec. 5, Ch. 334, L. 2019.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department or its agents or contractors may enter and reclaim any affected land with respect to which a bond has been forfeited.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514; amd. Sec. 408, Ch. 418, L. 1995; amd. Sec. 72, Ch. 509, L. 1995; amd. Sec. 6, Ch. 338, L. 2001; amd. Sec. 8, Ch. 385, L. 2007; amd. Sec. 6, Ch. 334, L. 2019.

82-4-427. Hearing -- appeal -- venue. (1) (a) Subject to subsections (1)(b) and (1)(c), a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board if a written request stating the reasons for the appeal is submitted to the board within 30 days of the department's decision.

(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under **82-4-432**.

(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.

(2) An operator may request a hearing before the board on:

(a) a final decision of the department director pursuant to **82-4-436**(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under **82-4-442** by filing a request for hearing within 30 days of receipt of the decision.

(3) The operator or the landowner may request a hearing before the board on a decision on a bond release application by submitting a written request stating the reasons for the appeal within 30 days of the receipt of the decision.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the 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 activity is proposed to occur.

(6) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permitholder or applicant. All judicial challenges of 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. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515; amd. Sec. 409, Ch. 418, L. 1995; amd. Sec. 13, Ch. 507, L. 1999; amd. Sec. 16, Ch. 79, L. 2001; amd. Sec. 34, Ch. 361, L. 2003; amd. Sec. 17, Ch. 337, L. 2005; amd. Sec. 9, Ch. 385, L. 2007; amd. Sec. 4, Ch. 198, L. 2013; amd. Sec. 7, Ch. 334, L. 2019; amd. Sec. 50, Ch. 535, L. 2021.

82-4-428 through 82-4-430 reserved.

82-4-431. Permit for mining, processing, and reclamation required. (1) Except as provided in subsections (2) and (3), a permit is required for an operator who:

(a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden; or

(b) conducts an opencut operation where less than 10,000 cubic yards of materials and overburden are removed from the site and:

(i) the open cut operation affects surface water, including intermittent or perennial streams, ground water, or water conveyance facilities; or

(ii) has never held a permit pursuant to this part.

(2) (a) An operator who holds a permit under this part may conduct a limited opencut operation without first securing an additional permit or an amendment to an existing permit if the limited opencut operation meets the following criteria:

(i) the area to be disturbed by the limited opencut operation is located more than one-half mile from the operator's nearest existing limited opencut operation;

(ii) the total amount of materials and overburden removed does not exceed 10,000 cubic yards and the total area from which the materials and overburden are removed does not exceed 5 acres;

(iii) the operator:

(A) submits appropriate site and opencut operation information on a limited opencut operation form provided by the department;

(B) within 1 year of the department's receipt of the limited opencut operation form, salvages all soil from the area to be disturbed, removes the materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding topography, replaces an appropriate amount of overburden and all soil, and reclaims to conditions present prior to mining all access roads used for the operation unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.

(C) at the first seasonal opportunity, seeds or plants all affected land with vegetative species that meet the requirements of **82-4-434**; and

(iv) the limited opencut operation is not:

(A) in intermittent or perennial streams;

(B) in an area where the opencut operation will affect surface water, ground water, a water conveyance facility, or any slope that is steeper than 3:1;

(C) in an area where mining would be restricted by other laws; or

(D) in violation of local zoning regulations adopted under Title 76, chapter 2.

(b) At the operator's request and with department approval, the operator may have up to 1 additional year to perform the reclamation required by subsection (2)(a)(iii), provided the operator does not apply to extend or continue the limited opencut operation pursuant to subsection (2)(c).

(c) (i) An operator who commences a limited opencut operation pursuant to subsection (2)(a) may apply for a permit to continue or expand that opencut operation pursuant to the provisions of this subsection (2)(c).

(ii) The permit application must be complete within 180 days of the department's receipt of the limited opencut operation form.

(iii) If the complete permit application is acceptable within 1 year of the department's receipt of the limited opencut operation form, the provisions of subsections (2)(a)(iii)(B) and (2)(a)(iii)(C) do not apply and reclamation must be conducted as prescribed in the permit.

(iv) If the complete permit application is not acceptable within 1 year of the department's receipt of the limited opencut operation form, the application is considered abandoned and void. Starting 3 days after the department notifies the applicant that the application is considered abandoned and void, the applicant has 180 days to complete the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C).

