

Montana Code Annotated 2023

TITLE 82. MINERALS, OIL, AND GAS

CHAPTER 4. RECLAMATION

Part 1. Strip and Underground Mine Siting

82-4-101. Short title. This part shall be known and may be cited as "The Strip and Underground Mine Siting Act".

History: En. 50-1601 by Sec. 1, Ch. 280, L. 1974; amd. Sec. 1, Ch. 441, L. 1975; R.C.M. 1947, 50-1601.

82-4-102. Intent -- findings -- policy and purpose. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Strip and Underground Mine Siting 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) It is the policy of this state to 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.

(3) It is the purpose of this part:

(a) to vest in the department the authority to adopt rules and to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove those locations and plans and to exercise general administration and enforcement of this part;

(b) to satisfy the requirement of Article IX, section 2, of the constitution of this state that all lands disturbed by the taking of natural resources be reclaimed; and

(c) to ensure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(4) This part is an exercise of the general police power to provide for the health and welfare of the people."

History: En. 50-1602 by Sec. 2, Ch. 280, L. 1974; amd. Sec. 2, Ch. 441, L. 1975; R.C.M. 1947, 50-1602; amd. Sec. 360, Ch. 418, L. 1995; amd. Sec. 27, Ch. 361, L. 2003; amd. Sec. 82, Ch. 324, L. 2021.

82-4-103. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of environmental review provided for in **2-15-3502**.

(2) "Department" means the department of environmental quality provided for in **2-15-3501**.

(3) "Mineral" means mineral as defined in **82-4-203**.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife,

geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the open-cut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata.

History: En. 50-1603 by Sec. 3, Ch. 280, L. 1974; amd. Sec. 3, Ch. 441, L. 1975; R.C.M. 1947, 50-1603; amd. Sec. 191, Ch. 575, L. 1981; amd. Sec. 361, Ch. 418, L. 1995.

82-4-104. Application. The provisions of this part shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under **82-4-221** were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

History: En. 50-1617 by Sec. 17, Ch. 280, L. 1974; R.C.M. 1947, 50-1617.

82-4-105 through 82-4-110 reserved.

82-4-111. Repealed. Sec. 111, Ch. 324, L. 2021.

History: En. 50-1604 by Sec. 4, Ch. 280, L. 1974; amd. Sec. 4, Ch. 441, L. 1975; R.C.M. 1947, 50-1604; amd. Sec. 362, Ch. 418, L. 1995.

82-4-112. Administration. (1) The department shall:

(a) adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part, rules regarding filing of reports, issuance of permits, and other matters of procedure and administration;

(b) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(c) issue orders requiring operators to adopt remedial measures necessary to comply with this part and rules adopted under this part;

(d) order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or a permit issued pursuant to this part;

(e) issue an order revoking a permit when the requirements set forth by a notice of violation, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

(f) order the halting of any operation that is started without first having obtained a permit as required by this part;

(g) conduct investigations and inspections necessary to ensure compliance with this part; and

(h) encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work.

(2) The board shall conduct hearings under this part.

History: En. 50-1605 by Sec. 5, Ch. 280, L. 1974; amd. Sec. 5, Ch. 441, L. 1975; R.C.M. 1947, 50-1605; amd. Sec. 363, Ch. 418, L. 1995; amd. Sec. 6, Ch. 79, L. 2001; amd. Sec. 83, Ch. 324, L. 2021.

82-4-113. Receipts paid into general fund. Except for bond forfeiture moneys, all fees, penalties, and other moneys available or paid to the department under the provisions of this part shall be placed in the state treasury and credited to the general fund.

History: En. 50-1610 by Sec. 10, Ch. 280, L. 1974; amd. Sec. 10, Ch. 441, L. 1975; R.C.M. 1947, 50-1610; amd. Sec. 1, Ch. 31, L. 1981.

82-4-114 through 82-4-120 reserved.

82-4-121. Permit required. No person may commence preparatory work until the operator shall have first obtained from the department a mine-site location permit for a new strip mine or a new underground mine or a permit under part 2 of this chapter, if the application for such permit includes an appropriate long-range mining plan acceptable to the department.

History: En. 50-1606 by Sec. 6, Ch. 280, L. 1974; amd. Sec. 6, Ch. 441, L. 1975; R.C.M. 1947, 50-1606.

82-4-122. Application and approval of permit. (1) A person desiring a mine-site location permit shall file with the department an application that must contain a reclamation plan for any preparatory work and any other information the department considers necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine or a new underground mine. The department may require any information included in but not limited to an application for a strip-mining permit or underground-mining permit as required by part 2 of this chapter.

(2) Except as provided in **75-1-205(4)** and **75-1-208(4)(b)**, the department shall notify the applicant within 365 days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine or a new underground mine. If the site is approved, the department shall issue the applicant a mine-site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within 365 days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(1), (3); amd. Sec. 10, Ch. 299, L. 2001; amd. Sec. 13, Ch. 337, L. 2005.

82-4-123. Permit fee and surety bond. A fee of \$50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond

payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of \$5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(4); amd. Sec. 364, Ch. 418, L. 1995; amd. Sec. 84, Ch. 324, L. 2021.

