

# MINING

---

## COAL AND URANIUM MINING: OPERATING PERMITS

### 1. Types of Activities Regulated

A permit is required from the Montana Department of Environmental Quality (DEQ) prior to initiating strip or underground mining operations. Mined lands must be reclaimed and revegetated. See also WATER QUALITY PERMITTING, p. 207 and AIR QUALITY PERMITS, p. 36.

The Employment Relations Division of the Montana Department of Labor and Industry enforces mine safety regulations. The division's Safety and Health Bureau works with the mine operator and mining contractors to ensure worker safety.

Statute: 82-4-201, *et seq.*, MCA (Strip and Underground Mine Reclamation Act), and  
50-73-101, *et seq.*, MCA (Montana Coal Mining Code for mine safety)

Rule: ARM 17.24.301-17.24.1309 and 24.30.1302

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Coal & Opencut Mining Bureau*

DEPARTMENT OF LABOR AND INDUSTRY  
Employment Relations Division  
*Safety and Health Bureau*

### 2. Application Requirements

#### A. Permit

An applicant for a coal or uranium mine operating permit must submit a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the resources that may be affected by the proposed operations. The application must include information on the climate, geology, hydrology, neighboring surface and ground waters, and vegetation, etc., and two copies of all maps that meet the requirements outlined in statute. An applicant for a coal mining permit must also submit a certificate issued by an insurance company authorized to do business in Montana certifying that the

applicant has a public liability insurance policy for the strip or underground mining and reclamation operations described in the permit application.

Prior to the issuance of a permit, the operator must file a bond payable to the state of Montana with the DEQ in a sum to be determined by the department of not less than \$200 for each acre of the land affected, with a minimum bond of \$10,000. If federal coal is involved, the bond must also be made payable to the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement. Permits may be renewed on each five-year permit anniversary by applying for a renewal. In order to renew a permit, the operator must be in compliance with the permit requirements.

B. Reclamation Plan

The reclamation plan for a coal or uranium mine must describe in detail how the applicant will comply with provisions regarding grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, reclamation and coal conservation, and measures that will be taken to eliminate damage to public and private lands from soil erosion, subsidence, landslides, water pollution, and hazards. In addition, the plan must list the steps that will be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards. Provisions also must be made for the protection and/or reclamation of alluvial valley floors and prime farmlands.

Statute: 82-4-221, 82-4-222, 82-4-227, and 82-4-231, MCA

Rule: ARM 17.24.302-17.24.327

3. **Permitting Procedures**

- 1) An application is required for a permit or a major revision or amendment of a permit or reclamation plan. The DEQ reviews the application materials and determines if the application is administratively complete. Once the department makes its determination, it sends written notice to the applicant and if an Environmental Impact Statement is required (see MONTANA ENVIRONMENTAL POLICY ACT, p. 132), it will also send notice of this determination at this time.

The applicant must publish a notice in an area newspaper and the DEQ must notify various local governments, planning agencies, sewage and water treatment authorities, and water companies in the area of the proposed mine. Any person having an interest that is or may be adversely affected or an

officer of a federal, state, or local government agency may file written objections to the application within 30 days of the last publication of the applicant's public notice or receipt of the DEQ's notice. If written objections are filed and an objector requests an informal conference, the DEQ must hold the conference in the area of the proposed mining and publish a public notice of the informal conference. The DEQ may proceed with the application review while the written objections and conference findings are assessed.

- 2) The DEQ must notify the applicant in writing within 120 days after receipt of the complete application whether the plan is acceptable. If the plan is not acceptable, the DEQ must indicate its reasons. The applicant may then revise the application. The DEQ then has another 120 days to make its decision concerning the acceptability of the application.
- 3) An acceptable application triggers public notice by the DEQ of the acceptability of the proposal. Again, any person having an interest that is or may be adversely affected by the department's decision may file written objections and/or request an informal conference. The informal conference must be held within 20 days of the request. The DEQ must issue its decision within 10 days of the conference.
- 4) An applicant, permittee, or person with an interest that is or may be adversely affected by the approval or denial of an application for a permit, a revision, or amendment of a permit or reclamation plan or a permit transfer or renewal may request a hearing before the Board of Environmental Review by submitting a written request within 30 days of the decision. The contested case provisions of the Montana Administrative Procedure Act apply (see MAPA, p. 131).

Statute: 82-4-206, 82-4-225, and 82-4-231, MCA

Rule: ARM 17.24.401-17.24.404

#### 4. **Criteria**

The permit for a coal or uranium mining operation may be denied for a number of reasons, including, but not limited to, an inadequate reclamation plan, adverse reclamation possibilities, exceptional topographic or scientific characteristics or cultural resources, historic or geologic importance, critical biological productivity or ecological fragility, the threat of a public hazard, or designation of the land as unsuitable for mining.

