

SENATE BILL NO. 375

INTRODUCED BY D. GRIMES

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMITTING AND RECLAMATION PLAN AMENDMENT PROCEDURES FOR THE OPENCUT MINING LAW; AND AMENDING SECTIONS 82-4-402, 82-4-422, 82-4-432, 82-4-434, AND 82-4-441, MCA."

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

Section 1. Section 82-4-402, MCA, is amended to read:

"82-4-402. Policy. Because the extraction and use of opencut materials is important to the economy of this state, it ~~is~~ is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part:

- (1) to preserve natural resources;
- (2) to aid in the protection of wildlife and aquatic resources;
- (3) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;
- (4) to protect and perpetuate the taxable value of property through reclamation;
- (5) to protect scenic, scientific, historic, or other unique areas; and
- (6) to promote the health, safety, and general welfare of the people of this state."

Section 2. Section 82-4-422, MCA, is amended to read:

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

- (a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of ~~the~~ this part ~~or~~ and rules adopted to implement this part will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of ~~the~~ this part;
- (b) amend permits in accordance with the provisions of [section 5];
- ~~(b)~~(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and

1 affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the
2 production of any books, papers, correspondence, memoranda, agreements, documents, or other records
3 relevant or material to the inquiry;

4 ~~(e)~~(d) reclaim any affected land with respect to which a bond has been forfeited; and

5 ~~(d)~~(e) make investigations or inspections that are considered necessary to ensure compliance with
6 any provision of this part.

7 (2) The board shall adopt rules:

8 (a) that pertain to opencut mining in order to accomplish the purposes of this part; and

9 (b) establishing uniform procedures for filing of necessary records, for the issuance of permits,
10 and for any other matters of administration not specifically enumerated in this part."

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12 **Section 3.** Section 82-4-432, MCA, is amended to read:

13 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) Applications for a
14 permit must be made upon a form furnished by the department. The form must contain the following:

15 (a) the name of the operator and, if other than the owner of the land, the name and address of
16 the owner;

17 (b) the type of operation to be conducted;

18 (c) the volume of earth to be removed, as accurately as the volume may then be estimated, and
19 the volume that has been previously removed, if any;

20 (d) the location of the operation by legal subdivision, section, township and range, and county;

21 (e) the date when the operation was or will be commenced; and

22 (f) a statement that the applicant has the right and power, by legal estate owned, to mine, by
23 opencut mining, the lands described.

24 (2) The application must be accompanied by:

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

26 (b) a fee of \$50 for an application to mine bentonite, clay, scoria, sand, or gravel;

27 (c) a statement from the local governing body having jurisdiction over the area to be mined
28 certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply
29 with applicable local zoning regulations adopted under Title 76, chapter 2; and

30 (d) the operator's plan of operation and a complete reclamation plan.

1 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit
2 an application and requests the department to examine the area to be mined, the department shall cause
3 the area to be examined and make recommendations to the person regarding reclamation. The person may
4 request a meeting with the department. The department shall hold a meeting if requested.

5 (4) Upon receipt of ~~a complete~~ an application containing all items listed in subsections (1) and (2),
6 the department shall, within ~~30~~ 15 days, notify the person whether or not the department believes that
7 the application is complete. If the department determines that the application is not complete, the
8 department shall include in the notification a detailed identification of all deficiencies. Within 30 days of
9 receipt of a complete application, the department shall notify the applicant if it has approved or denied the
10 application. If the department denies the application, the notice must include a detailed explanation
11 describing why the application was denied. The department may for sufficient cause extend its period of
12 review for an additional 30 days if it notifies the person of the extension prior to the end of the original
13 30-day period. The department shall include in the notification of extension the reason for the extension.
14 Upon approval of the application, the department shall issue a permit to the operator that entitles the
15 operator to continue or engage in opencut mining on the land described in the application.

