Montana Code Annotated 2023

TITLE 82. MINERALS, OIL, AND GAS
CHAPTER 4. RECLAMATION

Part 3. Metal Mine Reclamation

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.

(2) It is the legislature's intent that:

(a) 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;

(b) tailings storage facilities are designed, operated, monitored, and closed in a manner that:

(i) meets state-of-practice engineering design standards;

(ii) uses applicable, appropriate, and current technologies and techniques as are practicable given site-specific conditions and concerns; and

(iii) provides protection of human health and the environment; and

(c) the regulation of tailings storage facilities is not prescriptive in detail but allows for adaptive management using evolving best engineering practices based on the recommendations of qualified, experienced engineers.

(3) 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 the specifications for reclamation and tailings storage facilities 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 and tailings storage 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.

(4) The legislature finds that the mining of rock products from or just below the ground surface not containing sulfides is subject to fewer permitting requirements than other minerals because:

(a) the mining of nonsulfide rock products from or just below the ground surface creates fewer and more limited environmental concerns than the mining of other minerals;

(b) nonsulfide rock products are typically used in their natural state and not subject to chemical processing; and

(c) water quality and quantity are not significantly affected by mining of nonsulfide rock products from or just below the ground surface.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201; amd. Sec. 31, Ch. 361, L. 2003; amd. Sec. 1, Ch. 399, L. 2015; amd. Sec. 1, Ch. 152, L. 2021.

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) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

(5) "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.

(6) "Constructor" means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings distribution systems, reclaim water systems, and monitoring instrumentation.

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

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

(9) "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.

(10) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage facility.

(11) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.

(12) "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**.

(13) "Independent review engineer" means a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure.

(14) "Material deviation" means a failure to follow a condition in a design document, corrective action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected to substantively impair a tailings storage facility from performing as intended.

(15) "Maximum credible earthquake" means the most severe earthquake that can be expected at a site based on geologic and seismological evidence, including a review of all historic earthquake data of events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to the site.

(16) "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.

(17) "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.

(18) "Observational method" means a continuous, managed, and integrated process of design, construction control, monitoring, and review enabling appropriate, previously defined modifications to be incorporated during and after construction.

(19) "Operator" means a person who has an operating permit issued under **82-4-335**.

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

(21) "Panel" means the tailings storage facility independent review panel created for each new or expanded tailings storage facility.

(22) "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.

(23) "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.

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

(25) "Practicable" means available and capable of being implemented after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(26) "Professional engineer" means a registered professional engineer licensed to practice in Montana under Title 37, chapter 67, part 3.

(27) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct experience with the design and construction of tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction, operation, and closure of a tailings storage facility.

(28) "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**.

(29) (a) "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 that do not contain sulfides with the potential to produce acid, toxic, or otherwise pollutive solutions.

(b) The term does not include talc, gypsum, limestone, metalliferous ores, gemstones, or materials extracted by underground mining.

(30) (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 **82-4-343** or **82-4-335** except for a permit issued under **82-4-335**(2) or an operating permit that meets the criteria of subsection (30)(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.

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

(32) (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.

(33) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.

(34) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.

(b) The term does not include a facility that:

(i) stores 50 acre-feet or less of free water or process solution;

(ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution or underground mines that use tailings as backfill; or

(iii) stores dry stack or filtered tailings.

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

(36) "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.

(37) "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; amd. Sec. 2, Ch. 399, L. 2015; amd. Sec. 2, Ch. 152, L. 2021.

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 initial 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 initial rules regarding those activities. If, after the date of promulgation of initial 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; amd. Sec. 96, Ch. 324, L. 2021.

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**(30)(a)(i) and (30)(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**(30)(a)(i) and (30)(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; amd. Sec. 3, Ch. 399, L. 2015.

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 does not apply to operations on certain federal lands as specified by the department, provided it is first determined by the department 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; amd. Sec. 97, Ch. 324, L. 2021.

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 and adopting rules as 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; amd. Sec. 98, Ch. 324, L. 2021.

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 department 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; amd. Sec. 99, Ch. 324, L. 2021.