(v) If the permit application is withdrawn by the applicant within 1 year of the department's receipt of the limited opencut operation form, the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C) must be completed within 180 days of the date of the withdrawal.

(3) A landowner may remove up to 10,000 cubic yards of opencut materials on the landowner's property for personal or agricultural uses without obtaining a permit, unless the removal affects surface water, including intermittent or perennial streams, ground water, or water conveyance facilities.

(4) The department may deny an application for issuance of a permit under subsection (1) or may prohibit the operator from conducting a limited opencut operation under subsection (2)(a) if, at the time of application or notification, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit.

(5) A permit is effective when the department provides written notice to the applicant that the information and materials provided to the department meet the requirements of this part and rules adopted pursuant to this part.

(6) (a) Except as provided in subsection (6)(b), a permit issued under this part expires on the reclamation date proposed by the operator and approved by the department.

(b) Prior to the expiration of a permit:

(i) the operator may file an application to amend the plan of operation to extend the reclamation date pursuant to **82-4-434(4)(a)**;

(ii) the department may amend the plan of operation pursuant to **82-4-436**;

(iii) the department may revoke the permit pursuant to **82-4-442**;

(iv) the operator and the department may agree to terminate the permit upon mutual written consent;

(v) (A) for a site permitted or for which an amendment was approved in 2010 or later, the operator may apply to extend the reclamation date on a site by submitting a form furnished by the department and provide an updated landowner consultation form and bond, if applicable; or

(B) for a site permitted or for which an amendment was approved prior to 2010, the department may use its discretion to allow the operator to request an extended reclamation date pursuant to subsection (6)(b)(v)(A); or

(vi) the operator may change the postmine land use on a site by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, if applicable.

(7) The expiration or termination of a permit issued under this part does not relieve an operator from the obligation to conduct reclamation as required by the plan of operation or the liability for costs of reclamation exceeding the amount of the bond.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507; amd. Sec. 4, Ch. 280, L. 1987; amd. Sec. 3, Ch. 408, L. 1991; amd. Sec. 2, Ch. 431, L. 1991; amd. Sec. 410, Ch. 418, L. 1995; amd. Sec. 14, Ch. 507, L. 1999; amd. Sec. 10, Ch. 385, L. 2007; amd. Sec. 5, Ch. 198, L. 2013; amd. Sec. 8, Ch. 334, L. 2019; amd. Sec. 3, Ch. 545, L. 2021.

82-4-432. Application for permit -- contents -- issuance -- amendment. (1) (a) An operator who requires a permit pursuant to **82-4-431** shall apply for a permit on forms furnished by the department prior to commencing operations.

(b) Operations subject to subsections (2) through (13) are those:

(i) that affect ground water or surface water, including intermittent or perennial streams, or water conveyance facilities; or

(ii) where 10 or more occupied dwelling units are within one-half mile of the permit boundary of the operation.

(c) All other operations are subject to subsection (14).

(2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using forms furnished by the department and must contain the following:

(i) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(ii) the type of operation to be conducted;

(iii) the estimated volume of overburden and materials to be removed;

(iv) the location of the proposed opencut operation by legal description and county accompanied by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed site; and

(v) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(b) The application must be accompanied by:

(i) a bond or security meeting the requirements as set out in this part;

(ii) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(iii) a plan of operation that contains information sufficient to initiate acceptability review by addressing the requirements of **82-4-434** and rules adopted pursuant to this part related to **82-4-434**;

(iv) written documentation that the landowner has been consulted about the proposed plan of operation;

(v) a written agreement between the landowner and the operator authorizing the operator access to the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;

(vi) a list that is certified by the operator and generated on a form furnished by the department using cadastral and field information at the time of permit application of owners of real property on which occupied dwelling units exist located within one-half mile of the proposed permit boundary using the owners of record as shown no more than 60 days prior to the submission of an application in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located; and

(vii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a preapplication meeting with the department. The department shall hold a meeting if requested.

(4) (a) (i) Except as provided in **75-1-208(4)(b)**, upon receipt of an application, the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(ii) The time limit provided in subsection (4)(a)(i) applies to each submittal of the application until the department determines that the application is complete.

(b) (i) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information or inspect the site during the review process.

(ii) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section.

(iii) The department shall accept public comment throughout the review process.

(c) The department may declare an application abandoned and void if:

(i) the applicant fails to respond to the department's written request for more information within 1 year; and

(ii) the department notifies the applicant of its intent to abandon the application and the applicant fails to provide information within 30 days.

(d) The department shall notify the applicant when an application is complete and post the complete application on the department's website.

