



AN ACT GENERALLY REVISING LAWS RELATED TO OPENCUT MINING; CLARIFYING EFFECTIVE AND EXPIRATION DATES FOR PERMITS; REQUIRING LANDOWNERS TO ALLOW ACCESS FOR RECLAMATION; EXTENDING APPLICATION DEADLINES FOR WEATHER OR OTHER FIELD CONDITIONS; REVISING THE BONDING PROCESS; ESTABLISHING FEES; ALLOWING LIMITED BORROW OPERATION OF LESS THAN 15 ACRES; REQUIRING BONDING AND RECLAMATION FOR LIMITED BORROW OPERATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-38-106, 15-38-113, 82-4-405, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-437, AND 82-4-438, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax -- records -- collection of taxes -- refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 17-2-124, deposit the proceeds from the resource indemnity and ground water assessment tax ~~and money deposited pursuant to 82-4-424(3)~~ in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds from the tax in the ground water assessment account established by

85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

(d) 50% of the remaining proceeds from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

(e) all remaining proceeds from the tax in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 2. Section 15-38-113, MCA, is amended to read:

"15-38-113. Exemption from resource indemnity and ground water assessment tax. The following persons are exempt from the resource indemnity and ground water assessment tax:

(1) a person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1;

(2) a person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3;

(3) a person who holds a permit pursuant to Title 82, chapter 4, part 4, and is subject to the ~~fee~~ fees provided for in 82-4-437(2) and (3); or

(4) a county, city, or town that holds a permit pursuant to Title 82, chapter 4, part 4."

Section 3. Section 82-4-405, MCA, is amended to read:

"82-4-405. Inapplicability to government. (1) Except as provided in subsection (2), the provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

(2) Counties, cities, and towns are responsible for the ~~fee~~ fees required pursuant to 82-4-437(2) and (3)."

Section 4. Section 82-4-424, MCA, is amended to read:

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

(2) All penalties and other money paid under the provisions of this part, except ~~annual~~ fees provided for in 82-4-437, must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

~~(3) The department shall deposit 85% of proceeds from annual fees into the opencut fund established in 82-4-438 and transfer 15% of the proceeds from the fees to the department of revenue for distribution in accordance with 15-38-106."~~

Section 5. Section 82-4-425, MCA, is amended to read:

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

Section 6. Section 82-4-426, MCA, is amended to read:

"82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part,

the department may or its agents or contractors may enter and reclaim any affected land with respect to which a bond has been forfeited."

Section 7. Section 82-4-427, MCA, is amended to read:

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

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

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

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

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

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

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

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

(5) A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(6) The petition for judicial review must include the party to whom the permit was issued or the applicant

unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 8. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for mining, processing, and reclamation required. (1) ~~A~~ Except as provided in [section 14], a permit is required for an operator who:

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

(b) conducts more than one opencut operation where each of the operations results in the removal of less than 10,000 cubic yards of materials and overburden but the operations result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate; or

(c) removes materials or overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards.

(2) Except as provided in or conditioned under subsections (5) and (6), an operator who holds a permit under this part may conduct a limited opencut operation without first securing an additional permit or an amendment to an existing permit if the limited opencut operation meets the following criteria:

(a) the area to be disturbed by the limited opencut operation is located more than 1 mile from the operator's nearest existing limited opencut operation;

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

(c) the operator:

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

(ii) within 1 year of the department's receipt of the limited opencut operation form, salvages all soil from the area to be disturbed, removes the materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding topography, replaces an appropriate amount of overburden and all soil, and

reclaims to conditions present prior to mining all access roads used for the operation unless the landowner requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.

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

(3) At the operator's request and with department approval, the operator may have up to 1 additional year to perform the reclamation required by subsection (2)(c), provided the operator does not apply to extend or continue the limited opencut operation pursuant to subsection (4).

(4) (a) An operator who commences a limited opencut operation pursuant to subsection (2) may apply for a permit to continue or expand that opencut operation pursuant to the provisions of this subsection (4).