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 **82-4-343**, a separate final operating permit is required for each complex.

(2) 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.

(3) (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 department 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 (3)(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.

(4) 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, the engineer of record if applicable, 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. For a tailings storage facility, this requirement is met by submission of a design document pursuant to **82-4-376**, a panel report pursuant to **82-4-377**, and a tailings operation, maintenance, and surveillance manual pursuant to **82-4-379** prior to issuance of a draft permit.

(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. For a tailings storage facility, this requirement is met by submission of a design document pursuant to **82-4-376**, a panel report pursuant to **82-4-377**, and a tailings operation, maintenance, and surveillance manual pursuant to **82-4-379** prior to issuance of a draft permit.

(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.

(5) Except as provided in subsection (7), 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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 (4)(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 (9)(a)(i) or (9)(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; amd. Sec. 11, Ch. 399, L. 2015; amd. Sec. 3, Ch. 152, L. 2021; amd. Sec. 100, Ch. 324, L. 2021.

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.

(13) The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to **82-4-377**.

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; amd. Sec. 12, Ch. 399, L. 2015.

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:

(i) for rock products, 60 days of receipt of the initial application and within 20 days of receipt of responses to notices of deficiencies. If an applicant for a rock products operating permit responds to a notice of deficiency more than 1 year after its receipt, the department has 60 days to review the response to the notice of deficiency.

(ii) for all other applications not covered under subsection (1)(a)(i), 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies.

(b) The department's 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.

(c) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(d) 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.

(e) 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;

(iii) when an application submitted after October 1, 2015, includes a tailings storage facility, verify the receipt of the certified design document pursuant to **82-4-376**, the panel report pursuant to **82-4-377**, and the tailings operation, maintenance, and surveillance manual pursuant to **82-4-379**; and

(iv) 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.

(f) 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.

(g) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(h) 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)(i) 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.

(i) Except as provided in subsection (1)(h), 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**(9);

(iii) the department has found that permit issuance is not prohibited by **82-4-335**(8) 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.

(j) 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)(i)(iv).

(e) Upon submission of the bond and subject to subsection (1)(i), 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; amd. Sec. 13, Ch. 399, L. 2015; amd. Sec. 5, Ch. 152, L. 2021.

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 department, 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, during a suspension authorized pursuant to **82-4-341**(8)(b)(ii) or 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 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** or **82-4-343** 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 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; amd. Sec. 1, Ch. 458, L. 2019; amd. Sec. 6, Ch. 152, L. 2021; amd. Sec. 101, Ch. 324, L. 2021.

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 rule 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**(4)(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; amd. Sec. 7, Ch. 152, L. 2021; amd. Sec. 102, Ch. 324, L. 2021.

82-4-340. Successor operator. (1) 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, provided that both operators comply 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.

(2) For an operation with a forfeited bond where the department holds a suspended permit pursuant to **82-4-341**(8), the department may transfer the permit to a successor operator provided that the successor operator:

(a) complies with the requirements of this part; and

(b) assumes the duty of the former operator to complete reclamation and submits:

(i) any additional bond required under **82-4-338**; and

(ii) a $2,000 fee.

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; amd. Sec. 2, Ch. 458, L. 2019.

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 (9). 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) Except as provided in subsection (8)(e), the department may hold a permit suspended pursuant to **82-4-338** for up to 5 years and place the proceeds from a cash bond forfeited under this section in an interest-bearing account if mining of the ore body identified in the permit or a permit amendment application is not complete. The 5-year period begins on the date the department takes possession of the bond proceeds.

(b) The department may spend bond proceeds from the account during the suspension period to:

(i) perform maintenance, monitoring, and other actions required by the permit;

(ii) abate imminent danger to public health, public safety, or the environment; or

(iii) abate conditions that violate the provisions of Title 75, chapters 2 and 5, or conditions that may cause violations of those provisions.

(c) The department may transfer a permit suspended under this section as provided by **82-4-340**. The balance of funds in the account must be retained as a cash bond on behalf of the successor operator.