(5) Within 15 days after the department sends notice of a complete application to the applicant, the applicant shall provide public notice, which must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed opencut operation;

(c) a legal description of the proposed opencut operation and a map, or directions on how to access a map, showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, notification that the application is complete and information on how to request a public meeting pursuant to this section.

(6) To provide public notice, the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located;

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible; and

(d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(b) If the applicant and the department mutually agree or the applicant submits documentation on a form provided by the department showing that a public meeting will not be required pursuant to subsection (9), the department shall inform the applicant within 30 days of the notice of a complete application as to whether or not the application is acceptable pursuant to subsection (10).

(8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of the public meeting request period in subsection (7), the department shall:

(a) hold a meeting; and

(b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or that the application requires an extended review pursuant to **82-4-439**.

(9) (a) The department shall hold a public meeting in the area of the proposed opencut operation at the request of:

(i) the applicant; or

(ii) at least 51% of the real property owners on which occupied dwelling units exist or 10 real property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be counted as a single real property owner.

(b) To provide notice for a public meeting, the department shall notify by first-class mail or electronically the property owners on the list provided by the applicant pursuant to this section and the board of county commissioners in the county where the proposed opencut operation is located.

(10) (a) An application is acceptable if it complies with the requirements of subsections (1) and (2) and includes a plan of operation that satisfies the requirements of **82-4-434** and rules adopted pursuant to this part related to **82-4-434**. If the department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

(11) (a) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in this section. If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice or public meeting requirements of this section or an extended review pursuant to **82-4-439** unless it proposes an increase in permitted acreage of 50% or more of the amount of permitted acreage in the current permit.

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

(12) (a) Except as provided in subsection (12)(b), if weather or other field conditions prevent the department from conducting an adequate site inspection to evaluate a permit or amendment application, the time limits provided in subsections (7) and (11) are suspended until the weather or other field conditions allow for an adequate site inspection.

(b) Before suspending time limits, the department shall allow the operator to provide the information needed from a site inspection by other means, including but not limited to surveys, photos, videos, or other reports.

(13) The department shall post a copy of an acceptable permit or amendment on its website.

(14) (a) Operations not described by subsection (1)(b) that apply for a permit or an amendment shall submit:

(i) a landowner consultation form;

(ii) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land;

(iii) a reclamation bond calculated pursuant to the requirements of **82-4-433** unless exempt pursuant to **82-4-405**;

(iv) if applicable, documentation of compliance with Title 87, chapter 5, part 9;

(v) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

(vi) results from three soil test pits meeting the soil guideline requirements;

(vii) the appropriate fee as set forth in **82-4-437** and a \$500 fee to be deposited in the opencut fund pursuant to **82-4-438**;

(viii) the proposed permit boundary in a format acceptable to the department and a location map;

(ix) a certification from the operator that there are fewer than 10 occupied dwelling units within one-half mile of the permit boundary of the operation no more than 60 days from the date the application materials are submitted;

(x) certification from the operator that notice of the proposed opencut operation was:

(A) published at least twice in a newspaper of general circulation in the locality of the proposed opencut operation;

(B) mailed to surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the most current known owners of record as shown in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located. If the notice does not include a map, the applicant shall promptly provide a copy to a requestor.

(C) posted in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible;

(xi) the date the site is to be fully reclaimed.

(b) Except as provided in **75-1-208(4)(b)**, upon receipt of an application under this subsection (14), the department shall, within 5 working days, review the application and notify the person as to whether or not the application is complete. An application is complete if it contains the items listed in subsection (14)(a). If the department determines that the application is not complete, the department shall notify the applicant in writing and include a detailed identification of information necessary to make the application complete.

(c) Upon determining that an application is complete, the department shall begin reviewing the application for acceptability pursuant to this section. Public comment may be submitted throughout the review period.

(d) Within 15 days of receiving the information required by subsection (14)(a), the department shall determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If the requirements are met, the operator may commence the operation on receipt of the notification.

(e) If the information submitted does not meet the requirements of subsection (14)(a), the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(f) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether the information submitted meets the requirements of subsection (14)(a). If the information submitted does not meet the requirements, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(g) If the information submitted to the department meets the requirements of subsection (14)(a), the department shall notify the operator in writing. On receipt of the notification, the operator may commence opencut operations on the land described in the application.

(h) The department may prohibit an operation under this section if, at the time of submission of information required by subsection (14)(a), the operator has a pattern of violations of this part or is in current violation of this part, rules adopted under this part, or provisions of a permit.