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

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

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

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

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

(6) The department may require an additional bond as a condition for the conduct of an opencut operation under subsection (2).

(7) Opencut operations described in subsection (2) may not occur:

- (a) in ephemeral, intermittent, or perennial streams;
 - (b) in an area where the opencut operation will intercept surface water, ground water, or any slope that is steeper than 3:1; or
 - (c) in any area where mining would be restricted by other laws.
- (8) Sand and gravel opencut operations must meet applicable local zoning regulations adopted under Title 76, chapter 2.

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

(10) (a) Except as provided in subsection (10)(b), a permit issued under this part expires on the reclamation date proposed by the operator and approved by the department.

(b) Prior to the expiration of a permit:

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

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

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

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

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

Section 9. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for permit -- contents -- issuance -- amendment. (1) An application for a permit must be made using forms furnished by the department and must contain the following:

- (a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;
- (b) the type of operation to be conducted;
- (c) the estimated volume of overburden and materials to be removed;
- (d) the location of the proposed opencut operation by legal description and county accompanied by a

map showing the location of the proposed operation sufficient to allow the public to locate the proposed site; and

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

(2) The application must be accompanied by:

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

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

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

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

and

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

~~(e)~~(f) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the owners of record as shown no more than 60 days prior to the submission of an application in the paper or electronic records of the county clerk and recorder for the county where the proposed opencut operation is located; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed opencut operation, the notice provides an address for the map posted on the department's website and

instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the applicant shall promptly provide a paper copy to a requestor.

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

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

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

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

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

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

(a) hold a meeting; and

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

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

(i) the applicant; or

(ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple property owners of the same parcel are to be counted as a single property owner.

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

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

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

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

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

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

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

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

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

reports.

~~(12)~~(13) The department shall post a copy of an acceptable permit or amendment on its website."

Section 10. Section 82-4-433, MCA, is amended to read:

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

(2) (a) For opencut operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

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

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

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

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

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

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

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

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

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

Section 11. Section 82-4-434, MCA, is amended to read:

"82-4-434. Plan of operation -- requirements. (1) ~~The department shall immediately submit a plan of operation received in a permit or permit amendment application involving expansion of the permit area to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined.~~

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

~~(3)~~(2) The department may not accept a plan of operation unless the plan provides:

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

(b) that whenever the opencut operation results in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, catchments, ponds, or other reasonable devices to control water drainage and sediment will be constructed and maintained, provided the devices will not interfere with other landowners' rights or contribute to water pollution;

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

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

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

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

(g) that the opencut operation will be conducted to avoid range and wildland fires and spontaneous combustion and that open burning will be conducted in accordance with suitable practices for fire prevention and control. Approval of the plan for fire prevention and control under this part does not relieve the operator of the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.

- (h) that archaeological and historical values on affected lands will be given appropriate protection;
- (i) that except for those postmining land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no longer required;
- (j) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmining land use and that retards erosion;
- (k) that reclamation will be as concurrent with the opencut operation as feasible and will be completed within a specified length of time;
- (l) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the opencut operation;
- (m) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and
- (n) that any additional procedures, including monitoring, that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

~~(4)(3)~~ If reclamation according to the plan of operation ~~has not been~~ is not completed in the time specified, the department, ~~after 30 days' written notice, shall~~ may:

- (a) pursue an administrative order pursuant to 82-4-441;
- (b) after 30 days' written notice, order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement; or
- (c) may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

~~(5)(4)~~ (a) At any time during the term of the permit, the operator may for good reason submit to the department a new plan of operation or amendments to the existing plan, including extensions of time for reclamation.

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

- (i) the new plan of operation or amendments comply with the requirements of this section; and
- (ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of

operation; or

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

~~(6)~~(5) The permit, plan of operation, and amendments accepted by the department are a public record and are open to inspection."

Section 12. Section 82-4-437, MCA, is amended to read:

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

(2) (a) Except as provided in subsection (2)(b), each opencut operation shall submit with the annual report a fee of ~~2.5~~ 4.5 cents per cubic yard of materials for all operations mined during the period covered by the report.