(d) The department may revoke a permit suspended under this section if a transfer is not completed within 5 years of the suspension. In the case of a revoked permit, reclamation may proceed pursuant to subsection (6).

(e) The department may extend a suspension up to 6 months if a potential successor operator is exercising reasonable diligence to complete the transfer. If litigation precludes the transfer, the suspension is stayed until the litigation is resolved.

(9) (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; amd. Sec. 3, Ch. 458, L. 2019; amd. Sec. 1, Ch. 566, L. 2023.

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 department may by rule establish criteria for the classification of amendments as major or minor. The department 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);

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use;

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with **82-4-376**(2)(l) and (2)(dd) and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section; and

(l) applications for rock product permits and amendments pursuant to **82-4-343**.

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; amd. Sec. 14, Ch. 399, L. 2015; amd. Sec. 8, Ch. 152, L. 2021; amd. Sec. 103, Ch. 324, L. 2021.

82-4-343. Operating permit -- rock products -- fees. (1) A person may not engage in mining of rock products or disturb land in anticipation of mining rock products before obtaining a final operating permit from the department pursuant to this section.

(2) (a) A person mining rock products or a landowner allowing another person to mine rock products from the landowner's land may obtain an operating permit for a single site or multiple sites if the operation or operations cumulatively disturb no more than 100 acres of the earth's surface and the single site or each of the multiple sites do 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) 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

(iv) impact significant historic or archaeological features.

(b) A landowner who is a permittee and allows another person to mine on the landowner's land is responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for 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) Prior to receiving a final operating permit from the department, a person shall pay a basic permit application fee of $500. The department may require a person 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 $2,000, 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 (3)(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.

(4) 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 rock products 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, 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;

(5) 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.

(6) 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 (4)(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 **82-4-335**(9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

(7) The department's action on an application submitted under this section does not require an environmental review under Title 75, chapter 1, for the following:

(a) an application for a new permit resulting in less than 15 acres of total disturbance;

(b) an application to amend a permit resulting in less than 15 acres of total disturbance; and

(c) an application to amend a permit that has been analyzed under Title 75, chapter 1, that results in less than 25 acres of new disturbance.

History: En. Sec. 4, Ch. 152, L. 2021.

82-4-344 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 permitholder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permitholder 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 (9), **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; amd. Sec. 4, Ch. 458, L. 2019.

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.

(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; amd. Sec. 48, Ch. 535, L. 2021.

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 and 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, an administrative deficiency notice, or a term or condition of a permit issued under this part, it shall send a letter of warning or violation to the person. The letter of warning or violation 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 recommend corrective actions necessary to return to compliance. Issuance of a letter of warning or violation 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 letter of warning or violation 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.

(8) For the purposes of this section, "administrative deficiency" means a deficiency in reporting, recordkeeping, fee payment, or notification that the department determines is minor in nature, nonsubstantive, and unlikely to recur.

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; amd. Sec. 49, Ch. 535, L. 2021; amd. Sec. 1, Ch. 191, L. 2023.

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 department 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; amd. Sec. 104, Ch. 324, L. 2021.

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.

(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.

82-4-373 and 82-4-374 reserved.

82-4-375. Engineer of record -- duties. (1) An operator with an existing tailings storage facility shall provide the department with written designation of an engineer of record, including contact information, within 180 days after October 1, 2015.

(2) An application for a permit pursuant to **82-4-335** or an amendment that will include a tailings storage facility must include the designation of an engineer of record and contact information.

(3) The engineer of record may not be an employee of an operator or permit applicant. The engineer of record shall:

(a) review designs and other documents pertaining to tailings storage facilities required by this part;

(b) certify and seal designs or other documents pertaining to tailings storage facilities submitted to the department;

(c) complete an annual inspection of the tailings storage facility as required in **82-4-381**;

(d) notify the operator when credible evidence indicates the tailings storage facility is not performing as intended; and

(e) immediately notify the operator and the department when credible evidence indicates that a tailings storage facility presents an imminent threat or a high potential for imminent threat to human health or the environment.