(i) Prior to removing materials, the operator shall salvage all of the soil from the area to be disturbed.

(j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter slopes for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the surrounding topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions either present prior to operations or as specified by the landowner, including all access roads used for the operation unless the landowner requests in writing that specific roads or portions of roads remain in place. Roads left at the landowner's request must be sized to support the use of the road after operations.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508; amd. Sec. 4, Ch. 408, L. 1991; amd. Sec. 411, Ch. 418, L. 1995; amd. Sec. 15, Ch. 507, L. 1999; amd. Sec. 13, Ch. 299, L. 2001; amd. Sec. 3, Ch. 325, L. 2001; amd. Sec. 11, Ch. 385, L. 2007;

amd. Sec. 7, Ch. 477, L. 2009; amd. Sec. 6, Ch. 198, L. 2013; amd. Sec. 9, Ch. 334, L. 2019; amd. Sec. 4, Ch. 545, L. 2021.

82-4-433. Bond. (1) Before a permit or permit amendment may be issued, a surety bond made payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules adopted under this part, and the permit must be submitted to and approved by the department. The bond must be signed by the applicant as principal and by a good and sufficient corporate surety licensed to do business in the state of Montana. The bond amount must be determined by the department at the cost of reclamation of the affected land by the department. The applicant shall submit a bond that is no less than the amount determined by the department.

(2) (a) For opencut operations 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.

(b) 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.

(3) In lieu of submitting a surety bond pursuant to subsection (1), the operator may submit cash, a certificate of deposit, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) The bond or other security must be increased or reduced as provided in this part.

(5) The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the department has approved the reclamation and released the bond or security. The bond or security may cover only actual affected land and must be increased or reduced to cover only unreclaimed acreages.

(6) If the license of a surety that has issued a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute a good and sufficient bond from another surety licensed to do business in the state or shall submit another type of security pursuant to subsection (3). Upon failure of the operator to make the bond substitution within the 30-day time period, the department shall suspend the permit of the operator to conduct opencut operations upon the land described in the permit until the substitution has been made. If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an additional 60 days for the operator to submit a replacement bond before suspending the permit.

(7) Whenever an operator has completed all of the reclamation requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements and may request bond release. If the department releases the operator from further obligation regarding any affected land, the bond must be reduced proportionately. Within 365 days of

receiving the bond release request, the department shall notify the operator and the landowner in writing of the decision on the bond release application.

(8) If the operator fails to complete reclamation as required, the bond is forfeited. The surety is liable to the state for the bond amount. The operator is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(9) (a) If the bond is canceled by the surety, the operator shall provide a replacement bond to the department within 30 days after receiving notice of the cancellation. The department may extend this timeframe if the operator exercised due diligence in attempting to obtain a replacement bond within the time required.

(b) The permit is suspended by operation of law if the operator fails to submit a replacement bond within 30 days or within an extended period provided by the department pursuant to subsection (9)(a).

(c) A suspended permit is reinstated upon department approval of a replacement bond.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509; amd. Sec. 1, Ch. 138, L. 1983; amd. Sec. 5, Ch. 280, L. 1987; amd. Sec. 3, Ch. 431, L. 1991; amd. Sec. 412, Ch. 418, L. 1995; amd. Sec. 16, Ch. 507, L. 1999; amd. Sec. 2, Ch. 32, L. 2005; amd. Sec. 12, Ch. 385, L. 2007; amd. Sec. 7, Ch. 198, L. 2013; amd. Sec. 10, Ch. 334, L. 2019.

82-4-434. Plan of operation -- requirements. (1) The department shall accept a plan of operation if the department finds that the plan complies with the requirements of this part and the rules adopted pursuant to this part and that after the opencut operation is completed, the affected land will be reclaimed to a productive use. Once the plan of operation is accepted by the department, it becomes a part of the permit but is subject to annual review and amendment by the department. Any amendment by the department must comply with the provisions of **82-4-436(2)**.

(2) A plan of operation must provide:

(a) that the affected land will be reclaimed for one or more specified uses, including but not limited to agriculture, forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other reasonable, practical, and achievable uses;

(b) that soil and other suitable overburden will be salvaged and replaced on affected land, when required by the postmining land use, after completion or termination of that particular phase of the opencut operation. The depth of soil and other suitable overburden to be placed on the reclaimed area must be specified in the plan.