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

(3) The department:

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

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

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

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

or

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

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

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

Section 13. Section 82-4-438, MCA, is amended to read:

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

(2) There must be deposited in the account ~~85% of the~~ money received from the ~~fee fees~~ established in 82-4-437.

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

Section 14. Limited borrow operations -- notice -- limitations -- rulemaking -- definition. (1) Except as provided in subsection (3)(b), an operator who holds a permit under this part may conduct limited borrow operations without obtaining an additional opencut permit if the limited borrow operation:

- (a) operates during hours that are consistent with the hours of the associated project;
- (b) except for screens, does not involve material processing on site, including crushers and asphalt plants;
- (c) does not occur in ephemeral, intermittent, or perennial streams;
- (d) does not intercept surface water or ground water;
- (e) is not restricted by federal, state, or local law;
- (f) does not occur where 10 or more surface owners are within one-half mile of the exterior boundary of the limited borrow operation; and
- (g) is located:
 - (i) more than 1 mile from all of the operator's existing limited borrow operations and limited opencut operations; and
 - (ii) within 2.5 miles of right-of-way of the associated public project.

(2) Prior to commencing limited borrow operations, the operator shall submit complete and accurate site and operation information on a form provided by the department to the department including:

- (a) a landowner consultation form;
- (b) documentation of consultation with the state historic preservation office regarding possible archaeological or historical values on the affected land;
- (c) a reclamation bond calculated pursuant to the requirements of 82-4-433;
- (d) if applicable, documentation of compliance with Title 76, chapter 22, part 1;

- (e) a zoning form from the county or counties where the limited borrow operation is proposed;
- (f) results from three soil test pits meeting the soil guideline requirements; and
- (g) a \$500 fee.

(3) (a) Within 30 days of receiving the information required by subsection (2), the department shall determine if the information meets the requirements and notify the operator in writing. If the requirements are met, the operator may commence the limited borrow operation upon receipt of the notification.

(b) The department may prohibit a limited borrow operation under this section if, at the time of submission of information required by subsection (2), the operator has a pattern of violations of this part or is in current violation of this part, rules adopted under this part, or provisions of a permit.

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

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

(6) At the first seasonal opportunity, the operator shall seed or plant all land affected by the limited borrow operation in accordance with the requirements of 82-4-434(2)(j).

(7) A borrow source operation must be reclaimed within 2 years of the date the project concludes or is considered concluded by the project owner.

(8) The operator shall request final bond release within two growing seasons after completion of the project.

(9) For the purposes of this section "limited borrow operation" means excavations or grading less than 15 acres of affected land to obtain mixed opencut materials solely for public road or highway construction, repair, maintenance, or replacement as part of a project funded by the state department of transportation or the federal highway administration.

Section 15. Report to environmental quality council. (1) The department of environmental quality shall review laws, rules, and fees for the opencut mining program and solicit suggestions from stakeholders,

including suggestions to streamline the permitting process.

(2) Before September 15, 2020, the department shall report the findings of the review and proposed changes to laws, rules, or fees to the environmental quality council established in 5-16-101.

Section 16. Codification instruction. [Section 14] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 14].

Section 17. Effective date. [This act] is effective July 1, 2019.

- END -

I hereby certify that the within bill,
SB 0343, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 343

INTRODUCED BY T. RICHMOND

AN ACT GENERALLY REVISING LAWS RELATED TO OPENCUT MINING; CLARIFYING EFFECTIVE AND EXPIRATION DATES FOR PERMITS; REQUIRING LANDOWNERS TO ALLOW ACCESS FOR RECLAMATION; EXTENDING APPLICATION DEADLINES FOR WEATHER OR OTHER FIELD CONDITIONS; REVISING THE BONDING PROCESS; ESTABLISHING FEES; ALLOWING LIMITED BORROW OPERATION OF LESS THAN 15 ACRES; REQUIRING BONDING AND RECLAMATION FOR LIMITED BORROW OPERATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-38-106, 15-38-113, 82-4-405, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-437, AND 82-4-438, MCA; AND PROVIDING AN EFFECTIVE DATE.