Statute: 82-4-227 and 82-4-228, MCA

Rule: ARM 17.24.1131-17.24.1148

## **COAL AND URANIUM MINING: PROSPECTING PERMITS**

### **1. Types of Activities Regulated**

A person interested in prospecting for coal or uranium must obtain a prospecting permit from the Montana Department of Environmental Quality (DEQ) if the land is not already included in a current operating permit (see p. 107) and if the prospecting is conducted to determine the location, quality, or quantity of mineral deposits. A reclamation plan and bond must be submitted. The permit is valid for one year and may be renewed.

A prospecting permit is not required for an operation that is conducted for the purpose of gathering environmental data to evaluate the conditions of an area before beginning strip or underground mining or conducted to determine drill hole locations and access routes prior to submittal of an application to prospect to determine the location, quality, and quantity of a mineral reserve provided the area to be disturbed is not one designated as unsuitable for coal mining (see 4. Criteria. p. 112). However, a notice of intent must be filed that meets the requirements in ARM 17.24.1018.

Statute: 82-4-226, *et seq.*, MCA (Strip and Underground Mine Reclamation Act)

Rule: ARM 17.24.1001-17.24.1018

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Coal & Opencut Mining Bureau*

### **2. Application Requirements**

The application for a prospecting permit must be made in writing, notarized, and submitted to the DEQ on forms provided by the department. The application form and permitting requirements vary according to the size and nature of the coal prospecting operation (see below) but will include a detailed prospecting map, a description of the proposed method of prospecting, the type of equipment to be used, and a reclamation plan.

A *short form* application is available for coal prospecting that does not remove more than 250 tons of coal and that does not substantially disturb the natural land surface (defined

in ARM 17.24.301(121)). The information required for a short form application is described in 82-4-226(8), MCA. A *long form* application is required for prospecting conducted to determine the location, quality, or quantity of a uranium deposit or for coal prospecting that would substantially disturb the natural land surface. The information required for a long form application is outlined in ARM 17.24.1001.

### 3. **Permitting Procedures**

- 1) Short Form Applications: Within 10 working days of receipt of the application, the DEQ must notify the applicant in writing whether the application is complete and preliminarily acceptable. If the application is incomplete, the DEQ will provide information to the applicant on how to complete the application requirements. Within five working days of receipt of an applicant's response to the identified deficiencies, the DEQ reviews the response and determines if the application is complete and preliminarily acceptable. On receipt of the department's determination of preliminary acceptability, the applicant must advertise the public notice once in a newspaper of general circulation in the locality of the proposed prospecting. A 10 day public comment period follows the advertisement of the public notice. Within five working days following the end of the public comment period, the DEQ must notify the applicant as to whether the application is acceptable. If public comments are received, the department has 10 days to make this determination.

Long Form Applications: There are no established review timelines for long form applications, however, as a general guideline, the timelines for mine operating permit application review are used. All operations that are permitted under the long form must be conducted in compliance with ARM 17.24.1002 through 17.24.1013.

- 2) Prior to obtaining a prospecting permit, the applicant must file a reclamation bond with the DEQ based on the estimated cost of the required reclamation and restoration work as determined by department guidelines. The bond may be no less than \$200 per acre with a minimum bond of \$10,000.
- 3) At least 15 days prior to the permit's anniversary date, the operator may submit an application for a permit renewal stating the number of holes permitted and drilled, listing surface disturbances, and supplying an updated map.
- 4) An applicant, permittee, or person with an interest that is or may be adversely affected by the approval or denial of an application for a permit may request a hearing before the Board of Environmental Review by submitting a written

request within 30 days of the decision. The contested case provisions of the Montana Administrative Procedure Act apply (see MAPA, p. 131).

Statute: 82-4-206 and 82-4-226, MCA

Rule: ARM 17.24.1001, 17.24.1003, 17.24.1016, and 17.24.1102

#### 4. **Criteria**

The permit for prospecting for coal and uranium may be denied for a number of reasons, including, but not limited to, adverse reclamation possibilities, exceptional topographic or scientific characteristics or cultural resources, historic or geologic importance, critical biological productivity or ecological fragility, the threat of a public hazard, or designation of the land as unsuitable for mining.

Statute: 82-4-227 and 82-4-228, MCA

Rule: ARM 17.24.1131-17.24.1148

### **COAL MINING: IN SITU COAL GASIFICATION**

#### 1. **Types of Activities Regulated**

The Montana Legislature authorized the Montana Board of Environmental Review to establish rules to regulate underground mining using in situ coal gasification. In situ coal gasification is the use of a conduit or well to inject or recover a liquid, solid, sludge, or gas that causes the leaching, dissolution, gasification, liquefaction, or extraction of the coal.