(c) that grading will result in a postmining topography conducive to the designated postmining land use;

(d) that waste will be buried on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules;

(e) that all access, haul, and other support roads will be located, constructed, and maintained in a manner that controls and minimizes erosion;

(f) that archaeological and historical values on affected lands will be given legally required protection;

(g) that except for those postmining land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no longer required;

(h) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmining land use and that retards erosion;

(i) that reclamation will be as concurrent with the opencut operation as feasible and will be completed within a specified length of time;

(j) a declaration by the operator that the operator will comply with applicable federal, state, county, or local regulations, ordinances, and permits, licenses, and approvals for the operation;

(k) for the construction of berms between the opencut operation and residences located within 300 feet of the permit boundary; and

(l) procedures to prevent physical harm to water conveyance facilities or that allow the owner of a water conveyance facility to authorize in writing the relocation or disturbance of the water conveyance facility.

(3) If reclamation according to the plan of operation is not completed in the time specified, the department may:

(a) pursue an administrative order pursuant to **82-4-441**;

(b) after 30 days' written notice, order the operator to cease mining and, if the operator does not cease, issue an order to reclaim, a notice of violation, or an order of abatement;

(c) institute an action to enjoin further operation; or

(d) on request of the operator:

(i) extend the timeframe for reclamation-only activities, including revegetation, up to 5 years by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, as appropriate; or

(ii) change the postmine land use by submitting the request on a form furnished by the department and provide an updated landowner consultation form and bond, as appropriate.

(4) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new plan of operation or amendments to the existing plan, including extensions of time for reclamation.

(b) The department may approve the proposed new plan of operation or amendments to the existing plan if:

(i) the new plan of operation or amendments comply with the requirements of this section; and

(ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of operation; or

(B) it is highly improbable that reclamation will be successful unless the existing plan of operation is replaced or amended.

(5) The permit, plan of operation, and amendments accepted by the department are a public record and are open to inspection.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510; amd. Sec. 6, Ch. 280, L. 1987; amd. Sec. 58, Ch. 16, L. 1991; amd. Sec. 413, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 17, Ch. 507, L. 1999; amd. Sec. 4, Ch. 325, L. 2001; amd. Sec. 13, Ch. 385, L. 2007; amd. Sec. 11, Ch. 334, L. 2019; amd. Sec. 5, Ch. 545, L. 2021.

82-4-435. Repealed. Sec. 2, Ch. 113, L. 1981.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

82-4-436. Plan amendments by department. (1) Unless an amendment to a plan of operation or permit is proposed by the operator, the department may amend only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that a continued opencut operation under the terms of an existing plan of operation or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

- (a) an identification of the existing plan or permit;
- (b) the justification for the amendment, including all test results or other credible evidence that the department relied on in proposing the amendment; and
- (c) the text, maps, drawings, and other appropriate information that constitute the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or, if a review by the director is requested, until 15 days after the director affirms or modifies the amendment. A decision by the department director is subject to the contested case provisions in **82-4-427**.

(5) If the operator requests a hearing on the proposed amendment, the amendment is not effective and enforceable until completion of the contested case process.

History: En. Sec. 5, Ch. 325, L. 2001; amd. Sec. 35, Ch. 361, L. 2003; amd. Sec. 18, Ch. 337, L. 2005; amd. Sec. 14, Ch. 385, L. 2007.

82-4-437. Annual report -- fees. (1) For each opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the department.

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

(b) Opencut operations that mine, extract, or produce bentonite are not subject to the fee in subsection (2)(a).

(3) The department:

(a) shall require the operator to pay the following fees:

(i) \$1,500 for each permit application submitted pursuant to **82-4-432(1)**; and

(ii) for each amendment application submitted pursuant to **82-4-432(11)**:

(A) \$750 if the date of the amendment application is 10 years or less from the date of the permit approval; or

(B) \$1,500 if the date of the amendment application is more than 10 years from the date of the permit approval; and

(b) shall adopt rules for applications or responses that are administrative. Fees, if any, for administrative actions identified under this subsection (3) may not exceed \$250.

(4) Pursuant to the provisions of **82-4-441**, a person who mines materials without a permit in violation of this part shall submit a report and the fees required by subsections (2)(a) and (3)(a)(i) of this section.

History: En. Sec. 1, Ch. 385, L. 2007; amd. Sec. 9, Ch. 477, L. 2009; amd. Sec. 8, Ch. 198, L. 2013; amd. Sec. 12, Ch. 334, L. 2019; amd. Sec. 107, Ch. 324, L. 2021.