82-4-124. Permit -- authority under and renewal. A mine-site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of 1 year from the date of issuance and is renewable until the applicant has applied for and received a strip-mining or underground-mining permit in accordance with part 2 of this chapter.

History: En. 50-1607 by Sec. 7, Ch. 280, L. 1974; amd. Sec. 7, Ch. 441, L. 1975; R.C.M. 1947, 50-1607(2).

82-4-125. Refusal of permit. (1) The department may not issue a permit under this part if it finds that a new strip mine or a new underground mine is not consistent with the purposes and policies of this part.

(2) The department shall not approve a new strip-mining site, a new underground-mining site, or preparatory worksite for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in **82-4-227**.

(3) The department shall not issue a permit under this part if a proposed reclamation plan does not meet the requirements of part 2 of this chapter.

History: En. 50-1608 by Sec. 8, Ch. 280, L. 1974; amd. Sec. 8, Ch. 441, L. 1975; R.C.M. 1947, 50-1608.

82-4-126. When information may be used to meet strip-mining or underground-mining permit requirements. The department may choose to accept information submitted under this part to the extent it is applicable and relevant as satisfying the requirements of part 2 of this chapter.

History: En. 50-1614 by Sec. 14, Ch. 280, L. 1974; amd. Sec. 11, Ch. 441, L. 1975; R.C.M. 1947, 50-1614.

82-4-127. Effect of siting permit on subsequent mining permits. When the department has sufficient information to approve or disapprove a mine-site location permit application on either the entire area being considered for a mine-site location permit or a portion of the area on the grounds listed in **82-4-227**(2) and (7), the department shall provide written notification to the operator that the department has enough information to approve or disapprove the application. The decision is binding on the department with regard to strip-mining or underground-mining permit applications as specified in part 2 of this chapter unless:

(1) new information is submitted or obtained in compliance with part 2 of this chapter that indicates a situation not existing or known at the time of the issuance of a permit under this part;

(2) an application under this part misrepresented information related to the criteria;

(3) a situation, which was not in existence at the time of the issuance of a permit under this part, develops because of strip mining or underground mining operations.

History: En. 50-1616 by Sec. 16, Ch. 280, L. 1974; amd. Sec. 13, Ch. 441, L. 1975; R.C.M. 1947, 50-1616; amd. Sec. 68, Ch. 44, L. 2007.

82-4-128. Termination of permit. A mine-site location permit granted by the department in accordance with the provisions of this part shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine-site location permit for which a strip-mining or an underground-mining permit is granted pursuant to the provisions of part 2 of this chapter shall be released from the terms and provisions of the mine-site location permit.

History: En. 50-1615 by Sec. 15, Ch. 280, L. 1974; amd. Sec. 12, Ch. 441, L. 1975; R.C.M. 1947, 50-1615.

82-4-129. Noncompliance -- suspension of permits. (1) If any of the requirements of this part or rules or orders of the department have not been complied with within the time limits set by the department or by this part, the department shall serve a notice of noncompliance on the operator or, when necessary, the director of the department shall order the suspension of a permit. The notice or order must be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until the operator has complied with all the requirements of this part with respect to previous permits issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part.

History: En. 50-1609 by Sec. 9, Ch. 280, L. 1974; amd. Sec. 9, Ch. 441, L. 1975; R.C.M. 1947, 50-1609; amd. Sec. 365, Ch. 418, L. 1995; amd. Sec. 85, Ch. 324, L. 2021.

82-4-130. Procedure for hearings. (1) A person aggrieved by a final decision of the department under this part may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after the department's decision.

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

History: En. 50-1613 by Sec. 13, Ch. 280, L. 1974; R.C.M. 1947, 50-1613; amd. Sec. 7, Ch. 79, L. 2001.

82-4-131 through 82-4-140 reserved.

82-4-141. Violation -- penalty. (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. These penalties are recoverable in an action brought by the department in the

district court of the first judicial district, Lewis and Clark County, or in the district court having jurisdiction of the defendant.

(2) The department may bring an action for a restraining order, temporary injunction, or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who purposely or knowingly violates any of the provisions of this part or any determination or order adopted under this part that has become final is guilty of a misdemeanor and shall be fined not less than \$500 and not more than \$5,000. Each day on which a violation occurs constitutes a separate offense.

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

History: En. 50-1611 by Sec. 11, Ch. 280, L. 1974; R.C.M. 1947, 50-1611; amd. Sec. 366, Ch. 418, L. 1995; amd. Sec. 24, Ch. 487, L. 2005.

82-4-142. Mandamus to compel enforcement. (1) A resident of this state who has 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 enforce to the attention of the public officer or employee by a written statement under oath that must state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed in **45-7-202**.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus 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 whose duty it is to enforce the requirement or rule 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.

History: En. 50-1612 by Sec. 12, Ch. 280, L. 1974; R.C.M. 1947, 50-1612; amd. Sec. 2, Ch. 201, L. 1979; amd. Sec. 2732, Ch. 56, L. 2009; amd. Sec. 46, Ch. 535, L. 2021.