

HOUSE BILL NO. 553

INTRODUCED BY HALVORSON, BRENDEN, DOANE, KNUDSEN, ROSENDALE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING OPENCUT MINING LAWS; ALLOWING OPENCUT OPERATIONS TO MINE UNDER A CONDITIONAL PERMIT DURING THE PERMIT REVIEW PERIOD; AND AMENDING ~~SECTION~~ SECTIONS 82-4-422 AND 82-4-432, MCA."

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

SECTION 1. 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, on the basis of the information set forth in the application and an evaluation of the proposed opencut operations, the department finds that the requirements of this part and rules adopted to implement this part will be observed;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited;

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part; and

(e) enforce and administer the provisions of this part and issue orders necessary to implement the provisions of this part.

(2) The board shall:

(a) adopt rules that pertain to opencut operations in order to accomplish the purposes of this part;

(b) adopt rules:

(i) establishing uniform procedures for filing of necessary records;

(ii) providing procedures for the issuance of permits and filing of annual reports; and

(iii) providing other administrative requirements that the board considers necessary to implement this part;

and

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production

1 of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or
 2 material to the inquiry; and

3 (d) in a timely manner, assist landowners and operators in the development of resources governed by
 4 this part."

5

6 **Section 2.** Section 82-4-432, MCA, is amended to read:

7 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) An application for a
 8 permit must be made using forms furnished by the department and must contain the following:

9 (a) the name of the applicant and, if other than the owner of the land, the name and address of the
 10 owner;

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

12 (c) the estimated volume of overburden and materials to be removed;

13 (d) the location of the proposed opencut operation by ~~legal description and county~~ and a map showing
 14 the location of the proposed operation sufficient to allow the public to locate the proposed site;

15 (e) the date when the opencut operation is proposed to commence; and

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

18 (2) The application must be accompanied by:

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

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

23 (c) a plan of operation that addresses the requirements of 82-4-434 and rules adopted pursuant to this
 24 part related to 82-4-434;

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

27 (e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut
 28 permit area using the most current known owners of record as shown in the records of the county clerk and
 29 recorder in the county where the proposed opencut operation is located.

30 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an

1 application and requests that the department examine the area to be mined, the department shall examine the
2 area and make recommendations to the person regarding the proposed opencut operation. The person may
3 request a meeting with the department. The department shall hold a meeting if requested.

4 (4) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application, the department shall,
5 within ~~5 working~~ 10 days, review the application and notify the person as to whether or not the application is
6 complete. An application is complete if it contains the items listed in subsections (1) and (2). If the department
7 determines that the application is not complete, the department shall notify the applicant in writing and include
8 a detailed identification of information necessary to make the application complete.

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

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

14 (ii) (A) Upon determining that an application is complete, the department shall begin reviewing the
15 application for acceptability pursuant to this section and shall issue a 120-DAY conditional permit allowing the
16 opencut operation to operate through the review period if the opencut operation is at least one-half mile from any
17 residence or the residential property owner provides written permission for the opencut operation to commence
18 under the conditional permit.

19 (B) The department may not issue a conditional permit if the provisions of subsection (4)(b)(ii)(A) are not
20 met but shall continue with the review of the application.

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

22 (c) The department may revoke a conditional permit and declare an application abandoned and void if:

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

24 and

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

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

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

- 1 (a) the name, address, and telephone number of the applicant;
- 2 (b) a description of the acreage, the estimated volume of overburden and materials to be removed, the
3 type of materials to be removed, the facilities, the duration of activities, and the access points of the proposed
4 opencut operation;
- 5 (c) ~~a legal description of the proposed opencut operation~~ and a map showing the location of the
6 proposed opencut operation and immediately surrounding property; and
- 7 (d) on a form provided by the department, information on how to request a public meeting pursuant to
8 this section.
- 9 (6) To provide public notice, the applicant shall:
- 10 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed
11 opencut operation;
- 12 (b) mail the notice by first-class mail to the board of county commissioners of the county in which the
13 proposed opencut operation is located and to surface owners of land located within one-half mile of the boundary
14 of the proposed opencut permit area using the most current known owners of record as shown in the records of
15 the county clerk and recorder in the county where the proposed opencut operation is located;
- 16 (c) post the notice in at least two prominent locations at the site of the proposed opencut operation,
17 including near a public road if possible; and
- 18 (d) provide the department with the names and addresses of those notified pursuant to subsection (6)(b).
- 19 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting
20 for 45 days after the department sends notice to the applicant of a complete application. ~~Within this period, unless
21 a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether
22 or not the application is acceptable pursuant to subsection (10).~~
- 23 (b) If the applicant and the department mutually agree or the applicant submits documentation to the
24 department showing that a public meeting will not be required pursuant to subsection (9), the department shall
25 inform the applicant within ~~30~~ 90 days of the notice of a complete application as to whether or not the application
26 is acceptable pursuant to subsection (10).
- 27 (8) If a public meeting is required pursuant to subsection (9), within ~~30~~ 45 days from the closing date of
28 the public meeting request period in subsection (7), the department shall:
- 29 (a) hold a meeting; and
- 30 (b) notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) or

1 that the application requires an extended review pursuant to 82-4-439.

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

4 (i) the applicant; or

5 (ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to
6 this section.

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

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

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

18 (C) THE CONDITIONAL PERMIT ISSUED PURSUANT TO SUBSECTION (4) EXPIRES 120 DAYS FROM ISSUANCE, AND
19 OPENCUT OPERATIONS MUST CEASE UNTIL THE APPLICATION IS ACCEPTABLE.

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

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

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

29 (c) For amendment applications not subject to the public notice and public meeting requirements of this
30 section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the

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

3 (12) The department shall publish a copy of an acceptable permit or amendment on its website."

4 - END -