(4) The engineer of record, operator, or permit applicant shall notify the department in writing if there is a change in the engineer of record.

(5) If the operator or permit applicant does not designate an engineer of record or replace an engineer of record within 90 days of receipt of notification that the engineer is no longer the engineer of record, the department shall order suspension of the deposition of tailings until an engineer of record is established pursuant to this section.

History: En. Sec. 4, Ch. 399, L. 2015.

82-4-376. Tailings storage facility -- design document -- fee. (1) An operator or a permit applicant proposing to construct a new tailings storage facility, an operator that is constructing a new tailings storage facility, or an operator proposing to expand an existing tailings storage facility shall submit to the department a design document and a $1,500 fee.

(2) The design document must contain:

(a) the certification of the engineer of record;

(b) a detailed description of the proposed facility and site characteristics;

(c) maps, sections, and appurtenances design drawings in both hard copy and electronic format with sufficient detail for an independent review;

(d) the raw data files for models used in developing and evaluating the design;

(e) an evaluation indicating that the proposed tailings storage facility will be designed, operated, monitored, and closed using the most applicable, appropriate, and current technologies and techniques practicable given site-specific conditions and concerns;

(f) a site geotechnical investigation commensurate in detail and scope with the complexity of the site geology and proposed tailings storage facility design. The investigation must include a geological model of site conditions and a rationalization of the site investigation process.

(g) a demonstration through site investigation, laboratory testing, geotechnical analyses, and other appropriate means that the tailings, embankment, and foundation materials controlling slope stability

are not susceptible to liquefaction or to significant strain-weakening under the anticipated static or cyclic loading conditions, to the extent that the amount of estimated deformation under the loading conditions would result in loss of containment;

(h) for a new tailings storage facility, design factors of safety against slope instability not less than:

(i) 1.5 for static loading under normal operating conditions, with appropriate use of undrained shear strength analysis for saturated, contractive materials;

(ii) 1.3 for static loading under construction conditions if the independent review panel created pursuant to **82-4-377** agrees that site-specific conditions justify the reduced factor of safety and that the extent and duration of the reduced factor of safety are acceptable; and

(iii) 1.2 for postearthquake, static loading conditions with appropriate use of undrained analysis and selection of shear strength parameters. Under these conditions, a postearthquake factor of safety less than 1.2 but greater than 1.0 may be accepted if the amount of estimated deformation does not result in loss of containment.

(i) for a new tailings storage facility, an analysis showing that the seismic response of the tailings storage facility does not result in the uncontrolled release of impounded materials or other undesirable consequences when subject to the ground motion associated with the 1-in-10,000-year event, or the maximum credible earthquake, whichever is larger. Any numeric analysis of the seismic response must be calculated for the normal maximum loading condition with steady-state seepage. The analysis must include, without limitation, consideration of:

(i) anticipated ground motion frequency content;

(ii) fundamental period and dynamic response;

(iii) potential liquefaction;

(iv) loss of material strength;

(v) settlement;

(vi) ground displacement;

(vii) deformation; and

(viii) the potential for secondary failure modes.

(j) if a pseudo-static stability analysis is performed to support the design, a justification for the use of the method with respect to the anticipated response to cyclic loading of the tailings facility structure and constituent materials. The calculations must be accompanied by a description of the assumptions used in deriving the seismic coefficient.

(k) reduced factors of safety or seismic design criteria if the independent review panel agrees that site-specific conditions justify that design to the specified requirements of factors of safety or seismic design criteria in this section is not necessary;

(l) for expansion of an existing tailings storage facility, either an analysis showing the proposed expansion meets the minimum design requirements for a new tailings storage facility under this section or an analysis showing the proposed expansion does not reduce the tailings storage facility's original design factors of safety and seismic event design criteria;

(m) a probabilistic and deterministic seismic evaluation for the area and assessment of peak horizontal ground acceleration;

(n) a dam breach analysis, a failure modes and effects analysis or other appropriate detailed risk assessment, and an observational method plan addressing residual risk;

(o) a description of the chemical and physical properties of the materials and process solutions to be stored in the tailings storage facility;