Statute: 75-5-103(29), 82-4-203(27), and 82-4-203(44), MCA

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Coal & Opencut Mining Bureau*

## HARD-ROCK MINING: EXPLORATION

### 1. Types of Activities Regulated

A state exploration license is required from the Montana Department of Environmental Quality to conduct mineral exploration activities for ores and rock or rock products that result in a material disturbance of the land surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization (82-4-303(12), MCA). An exploration license is a statewide license and only one is issued per individual or company. Any additional projects are considered amendments to the license and each must be individually approved and bonded. A bulk sample of up to 10,000 short tons of material may be taken at each project for metallurgical testing.

Following exploration, an Operating Permit (see HARD-ROCK MINING: OPERATING PERMITS, p. 114) must be obtained for production mining. Exploration and mining for oil, gas, bentonite, clay, coal, sand, gravel, peat, soil, or uranium are regulated under other statutes.

Statute: 82-4-303 and 82-4-331, *et seq.*, MCA

Rule: ARM 17.24.101, *et seq.*

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Hard Rock Mining Bureau*

### 2. Application Requirements

To obtain an exploration license, the applicant must propose a specific project to the DEQ. The department has available a sample plan of operations that shows the level of information required. The DEQ also accepts copies of U.S. Forest Service or U.S. Department of the Interior, Bureau of Land Management operating plans as long as an adequate map is provided. Once the DEQ receives and reviews an exploration plan, an on-site visit is scheduled among the DEQ, the applicant, and usually, a representative from the appropriate federal agency, to calculate the amount of reclamation bond required for the project. Joint bonds with the DEQ and the federal agency are accepted to avoid duplicate bonding. The applicant must agree to post the bond, reclaim any damaged land, and not be in default of any other reclamation law.

Statute: 82-4-331 and 82-4-332, MCA

Rule: ARM 17.24.103-17.24.104

### 3. Permitting Procedures

On approval of the exploration plan by the DEQ and after the bond is submitted, the applicant will receive a hard-rock exploration license. The operator cannot legally begin explorations, however, until approval by any other state or federal agency, if applicable, is also granted. The license is renewable annually by filing an annual report and payment of the renewal fee.

Rule: ARM 17.24.103

### 4. Fees

The application fee for an exploration license is \$100 and the yearly renewal fee is \$25.

Statute: 82-4-332, MCA

## HARD-ROCK MINING: OPERATING PERMITS

### 1. Permit Categories and Activities Regulated

<p><b>Large Scale Operations— an operating permit is required for:</b></p>	<p><b>Small Mine Operations— a Small Miner Exclusion Statement (SMES) may be filed to exclude an operation from the requirement to obtain an operating permit if:*</b></p>	<p><b>Recreational Miners—are not regulated by the state provided the miner:</b></p>
<ul style="list-style-type: none"> <li>■ land disturbance in anticipation of mining activities</li> <li>■ mining ore, some industrial minerals, and rock products</li> <li>■ ore processing</li> <li>■ ore reprocessing</li> <li>■ mill construction</li> </ul> <p>In addition:</p> <ul style="list-style-type: none"> <li>■ Annual reports and fees are required.</li> </ul>	<ul style="list-style-type: none"> <li>■ The operation leaves no more than five acres disturbed and unreclaimed at any one time or has two operations that leave no more than five acres disturbed and unreclaimed at one time and that are at least one mile apart. There is no limit on total disturbed and reclaimed acreage over time.</li> <li>■ The small miner does not hold an operating permit that exceeds 100 acres.</li> </ul>	<ul style="list-style-type: none"> <li>■ does not use motorized excavation equipment</li> <li>■ does not use blasting agents</li> <li>■ does not disturb more than 100 ft<sup>2</sup> or 50 yd<sup>3</sup> of material at any site</li> <li>■ does not leave unreclaimed sites that are less than one mile apart</li> <li>■ does not use mercury</li> <li>■ does not use cyanide or other metal leaching solvents</li> </ul>