82-4-438. Opencut fund -- use of fund. (1) There is an account in the state special revenue fund established by **17-2-102** to be known as the opencut fund.

(2) There must be deposited in the account money received from the fees established in **82-4-437**.

(3) Money in the fund must be spent for the purposes of administering and enforcing this part.

History: En. Sec. 1, Ch. 477, L. 2009; amd. Sec. 13, Ch. 334, L. 2019.

82-4-439. Extended review -- criteria -- timeframes. (1) The department may subject an opencut application to an extended review if the department determines that comments received at a public meeting held pursuant to **82-4-432** reveal the proposed plan of operation violates provisions of this part.

(2) (a) For a complete application subject to an extended review, the department shall, within 60 days from the date the department determines the application warrants an extended review, inspect the proposed site if the department determines an inspection is necessary and notify the applicant as to whether or not the application is acceptable pursuant to **82-4-432**. If the application is unacceptable, the notice must include a detailed explanation of the deficiencies.

(b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) The department may for sufficient cause extend either or both of the review periods in subsection (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original period. The department shall include in the notification of extension the reason for the extension.

(d) If the application is acceptable, the department shall issue a permit or a permit amendment to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

History: En. Sec. 8, Ch. 477, L. 2009; amd. Sec. 6, Ch. 545, L. 2021.

82-4-440. Repealed. Sec. 7, Ch. 545, L. 2021.

History: En. Sec. 14, Ch. 334, L. 2019.

82-4-441. Administrative and judicial penalties -- enforcement. (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) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit:

(a) an administrative penalty of not less than \$100 or more than \$1,000 for the violation; and

(b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than \$5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in **82-4-1001**.

(5) (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 (5)(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 an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, 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.

(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the opencut operation is located.

(7) The provisions of this section do 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.

History: En. Sec. 1, Ch. 113, L. 1981; amd. Sec. 7, Ch. 280, L. 1987; amd. Sec. 4, Ch. 431, L. 1991; amd. Sec. 414, Ch. 418, L. 1995; amd. Sec. 2, Ch. 271, L. 1997; amd. Sec. 5, Ch. 273, L. 1997; amd. Sec. 18, Ch. 507, L. 1999; amd. Sec. 17, Ch. 79, L. 2001; amd. Sec. 6, Ch. 325, L. 2001; amd. Sec. 4, Ch. 486, L. 2005; amd. Sec. 15, Ch. 385, L. 2007; amd. Sec. 51, Ch. 535, L. 2021.

82-4-442. Suspension and revocation orders. (1) (a) The department may, after affording the operator an opportunity for an informal conference, order the suspension of a permit if:

(i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to **82-4-441**; or

(ii) the operator has violated this part, a rule adopted pursuant to this part, or the permit and the violation could reasonably be expected to create a danger to the health or safety of persons outside the permit area or significant environmental harm to land, air, or water. The order of suspension must be served on the operator personally or by certified mail addressed to the permanent address shown on the most recently filed annual report. The order of suspension must specify the provision of this

part, the rules adopted under this part, or the permit violated and the facts alleged to constitute the violation and must, if the violation has not been corrected, order corrective action within a specified time period.

(b) The department may order immediate suspension of a permit whenever it finds that a violation of this part, the rules adopted under this part, or a permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must require immediate corrective action.

(c) The operator upon whom an order is served may file a request for hearing with the board within 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a request for hearing on an order issued does not stay the suspension or corrective action requirement, but the board may, upon written request of the operator, stay either or both of these requirements.

(2) If the operator has not complied with the requirements set forth in the order of suspension within the time limits set in the order, the permit may be revoked by order of the department and the performance bond forfeited to the department. The operator may request a hearing before the board by submitting a written request stating the reason for the request to the board within 30 days after service of the order. If a hearing is requested within the 30-day period, the permit may not be revoked and the bond may not be forfeited until the board makes a final decision.

(3) If an operator fails to file the report required under **82-4-437**, the department shall serve personally or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within 30 days of receipt of the letter, the department may issue a penalty order pursuant to **82-4-441** or a suspension order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit upon compliance.

(4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the permit and intended to protect public health or safety or the environment must continue during any period of suspension unless otherwise provided in the order.

History: En. Sec. 16, Ch. 385, L. 2007.

82-4-443 and 82-4-444 reserved.

82-4-445. 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 department may acquire the necessary property by gift or purchase, or 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. 108, Ch. 324, L. 2021.

82-4-446. 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.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.