16 (5) An operator desiring to have a permit amended to cover additional contiguous or nearby land
17 may file an amended application with the department. Upon receipt of the amended application and any
18 additional bond ~~as~~ that may be required and upon agreement to the terms of the amendment by the
19 parties, the department may issue an amendment to the original permit covering the additional land
20 described in the amended application without the payment of any additional fee.

21 (6) An operator may withdraw any land covered by a permit, except affected land, by notifying
22 the department of the withdrawal, in which case the penalty of the bond or security filed by the operator
23 pursuant to the provisions of this part must be reduced proportionately."
24

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

26 **"82-4-434. Reclamation plan part of permit -- requirements.** The reclamation plan must meet the
27 following requirements:

28 (1) The department shall submit each reclamation plan or operator-proposed amendments to the
29 reclamation plan to the landowner for recommendations and shall consider those recommendations in
30 deciding whether to approve or disapprove any plan or operator-proposed amendments. The department

1 may seek technical help from any state or federal agency. The department shall submit the plan
2 immediately to the state historic preservation office for evaluation of possible archaeological or historical
3 values in the area to be mined. The department may approve a reclamation plan only if the department has
4 found that the plan provides for the best possible reclamation under the circumstances at the time, so that
5 after mining operations are completed, the affected land will be reclaimed to a productive use. Once the
6 reclamation plan is accepted, in writing, by the department, ~~it~~ the plan must become a part of the permit
7 but is subject to annual review and modification by the department. Any modification by the department
8 must comply with the provisions of [section 5(2)].

9 (2) The department may not approve a reclamation plan or a plan of operations unless the plans
10 provide:

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

14 (b) that to the extent reasonable and practicable, the operator will establish vegetative cover
15 commensurate with the proposed land use;

16 (c) whenever operations result in a need to prevent acid drainage or sedimentation on or in
17 adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water
18 drainage, provided the formation of the impoundments or devices will not interfere with other landowners'
19 rights or contribute to water pollution;

20 (d) that to accomplish practical utilization of soil materials, the material will be salvaged and
21 utilized for placement on affected areas, if required by the reclamation plan after completion or termination
22 of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1
23 or less. The depth of soil materials to be placed on the reclaimed area must be specified in the plan.

24 (e) that grading will be commensurate with the topography sought and land use designated;

25 (f) that metal and other waste will be removed or buried;

26 (g) that all access, haul, and other support roads will be located, constructed, and maintained in
27 such a manner as to control and minimize channeling and other erosion;

28 (h) that the operator will submit a progress report annually to the department;

29 (i) that all operations will be conducted to avoid range and forest fires and spontaneous
30 combustion and that open burning of carbonaceous materials will be in accordance with suitable practices

1 for fire prevention and control;

2 (j) that archaeological and historical values in areas to be mined will be given appropriate
3 protection;

4 (k) that except for those postmine land uses that do not require vegetation, each surface area of
5 the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no
6 longer required;

7 (l) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that
8 is suitable for the postmine land use and that retards erosion and that all seed will be drilled unless
9 otherwise provided in the plan;

10 (m) that reclamation will be as concurrent with mining operations as feasible and will be completed
11 within a specified length of time;

12 (n) that surface water and ground water will be given appropriate protection, consistent with state
13 law, from deterioration of water quality and quantity that may arise as a result of the operation;

14 (o) that noise and visual impacts on residential areas will be minimized to the degree practicable
15 through berms, vegetation screens, and reasonable limits on hours of operation; and

16 (p) that any additional procedures that are necessary, consistent with the purposes of this part,
17 to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or
18 life forms will be implemented.

19 (3) If reclamation according to the plan has not been completed in the time specified, the
20 department, after 30 days' written notice, shall order the operator to cease mining and, if the operator
21 does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may
22 institute an action to enjoin further operation and may sue for damages for breach of the conditions of the
23 permit, for payment of the performance bond, or for both.

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

26 (b) The department may approve the proposed new reclamation plan or amendments to the
27 existing plan if:

28 (i) the operator has in good faith carried on reclamation according to the existing plan and the
29 proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than
30 the reclamation proposed under the existing plan; or

1 (ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or
2 amended.