<p><b>Large Scale Operations— an operating permit is required for:</b></p>	<p><b>Small Mine Operations— a Small Miner Exclusion Statement (SMES) may be filed to exclude an operation from the requirement to obtain an operating permit if:*</b></p>	<p><b>Recreational Miners—are not regulated by the state provided the miner:</b></p>
<ul style="list-style-type: none"> <li>■ A reclamation bond and a reclamation plan must be submitted and the DEQ conducts annual or more frequent inspections for compliance with the reclamation plan.</li> <li>■ Tailings storage facilities must have a designated engineer of record and detailed design documents and operation and management plans must be submitted. Independent engineering review is required for tailings storage facility designs and a separate document fee is required for tailings storage facilities.</li> <li>■ Community impact plans are required (see 6. Additional information). See also AIR QUALITY PERMITS, p. 36, WATER APPROPRIATIONS, p. 197, and WATER QUALITY PERMITTING, p. 207.</li> </ul>	<p>* An operating permit <u>is</u> required for that portion of an SMES operation that uses cyanide or other metal leaching agents.</p> <p>In addition:</p> <ul style="list-style-type: none"> <li>■ the DEQ has the authority to require a maximum \$10,000 reclamation bond on placer and dredge mines and to recover costs over the \$10,000 limit by filing for the additional amount in District Court, and</li> <li>■ an operator must post a performance bond and obtain approval for the design, construction, operation, and reclamation of any hard rock tailings impoundment.</li> </ul>	<p>A statewide permit is available for suction dredges with an intake of 4" or less. A one-time <i>application</i> fee of \$25 for Montana residents and \$100 for nonresidents is required. An <i>annual</i> fee of \$25 for Montana residents and \$100 for nonresidents is also required at the time of application and each year the permit is renewed. A person using a suction dredge must obtain a discharge permit from the DEQ (see MPDES Permits, p. 208) and a 310 permit from the county Conservation District (see STREAM BEDS - STREAM BANKS - WETLANDS, p. 10).</p>

Statute: 82-4-301, *et seq.*, MCA

Rule: ARM 17.24.101, *et seq.*

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Hard Rock Mining Bureau*

The Employment Relations Division of the Montana Department of Labor and Industry enforces mine safety regulations. The division's Safety and Health Bureau works with the mine operator and mining contractors to ensure worker safety.

Statute: 50-72-101, *et seq.*, MCA

DEPARTMENT OF LABOR AND INDUSTRY  
Employment Relations Division  
*Safety and Health Bureau*

## 2. **Application Requirements**

### A. Operating Permit

An applicant for an operating permit must submit an application for each mine complex, with the exception of mines for rock products at multiple sites which, under certain conditions, may be authorized under one permit. The application consists of several parts: a description of the present condition of the area, i.e., hydrology, soils, vegetation, cultural resources, wildlife, etc; an operating plan describing the type and size of the operation, equipment, etc; reclamation plans, stating the reclamation objectives and how they will be implemented; monitoring plans; contingency plans; and closure plans, including water treatment, if necessary.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

Statute: 82-4-335 through 82-4-338, MCA

Rule: ARM 17.24.116

### B. Tailings Storage Facility

An operating permit application that includes a tailings storage facility or impoundment that contains over 50 acre feet of free water or process solutions must provide the department with a written designation of an engineer of record and contact information. The engineer of record must certify that the design for the tailings facility or impoundment is sufficient to ensure that the structure is safe and stable and in accord with statutory design criteria. The design document must be reviewed by an independent engineering review panel and a separate design document fee is required.

Design documents, independent panel report, and operation, maintenance and monitoring manuals must be submitted before the issuance of the draft permit.

Statute: 82-4-303, 82-4-375 through 82-4-381, MCA

C. Small Mine Operations

The small mine operator must sign a Small Miner Exclusion Statement (SMES), available at the DEQ, which consists of a signed and notarized affidavit stating that the applicant will stay within the requirements or conditions of the exclusion. The applicant must submit a one page plan of operation and a map locating the mine site. Placer mines are bonded for reclamation up to \$10,000. An annual report and renewal are required to maintain SMES status.

3. **Permitting Procedures**

Operating Permit

- 1) Once a plan is submitted, the DEQ has 90 days for an initial review and 30 days for any subsequent review of the application to determine if it is complete and compliant with the requirements of the Metal Mine Reclamation Act (MMRA) and associated rules.
- 2) If incomplete, the applicant is mailed a deficiency or completeness review letter on or before the review deadline. The letter alerts the applicant to additional resource or plan information required by the department. If it is a joint state/federal action (if permits are required by both the DEQ and the U.S. Forest Service or U.S. Department of the Interior, Bureau of Land Management), a joint deficiency letter is sent that includes comments from both the state and federal agencies. During the application process, the DEQ inspects the proposed site. If the site is not accessible because of extended adverse weather conditions, the DEQ may extend the review period by a term agreed to by the applicant.
- 3) There are no constraints on the amount of time an applicant has to prepare a response. Once a response is submitted, the DEQ again has 30 days to review the information. This process continues until the application is complete and compliant.
- 4) Once the application is deemed complete and compliant, the DEQ will declare in writing that it is complete and compliant, detail the substantive

requirements of the MMRA and how the application complies with those requirements, and issue a draft permit. Tailings storage facility design documents, independent panel report, and operations, maintenance and monitoring manuals must be submitted before the issuance of the draft permit.