(p) when appropriate, depending on the chemical and physical properties of the materials, a detailed description of how undesirable constituents contained in the impoundment will be isolated from the environment;

(q) a description of the tailings storage facility capacity over time and the estimated ultimate capacity;

(r) specifications for impoundment construction, including the specifications for the foundation, abutments, embankment, means of containment, and the borrow materials;

(s) a construction management plan that includes, at a minimum, parameters and levels of acceptability to be monitored during construction for quality control and quality assurance purposes. The frequency of sampling, the amount of oversight, the qualifications of the oversight personnel, and the role of the panel during and after construction must be specified and agreed to by the panel.

(t) a list of quantitative performance parameters for construction, operation, and closure of the tailings storage facility. The quantitative performance parameters may be expressed as minimums or maximums for embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(u) a list of the assumptions used during the analysis and design of the facility and a description justifying the validity of each assumption;

(v) a description of how the design integrates into a closure plan that facilitates, to the extent possible, dam decommissioning resulting in a maintenance-free closure;

(w) requirements for postclosure monitoring, inspection, and review, including the frequency of engineer of record inspections, independent panel reviews, and retention of an engineer of record;

(x) a description of proposed risk management measures for each facility life-cycle stage, including construction, operation, and closure;

(y) a detailed water balance, evidence of calibration if available, and the raw data used to develop the water balance;

(z) a detailed description of how water, seepage, and process solutions are to be routed or managed during construction, operation, and closure;

(aa) a detailed description of storm water controls, including diversions, storage, freeboard, and how extreme storm events will be managed;

(bb) a design storm event for operation and closure conforming to current engineering best practices for the type of facility proposed that includes:

(i) a rationale for the selection of the design storm event;

(ii) the magnitude of the design storm event;

(iii) the magnitude of runoff generated by the design storm event to and around the impoundment; and

(iv) evidence that the dynamic nature of climatology was considered;

(cc) for a new tailings storage facility, design sufficient to store:

(i) the probable maximum flood event plus maximum operating water or solution volume plus sufficient freeboard for wave action; or

(ii) a flood event design criterion less than the probable maximum flood but greater than the 1-in-500-year, 24-hour event if the panel agrees that site-specific conditions justify that design to the probable maximum flood standard is unnecessary;

(dd) for an expansion of an existing tailings storage facility, either an analysis that the proposed expansion meets the minimum requirements in this section to manage storm or flood events or an analysis that the expansion does not reduce the tailings storage facility's ability to store or otherwise manage the original facility design storm or flood events; and

(ee) any other information, drawings, maps, detailed descriptions, or data to assist the panel in determining if the new or expanded tailings storage facility protects human health and the environment.

(3) The design document must be submitted prior to the issuance of the draft permit pursuant to **82-4-337**.

History: En. Sec. 5, Ch. 399, L. 2015.

82-4-377. Independent review panel -- selection -- duties. (1) An independent review panel shall review the design document required by **82-4-376**.

(2) The operator or permit applicant shall select three independent review engineers to serve on the panel and shall submit those names to the department. The department may reject any proposed panelists. If the department rejects a proposed panelist, the operator or permit applicant shall continue to select independent review engineers as panelists until three panelists are approved by the department.

(3) An independent review engineer may not be an employee of:

(a) an operator or permit applicant; or

(b) the design consultant, the engineer of record, or the constructor.

(4) The operator or permit applicant shall contract with panel members, process invoices, and pay costs.

(5) A representative of the department and a representative of the operator or permit applicant may participate on the panel, but they are not members of the panel and their participation is nonbinding on the review.

(6) The engineer of record is not a member of the panel but shall participate in the panel review.

(7) The operator or permit applicant shall provide each panel member with a hard copy and an electronic copy of the design document and other information requested by the panel.

(8) The panel shall review the design document, underlying analysis, and assumptions for consistency with this part. The panel shall assess the practicable application of current technology in the proposed design.

(9) The panel shall submit its review and any recommended modifications to the operator or permit applicant and the department. The panel's determination is conclusive. The report must be signed by each panel member.

