

HOUSE BILL NO. 617

INTRODUCED BY MENDENHALL, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METAL MINE RECLAMATION LAWS; PROHIBITING AN INCREASE IN A MINE RECLAMATION BOND UNTIL A MINE OPERATING PERMIT MODIFICATION IS COMPLETE; AMENDING SECTION 82-4-337, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.

(1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will be required.

(c) A permit may not be issued until:

- (i) sufficient bond has been submitted pursuant to 82-4-338;
- (ii) the information and certification have been submitted pursuant to 82-4-335(9); and
- (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

- (a) to modify the requirements so that they will not conflict with existing laws;
- (b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to conform to the requirements of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section, including any environmental analysis required by Title 75, chapter 1, part 2.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

~~(4)(5)~~ During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

~~(5)(6)~~ Applications for major amendments must be processed in the same manner as applications for new permits.

~~(6)(7)~~ Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

~~(7)(8)~~ If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to permits and permit amendments that were approved by the department of environmental quality after September 30, 1995.

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