- 5) Issuance of the draft permit as a final permit is the state action subject to review under the Montana Environmental Policy Act (see p. 132).
- 6) The DEQ will calculate the amount of the reclamation bond required for the project and notify the applicant. The final permit will be issued after completion of the MEPA review or when one year has elapsed from the issuance of the draft permit, the reclamation bond has been received, and the DEQ has determined that the final permit meets the substantive requirements of the MMRA.
- 7) The DEQ can place stipulations in a draft or final permit, either with the consent of the applicant or by providing the applicant in writing the reason for the stipulation and a citation to the statute or rule that gives the DEQ the authority to impose the stipulation. For a stipulation in the final permit that was not contained in the draft permit, the DEQ has to state the reason the stipulation was not contained in the draft permit (82-4-337(2)(b), MCA).
- 8) Legal actions challenging the DEQ's decision to grant or deny a permit have to be filed within 90 days after the decision is made (82-4-349(1), MCA). The applicant for an operating permit may request an administrative hearing on a denial of an application by submitting a written request for a hearing before the Board of Environmental Review within 30 days of the denial (82-4-353(2), MCA). For hearings before the board, the contested case provisions of the Montana Administrative Procedure Act apply (see MAPA, p. 131).
- 9) The final operating permit must provide that the reclamation plan may be modified by the DEQ, 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: to modify the requirements so that they will not conflict with existing laws; when the previously adopted reclamation plan is impossible or impracticable to implement and maintain; or when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the DEQ has the authority to address them under the MMRA (82-4-337(4), MCA).
- 10) The DEQ may also require the operator to submit an amended reclamation plan and post a temporary bond to guarantee the amended plan if it

determines, based on unanticipated circumstances that are discovered following the issuance of a permit, that there is a substantial and imminent danger to public health, public safety, or the environment (82-4-338(7), MCA).

Statute: 82-4-337, 82-4-338, 82-4-349, and 82-4-353, MCA

#### 4. Fees

The application fee for a hard-rock mining permit is \$500. The fee for filing the annual report is \$100. The design document fee for a tailings storage facility is \$1,500.

Statute: 82-4-335 and 82.4.376, MCA

Rule: ARM 17.24.116 and 17.24.118

#### 5. Criteria

An operating permit may be denied if the plan of development—mining or reclamation—conflicts with the Montana Clean Air Act (75-2-101, *et seq.*, MCA, p. 36), the Montana Water Quality Act (75-5-101, *et seq.*, MCA, p. 207), the Public Water Supply Act (75-6-101, *et seq.*, MCA, p. 191), or if the reclamation plan is insufficient to accomplish the proposed reclamation.

Additional criteria apply if the applicant has outstanding enforcement or reclamation responsibilities.

Statute: 82-4-351, MCA

#### 6. Additional Information

##### Large Scale Developments

- 1) When a proposed mining project will employ more than 75 people in a consecutive six-month period in the construction or operation of a mine or associated milling facilities, the applicant must submit an economic impact plan to the affected counties and to the Hard-Rock Mining Impact Board. The plan must include development timetables, work-force and population immigration projections, and the increased local government service and facility needs, costs, and revenues expected to result from the development. The developer must commit to pay to the affected local governments the

increased costs identified in the approved plan, and if requested, must provide financial or other assistance to help local governments prepare for and evaluate the impact plan.

- 2) After the plan is submitted for review, the affected governing bodies have 90 days to submit objections to the Impact Board. If objections cannot be resolved by the developer and local governments, the Impact Board will hold a contested case hearing. Impact plan review is conducted concurrently with the DEQ mine operating permit review.
- 3) Within 30 days after receipt of the approved plan, the developer must provide to the Board and the DEQ a written guarantee that it will make all payments according to the plan schedule. If the plan requires prepayment of taxes, the developer must also provide a third-party financial guarantee acceptable to the Board. Compliance with the terms of an approved impact plan is a statutory condition of the DEQ's operating permit.
- 4) Under certain circumstances, as specified by statute or by the plan itself, the developer or an affected county may petition the Board for an amendment to the impact plan. Jointly, they may petition for an amendment at any time.

Statute: 15-37-111, 82-4-335, 82-4-339, and 90-6-301, *et seq.*, MCA

Rule: ARM 8.104.201, *et seq.*

Contact: BOARD OF COUNTY COMMISSIONERS

DEPARTMENT OF COMMERCE  
Community Development Division  
*Hard-Rock Mining Impact Board*

## **LANDOWNER NOTIFICATION**

### **1. Types of Activities Regulated**

When surface and mineral rights are in separate ownership, the surface owner must be notified and give approval in writing of the proposed operations before any prospecting, exploration, or development of subsurface minerals may take place.

Statute: 82-2-301, *et seq.*, MCA (Landowner Notification Act)

Contact: SURFACE OWNER

## MINING RIGHT-OF-WAY

### 1. Types of Activities Regulated

The owner of mining rights may establish a right-of-way over adjacent lands if necessary to work the claim. The right-of-way may be for roads, ditches, flumes, and other mine-related purposes. Application is made to the District Court.