(10) The engineer of record shall modify the design document to address the recommendations of the panel and shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to **82-4-376**.

(11) For an expansion of a tailings storage facility for which the original design document was approved by the department, the operator shall make a reasonable effort to retain the previous panel members. To replace a panel member, the process in subsection (2) must be followed.

History: En. Sec. 6, Ch. 399, L. 2015.

82-4-378. Quality assurance during construction. (1) An operator constructing a new or expanded tailings storage facility shall:

(a) when indicated by the construction management plan, engage a professional engineer or other oversight specified in the plan to implement the construction management plan specified in the final design document. The professional engineer must be an employee of the engineer of record or an employee of the design firm represented by the engineer of record but may not be an employee of the constructor or the operator.

(b) ensure the collection of all records, including as-built plans and specifications, necessary to demonstrate that the tailings storage facility is constructed as specified in the final design document;

(c) when indicated by the construction management plan, secure a certification from the professional engineer for the records generated by the implementation of the quality assurance monitoring as specified in the final design document; and

(d) submit to the department the records collected during the quality assurance monitoring specified in the approved design document for all tailings storage facility construction conducted during a calendar year in the annual report required by the facility's operating permit or an independent submittal at the completion of the construction activity.

(2) After an appropriate investigation and consultation with the operator, the department shall, pursuant to **82-4-362**, order the suspension of tailings storage facility construction activities if credible evidence is observed, submitted, or otherwise obtained that construction activities are not being conducted as specified in the design document.

History: En. Sec. 7, Ch. 399, L. 2015.

82-4-379. Tailings operation, maintenance, and surveillance manual. (1) A tailings operation, maintenance, and surveillance manual is required for a tailings storage facility.

(2) For a tailings storage facility that exists on or before October 1, 2015, the tailings operation, maintenance, and surveillance manual must be developed within 180 days of October 1, 2015. For a tailings storage facility proposed after October 1, 2015, the tailings operation, maintenance, and surveillance manual must be developed prior to issuance of the draft permit pursuant to **82-4-337**.

(3) The operator or permit applicant shall develop the manual, which must contain:

(a) an identification of the roles and responsibilities of the agents of the operator of the tailings storage facility. The specific organizational role with ultimate responsibility for the tailings storage facility must be identified as the senior ranking agent of the operator at the site of the tailings storage facility.

(b) an identification of necessary maintenance and frequency of maintenance to safely operate the tailings storage facility;

(c) an identification of training needs and training plans for persons with responsibilities identified in the manual;

(d) an identification of operational aspects employed to facilitate, to the extent possible, a maintenance-free closure;

(e) an identification of all inspections and monitoring and the frequency of inspections and monitoring to ensure that the tailings storage facility is performing as intended;

(f) an identification of monitoring and data collection necessary to maintain and calibrate the tailings storage facility's water balance;

(g) a description of how issues identified by routine inspection or monitoring will be resolved and how the progress toward resolution is tracked;

(h) a listing of quantitative performance parameters for construction, operation, and closure. The quantitative performance parameters may be expressed as minimums or maximums for parameters such as embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(i) an emergency preparedness and response plan based on the failure modes and effects analysis or other appropriate risk assessment;

(j) an identification of specific trigger levels or events when the department and the engineer of record are immediately notified. When possible, trigger levels must be sufficiently conservative to allow time for corrective actions to be implemented.

(k) any other information necessary to ensure that the tailings storage facility is operated and maintained, is performing, and can be closed as intended.

(4) The engineer of record shall certify by seal that:

(a) the tailings operation, maintenance, and surveillance manual is consistent with the facility's design;

(b) the inspections and monitoring described in the tailings operation, maintenance, and surveillance manual are reasonably sufficient to ensure the tailings storage facility will perform as intended and will reasonably be expected to detect deviations if they occur; and

(c) the emergency preparedness and response plan describes reasonable measures that can be taken to protect human health and the environment.

(5) The operator shall review the tailings operation, maintenance, and surveillance manual annually to ensure that the manual reflects current conditions. Any revision of the manual during operation or at closure must be certified by the seal of the engineer of record.