3 (c) When accepted, the proposed new reclamation plan or the proposed amendments to the
4 existing plan become a part of the permit.

5 (5) The operator shall provide a performance bond or an alternative acceptable to the department
6 in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less
7 than \$200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.

8 (6) The permit, reclamation plan, and amendments accepted by the department are a public record
9 and are open to inspection.

10 (7) The permit is effective when signed by the department and the operator and remains in force
11 until terminated by mutual consent or by the department upon 6 months' notice."

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13 NEW SECTION. **Section 5. Plan amendments.** (1) Unless an amendment to a plan of operation,
14 reclamation plan, or other permit is proposed by the operator, the department may modify only the terms
15 of a plan or permit in compliance with this section.

16 (2) If the department believes, based on credible evidence, that continued operation under the
17 terms of an existing plan or permit would violate a substantive numerical or narrative state standard ~~of OR~~
18 regulation or otherwise ~~endanger the health, safety, and welfare of the people of this state~~ VIOLATE A
19 PURPOSE OF THIS PART, it may propose to the operator an amendment to the plan or permit.

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

22 (a) an identification of the existing plan or permit;

23 (b) the justification for the amendment, including all test results or other credible evidence that
24 the department relied on in proposing the amendment; and

25 (c) the text of the proposed amendment.

26 (4) The operator may, within 15 days of receipt of the department's amendment notice, request
27 a review of the amendment by the department director. The amendment is not effective or enforceable
28 until 15 days following the issuance of the department's amendment notice or until after the department
29 director affirms or modifies the amendment if a review by the director is requested. A decision by the
30 department director is subject to the contested case provisions of the Montana Administrative Procedure

1 Act, provided for in Title 2, chapter 4, parts 6 and 7.

2 (5) If the operator does not appeal the proposed amendment, the amendment becomes effective
3 and enforceable 15 days after the operator receives the notification.

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5 **Section 6.** Section 82-4-441, MCA, is amended to read:

6 **"82-4-441. Penalty -- enforcement.** (1) The department may assess against a person who violates
7 any of the provisions of this part, rules adopted under this part, or provisions of a reclamation permit:

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

9 (b) an additional civil penalty of not less than \$100 or more than \$1,000 for each day during
10 which a violation continues following the service of notice of the violation.

11 (2) The department shall take into account the following factors in determining whether to institute
12 a civil penalty action and in determining the penalty amount:

13 (a) the nature, circumstances, extent, and gravity of the violation;

14 (b) the violator's prior history of violations within the past 3 years;

15 (c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

16 (d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts
17 of the violation; and

18 (e) other matters that justice may require to decrease the amount of penalty.

19 (3) The department shall notify the person or operator of the violation. The person or operator is
20 entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the
21 issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is
22 proper. The department shall issue a statement of proposed penalty, including the penalty calculation that
23 identifies and describes the factors considered pursuant to subsection (2), no more than 10 days after
24 notice of violation. After the hearing or after the time for requesting a hearing has expired, the department
25 shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount
26 of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall
27 remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain
28 judicial review of the assessment, the person or operator shall submit with the penalty a statement that
29 the penalty is being paid under protest and the department shall hold the payment in escrow until judicial
30 review is complete. A person or operator who fails to request and submit testimony at the hearing provided

1 for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order
2 assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations.
3 These penalties are recoverable in an action brought by the department in the district court of the first
4 judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county
5 in which the opencut mine is located.

6 (4) The department may bring an action to enjoin an operator or other person violating or
7 threatening to violate this part, rules adopted pursuant to this part, or a permit pursuant to this part in the
8 district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the
9 district court of the county in which the opencut mine is located."

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11 NEW SECTION. **Section 7. Codification instruction.** [Section 5] is intended to be codified as an
12 integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to
13 [section 5].

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