Statute: 82-2-201, *et seq.*, MCA

Contact: DISTRICT COURT

### 2. Permitting Procedures

- 1) If the mine owner cannot obtain the agreement of adjacent landowners for right-of-way, the mine owner may file a complaint in District Court requesting that a right-of-way be created.
- 2) After receipt of the complaint, the district judge must issue a summons to the parties requiring appearance before the court. The court appearance must be 10 or more days from the date of service of the summons.
- 3) If the judge determines that the right-of-way is warranted, the judge must award the mine owner the right-of-way and establish a commission of three persons to assess damages to the lands used as right-of-way.
- 4) Use of right-of-way can only begin upon payment of the assessed damages.

Statute: 82-2-203 through 82-2-208, MCA

### 3. Additional Information

Any party may appeal the commissioners' assessment of damages to the District Court within 10 days after the report is filed.

Statute: 82-2-209 through 82-2-212, MCA

## **OPENCUT MINING**

### **1. Types of Activities Regulated**

The Opencut Mining Act and the related regulations apply to the mining of bentonite, clay, scoria, peat, soil, sand, or gravel. An operator may not remove over 10,000 cubic yards of material and overburden until the Montana Department of Environmental Quality (DEQ) has issued a permit for the mining and reclamation of affected lands. An operator conducting a number of opencut operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate, must obtain an opencut mine permit(s), except as follows. Exemptions may be available for operators currently holding a reclamation permit if the new operations will result in the removal of 5,000 cubic yards or less of material and overburden and the total area of excavation does not exceed five acres. There are specific requirements for this exemption, however, and a completed form provided by the DEQ must be submitted.

The Employment Relations Division of the Montana Department of Labor and Industry enforces mine safety regulations. The division's Safety and Health Bureau works with the mine operator and mining contractors to ensure worker safety.

All opencut sand and gravel operations must comply with applicable zoning regulations.

An air quality permit (see AIR QUALITY PERMITS, p. 36) from the DEQ is required for the operation of any mineral crushing or other processing plant.

Statute: 82-4-401, *et seq.*, MCA (Opencut Mining Act)  
50-72-101, *et seq.*, MCA (mine safety)

Rule: ARM 17.24.201, *et seq.*

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Air, Energy & Mining Division  
*Coal & Opencut Mining Bureau*

DEPARTMENT OF LABOR AND INDUSTRY  
Employment Relations Division  
*Safety and Health Bureau*

## 2. Application Requirements

An operator must submit an application for a mining permit on a form furnished by the DEQ. A bond calculated by the DEQ as the cost to the department of reclaiming the affected land, a zoning compliance form, plans of the intended operations, and other details of the mine operation are also required. Government agencies are exempt from the bond requirement.

Statute: 82-4-432 through 82-4-434, MCA

Rule: ARM 17.24.203-17.24.223

## 3. Permitting Procedures

- 1) The application materials (application/permit forms, bond, map(s), plan of operation, names of surface landowners within one-half mile of the proposed permit boundary using the most current known owners of record, etc.) are initially reviewed for completeness to ensure that each required item has been submitted.
- 2) The DEQ has five working days to notify the applicant whether the application is complete. If the application is not complete, the department must list the information necessary to make the application complete. This process continues for subsequent incompleteness responses until the application is complete.
- 3) An on-site evaluation is conducted, as necessary, to determine if the land has the capacity to be mined and reclaimed and to make sure site conditions are as specified in the application. The site inspection may be conducted with the applicant and other interested persons.
- 4) Within 15 days after the DEQ notifies the applicant that the application is complete, the applicant must publish public notice of its proposed operation and how to request a public meeting in a relevant newspaper, send the notice to the above-identified surface landowners and to the county commissioners of the affected county, and post the notice at the proposed mine site.
- 5) The DEQ must accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. A public meeting must be held if a certain percentage or number of surface landowners request a meeting.

- 6) Within the 45-day period above and unless a public meeting is required, the DEQ must notify the applicant whether the application is acceptable, and if not, include a detailed list of all deficiencies. An application is acceptable if it contains all of the information required by the law and applicable rules. If the DEQ and the applicant determine that a public meeting will not be required, the DEQ must issue the acceptability notification to the applicant within 30 days of the notice of a complete application. See also MONTANA ENVIRONMENTAL POLICY ACT, p. 132.
- 7) If a public meeting is required, within 30 days of the closing of the public meeting request period (a total of 75 days from the notice of completeness of the application), the DEQ must issue the notice of acceptability to the applicant, or notify the applicant whether an extended review, as a result of the public meeting, will be required. For applications requiring an extended review, the DEQ must, within 60 days from the date the department determines the application warrants an extended review, issue the notice of acceptability to the applicant; the DEQ may, for sufficient cause, extend this review period an additional 30 days if it provides prior notification to the applicant.
- 8) The DEQ has 10 working days to review deficiency responses and notify the applicant whether or not the application is acceptable. This process continues for subsequent deficiency responses. For applications requiring an extended review (see item 6) above), the DEQ has 30 days to review deficiency responses and notify the applicant whether or not the application is acceptable; the DEQ may, for sufficient cause, extend this review period an additional 30 days if it provides prior notification to the applicant.
- 9) An applicant, permittee, or person with an interest that is or may be adversely affected by the approval or denial of an application for a permit may request a hearing before the Board of Environmental Review by submitting a written request stating the reasons for the appeal within 30 days of the decision. The contested case provisions of the Montana Administrative Procedure Act apply (see MAPA, p. 131).