History: En. Sec. 8, Ch. 399, L. 2015.

82-4-380. Periodic review required. (1) At least once every 5 years following department approval of a design document pursuant to **82-4-376** during mining, or as required in a reclamation plan approved pursuant to **82-4-336**, the operator shall assemble a panel in accordance with the panel requirements in **82-4-377**. A reasonable effort must be made to retain previous panel members.

(2) The panel shall:

(a) inspect the tailings storage facility;

(b) review the tailings operation, maintenance, and surveillance manual and records collected in association with the manual;

(c) interview people with responsibilities identified in the tailings operation, maintenance, and surveillance manual; and

(d) review annual engineer of record inspection reports, corrective action plans, records associated with construction, and any other aspect, plan, record, document, design, model, or report related to

the tailings storage facility that the panel needs to review to ensure that the tailings storage facility is constructed, operated, and maintained as designed and is functioning, can be closed as intended, and meets acceptable engineering standards.

(3) The operator shall provide documents and records necessary for the panel to complete a periodic review.

(4) The panel shall prepare a report detailing the scope of review and include any recommendations resulting from the review.

(5) The panel shall immediately notify the department and the operator if there is an imminent threat to human health or the environment.

(6) The final review report must be signed by each panel member and provided to the department and the operator.

(7) The operator shall prepare a corrective action plan and schedule effectively implementing the recommendations included in the panel's report. The operator shall submit the corrective action plan and schedule to the panel within 60 days after receipt of the panel report.

(8) The panel shall review the corrective action plan and schedule to determine whether the corrective action plan and schedule proposed by the operator will effectively implement the recommendations included in the panel's report.

(9) Within 30 days after receipt of approval from the panel, the operator shall submit the corrective action plan with an implementation schedule to the department.

(10) Failure to implement the corrective action plan pursuant to the implementation schedule is subject to the provisions of **82-4-361** and **82-4-362**.

History: En. Sec. 9, Ch. 399, L. 2015.

82-4-381. Annual inspections. (1) The engineer of record shall inspect a tailings storage facility annually during operation or as required during closure pursuant to a reclamation plan under **82-4-336**.

(2) (a) The engineer of record shall prepare a report describing the scope of the inspection and actions recommended to ensure the tailings storage facility is properly operated and maintained.

(b) The engineer of record shall submit the report to the operator and the department and immediately notify the department and the operator if the tailings impoundment presents an imminent threat or the potential for an imminent threat to human health or the environment.

(3) (a) If the report contains recommendations, the operator shall prepare a corrective action plan implementing the recommendations of the engineer of record and an implementation schedule.

(b) The operator shall submit the corrective action plan and schedule to the engineer of record.

(c) The corrective actions proposed by the operator must reasonably be expected to effectively address the recommendations contained in the inspection report. The engineer of record shall verify the proposed corrective actions.

(d) The operator shall submit the corrective action plan verified by the engineer of record and the implementation schedule to the department within 120 days following the date of the inspection.

(e) The operator shall implement the corrective action plan pursuant to the implementation schedule.

(4) The department shall conduct inspections, review records, and take other actions necessary to determine if the tailings storage facility is being operated in a manner consistent with the approved design document and the tailings operation, maintenance, and surveillance manual.

(5) Failure to implement the corrective action plan and the implementation schedule or material deviations from the approved design document or the tailings operation, maintenance, and surveillance manual are subject to the provisions of **82-4-361** and **82-4-362**.

History: En. Sec. 10, Ch. 399, L. 2015.

82-4-382 through 82-4-389 reserved.

82-4-390. Cyanide heap and vat leach open-pit gold and silver mining prohibited. (1) Open-pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited except as described in subsection (2).

(2) A mine described in this section operating on November 3, 1998, may continue operating under its existing operating permit or any amended permit that is necessary for the continued operation of the mine.

History: En. Sec. 1, I.M. No. 137, approved Nov. 3, 1998; amd. Sec. 1, Ch. 457, L. 1999.