

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to administrative	)	ADOPTION
requirements for limited opencut	)	
operations	)	(RECLAMATION)
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 3, 2014, the Board of Environmental Review proposes to adopt the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 15, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) An operator holding an opencut permit may conduct a limited opencut operation that meets the criteria in 82-4-431(2), MCA, without first obtaining an additional permit or an amendment to an existing permit when, prior to commencing the limited opencut operation, the operator completes and submits to the department appropriate site and opencut operation information on a limited opencut operation form provided by the department.

(2) The operator must submit a completed limited opencut operation form and the following information to the department prior to commencing the opencut operation:

- (a) the operator's complete name and address;
- (b) the location, in the format required by the department, of the limited opencut operation site;
- (c) the locational coordinates of the approximate center of the limited opencut operation site;
- (d) the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site;
- (e) plans to expand or continue the limited opencut operation in accordance with 82-4-431(4), MCA;
- (f) the landowner's name and address;
- (g) driving directions to access the site from the nearest public road;

(h) a description of the pre-mine condition of the limited opencut operation site and the pre-mine condition of any private access roads to the limited opencut operation site;

(i) an aerial or topographic map of the limited opencut operation site; and

(j) certification by the operator that the information provided to the department in the limited opencut operation form is complete and accurate.

(3) The department's receipt of a limited opencut operation form initiates the timeframes set forth in 82-4-431, MCA, for either:

(a) salvaging soil, removing materials, and reclaiming the limited opencut operation site; or

(b) applying for a permit to continue or expand the opencut operation.

(4) A person conducting a limited opencut operation, authorized under 82-4-431(2), MCA, may not remove more than 10,000 cubic yards of materials and overburden. This limitation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for site reclamation.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

REASON: Proposed New Rule I provides administrative requirements that are necessary to implement the provisions in Section 5 of Senate Bill 332 (Chapter 198, Laws of 2013, codified in 82-4-431(2), MCA) for limited opencut operations. An operator who holds a permit under 82-4-431, MCA, may conduct a limited opencut operation without obtaining an additional permit or an amendment to an existing permit if the limited opencut operation meets the criteria in 82-4-431(2), MCA. To meet the criteria in 82-4-431(2), MCA, for a limited opencut operation, the operator must submit appropriate site and operation information on a form provided by the department. Proposed New Rule I is necessary to set forth administrative procedures for submitting appropriate limited opencut operation site and operation information to the department in accordance with Section 5 of Senate Bill 332. Proposed New Rule I will provide necessary clarification of the time limits for site reclamation and for submittal of an application to continue or expand a limited opencut operation pursuant to 82-4-431(4), MCA, as adopted in Section 5 of Senate Bill 332. Finally, New Rule I provides that the 10,000-cubic-yard limitation for a limited opencut operation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for reclamation purposes. This clarification is necessary to uphold the intent of Senate Bill 332, which is to allow operators a way to avoid the full permit process when necessary to complete smaller, short-term projects.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than January 23, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than January 23, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 55 based on the 550 operators holding permits in Montana.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated July 29, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE

Chairman

Certified to the Secretary of State, December 16, 2013.