Statute: 82-4-427 and 82-4-432, MCA

Rule: ARM 17.24.212

#### 4. **Criteria**

The DEQ will issue a permit only if the bond, reclamation plan, and other requirements of Title 82, chapter 4, part 4 are fulfilled. The reclamation plan must ensure that the applicant

will establish a productive post-mining land use, will appropriately protect ground and surface water, and will properly bury waste, etc.

Statute: 82-4-432 through 82-4-434, MCA

Rule: ARM 17.24.203-17.24.223

## **OPERATIONS ON STATE LANDS: COAL MINING**

### **1. Types of Activities Regulated**

Coal mining leases on state lands are awarded by competitive bidding at no less than fair market value. The primary lease term is 10 years and may be extended if coal continues to be produced in commercial quantities and the terms of the lease have been met. Rent and royalties are required. Corporations not incorporated in Montana must obtain a certificate of authority from the Montana Secretary of State. See also WATER QUALITY PERMITTING, p. 207.

Statute: 77-3-301, *et seq.*, MCA

Rule: ARM 36.25.301, *et seq.*

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
Trust Land Management Division  
*Minerals Management Bureau*

### **2. Application Requirements**

Applications are made on a form furnished by the Montana Department of Natural Resources and Conservation (DNRC). The application must include an adequate and sufficient description of the proposed tracts. All leases must comply with the requirements of the Strip and Underground Mine Reclamation Act, (82-4-201, *et seq.*, MCA, pp. 107-112). Mining operations must be as systematic as possible to prevent the waste of coal and to facilitate subsequent operations.

Statute: 77-3-306, MCA

Rule: ARM 36.25.304

### 3. **Permitting Procedures**

- 1) When a sufficient number of applications for leases have been received, or at the director's discretion, a lease sale will be announced through publication in a trade journal of general circulation in the coal mining industry or in Montana's major newspapers for four weeks preceding the sale.
- 2) A lease may not be issued until the coal resources and the surface of the tract have been evaluated or competitively bid by the Montana Board of Land Commissioners to determine the lease's value.
- 3) Sales of state coal leases are through competitive bidding. The DNRC may require a bid deposit in any amount it may determine, up to 10 percent of the appraised value of the coal offered for lease.
- 4) If no competitive bids are offered, the Board may enter into a lease that is at least at the fair market value as determined by an appraisal.

Statute: 77-3-312, MCA

Rule: ARM 36.25.304

### 4. **Fees**

A fee of \$50 is required for a lease application. Rent on a state coal lease cannot be less than \$2 per acre. The DNRC may authorize the bonus bid to be amortized for a period of up to five years. The lessee must pay a cash royalty on all coal produced from the leased premises at a rate of not less than 10 percent of the coal's value.

Statute: 77-3-316, MCA

Rule: ARM 36.2.1003, 36.25.309, 36.25.310, and 36.25.321

## **OPERATIONS ON STATE LANDS: METALLIFEROUS MINERALS AND GEMS**

### 1. **Types of Activities Regulated**

The Board of Land Commissioners leases state lands for the purpose of mining for metalliferous minerals (gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals) and gems (sapphires, rubies, and other precious or semiprecious stones). Royalties must be at least five percent of the full market value of the metalliferous minerals recovered under the lease. The primary lease term is 10 years and may be extended if

minerals continue to be produced in commercial quantities and the terms of the lease have been met.

Statute: 77-3-101, *et seq.*, MCA

Rule: ARM 36.25.601

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
Trust Land Management Division  
*Minerals Management Bureau*

## 2. Application Requirements

Applications are made on a form furnished by the Montana Department of Natural Resources and Conservation (DNRC). The application must include an adequate and sufficient description of the proposed tracts.

Statute: 77-3-111, MCA

Rule: ARM 36.25.604

## 3. Permitting Procedures

- 1) Leases may be issued on a first-come, first-served basis or by competitive bid.
- 2) When the DNRC receives an application for a lease, it may advertise for written bids on the tract of land for a reasonable time in trade journals and/or the official county newspaper of the county where the tract is located.
- 3) If bids are accepted, the tract will be leased to the highest bidder unless the Montana Board of Land Commissioners determines that the bid is not in the state's best interest.
- 4) A lease may not be issued until the mineral resources and the surface of the tract have been evaluated by the Board to determine the lease's value. The DNRC may require the applicant to pay up to \$500 for the evaluation.
- 5) The lease will contain provisions for prospecting and mining, royalties, etc. The Board also may require payment of a bond.

Statute: 77-3-111 through 77-3-112 and 77-3-119 through 77-3-121, MCA

Rule: ARM 36.25.602, *et seq.*

#### 4. Fees

A fee of \$50 is required for a lease application. Rent on a state metalliferous and gem lease is \$1 per acre for the first three years, \$2.50 per acre for the fourth and fifth years, then \$3 per acre until the lease terminates. The lessee must pay a cash royalty on all minerals produced from the leased premises at a rate of not less than five percent of the mineral's value.

Rule: ARM 36.2.1003, 36.25.606, and 36.25.607

## OPERATIONS ON STATE LANDS: PROSPECTING

### 1. Types of Activities Regulated

Permits may be issued by the Montana Department of Natural Resources and Conservation (DNRC) to non lease holders for prospecting for metalliferous metals (gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals) and gems (sapphires, rubies, and other precious or semiprecious stones) on state lands. See also OPERATIONS ON STATE LANDS: METALLIFEROUS MINERALS AND GEMS, p. 126.

Statute: 77-3-101, *et seq.*, MCA

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
Trust Land Management Division  
*Minerals Management Bureau*

### 2. Fees

The applicant for a prospecting permit on state lands is required to pay an issuance fee and an annual fee during the life of the permit. The prospecting permit fee is set by the DNRC and approved by the Board of Land Commissioners. Contact the DNRC for fee information.

Statute: 77-1-302, MCA

Rule: ARM 36.2.1003

## **OPERATIONS ON STATE LANDS: STONE, GRAVEL AND OTHER NONMETALLIFEROUS MINERALS**

### **1. Types of Activities Regulated**

Leases for the mining of nonmetallic minerals (i.e., stone, limestone, oil shale, clay, bentonite, calcite, talc, mica, ceramic, asbestos, marble, diatomite, gravel and sand, phosphate, sodium, potash, sulphur, fluorite, barite, or any other nonmetallic mineral, excluding coal, oil, or gas) on state lands are issued on a royalty basis for up to a 10-year period. The lessee may have a preferential right of renewal of a producing lease under the readjustment of terms and conditions determined by the Montana Board of Land Commissioners to be in the best interest of the state. Monthly reports are required. The Board may issue permits on its terms and conditions to the Montana Department of Transportation, the Board of County Commissioners, or other local government entities for the removal and use of stone, gravel, or sand from state land for the construction and maintenance of streets, bridges, highways, etc. Compliance with air quality laws is also required. See AIR QUALITY PERMITS, p. 36 and OPENCUT MINING, p. 122.

Statute: 77-3-201, *et seq.*, MCA

Contact: DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
Trust Land Management Division  
*Minerals Management Bureau*

### **2. Application Requirements**

Applications must be made on forms supplied by the Montana Department of Natural Resources and Conservation.

### **3. Permitting Procedures**

See OPERATIONS ON STATE LANDS: METALLIFEROUS MINERALS AND GEMS, p. 126.

### **4. Fees**

An application fee of \$40 is required for a nonmetalliferous lease.

Statute: 77-3-202, MCA

Rule: ARM 36.2.1003

## RECORDING OF MINING CLAIMS

### 1. Types of Activities Regulated

A person who discovers a vein, lode or ledge of rock on federal land bearing valuable mineral deposits and who wishes to locate a mining claim must follow these procedures:

- 1) Post a written notice at the point of discovery;
- 2) Within 30 days, mark the boundaries of the site;
- 3) Within 60 days, comply with United States mining laws and record the location with the county clerk and recorder, who in turn must provide a copy within 20 days to the Montana Department of Natural Resources and Conservation. The claimant must also, within 90 days, record the claim with the U.S. Department of the Interior, Bureau of Land Management (BLM), Montana State Office in Billings; and
- 4) File an affidavit of performance of annual work with the appropriate county. Claim maintenance fees must be paid or the applicant must comply with the BLM small miner maintenance fee waiver provisions by September 1 of each year. Small miners taking advantage of the fee waiver provisions must still file annual assessment filings on or before December 30 of each year.

Statute: 82-2-101, *et seq.*, MCA

Contact: COUNTY CLERK AND RECORDER

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

U.S. DEPARTMENT OF THE INTERIOR

Bureau of Land Management

*Montana State Office*