

SENATE BILL NO. 234

INTRODUCED BY J. PETERSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OPENCUT MINING LAWS; PROVIDING CERTAIN EXEMPTIONS TO PERMIT REQUIREMENTS; AND AMENDING SECTIONS 82-4-431, 82-4-441, AND 82-4-442, MCA."

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

Section 1. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for mining, processing, and reclamation opencut operation required -- exceptions -- provisional permit. (1) ~~An~~ Except as provided in this section, an operator may not conduct an opencut operation that results in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator. ~~An operator may not, without a permit, remove materials or overburden from a site from which a total of 10,000 cubic yards or more of materials and overburden in the aggregate has been removed. 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, is subject to the provisions of this part, except as provided in this section:~~

~~————(2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit under this part may conduct an opencut operation without first securing an additional permit or an amendment to an existing permit if the opencut operation meets the following criteria:~~

~~————(a) the total amount of materials and overburden removed from the site does not exceed 5,000 cubic yards and the total area from which the materials and overburden are removed does not exceed 5 acres; and~~

~~————(b) the operator:~~

~~————(i) submits appropriate site and opencut operation information; and~~

~~————(ii) within 180 days of submitting the form, salvages all soil from the area to be disturbed, removes the materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding topography, replaces an appropriate amount of overburden and all soil, and reclaims to conditions present prior to mining all access roads used for the operation unless the landowner requests in writing that specific roads or~~

1 portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use
2 of the road after opencut operations:

3 ~~—— (iii) at the first seasonal opportunity, seeds or plants all affected land with vegetative species that meet
4 the requirements of 82-4-434.~~

5 ~~—— (3) The department may refuse to approve an application for issuance of a permit under subsection (1)
6 or may prohibit the operator from conducting an opencut operation under subsection (2) if, at the time of
7 notification by the operator to the department, the operator has a pattern of violations or is in current violation of
8 this part, rules adopted under this part, or provisions of a permit.~~

9 ~~—— (4) The department may require an additional bond as a condition for the conduct of an opencut
10 operation under subsection (2).~~

11 ~~—— (5) Opencut operations described in subsection (2) may not occur:~~

12 ~~—— (a) in ephemeral, intermittent, or perennial streams;~~

13 ~~—— (b) in an area where the opencut operation will intercept surface water, ground water, or any slope that
14 is steeper than 3:1; or~~

15 ~~—— (c) in any area where mining would be restricted by other laws.~~

16 ~~—— (6) Sand and gravel opencut operations must meet applicable local zoning regulations adopted under
17 Title 76, chapter 2.~~

18 (2) Opencut operations allowed without a permit pursuant to this section must meet applicable local
19 zoning regulations adopted under Title 76, chapter 2 and may not occur in:

20 (a) ephemeral, intermittent, or perennial streams;

21 (b) an area where the opencut operation will intercept surface water, ground water, or any slope that is
22 steeper than 3:1; or

23 (c) any area where mining would be restricted by other laws.

24 (3) (a) Except as provided in subsection (3)(b), a permit is not needed to conduct an opencut operation
25 that results in the removal of a total of 10,000 cubic yards or less of materials and overburden.

26 (b) A permit is required for an operator conducting more than one opencut operation if each of the
27 operations results in the removal of less than 10,000 cubic yards of materials and overburden but the operations
28 result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate.

29 (4) An operator who holds a permit under this part may conduct an opencut operation without first
30 securing an additional permit or an amendment to an existing permit if the opencut operation meets the following

1 criteria:

2 (a) the total amount of materials and overburden removed from the site does not exceed 5,000 cubic
3 yards and the total area from which the materials and overburden are removed does not exceed 5 acres; and

4 (b) the operator:

5 (i) submits appropriate site and opencut operation information;

6 (ii) posts any additional bond required by the department;

7 (iii) within 180 days of submitting the form, salvages all soil from the area to be disturbed, removes the
8 materials, grades the affected land to 3:1 or flatter slopes, blends the graded land into the surrounding
9 topography, replaces an appropriate amount of overburden and all soil, and reclaims to conditions present prior
10 to mining all access roads used for the operation unless the landowner requests in writing that specific roads or
11 portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use
12 of the road after opencut operations.

13 (iv) at the first seasonal opportunity, seeds or plants all affected land with vegetative species that meet
14 the requirements of 82-4-434.

15 (5) Notwithstanding the exemptions provided in subsections (3) and (4), an operator may obtain a
16 provisional permit provided that:

17 (a) the affected land consists less than 5 acres and the parcel that includes the affected land consists
18 of at least 20 acres;

19 (b) processing facilities located on the parcel do not include either an asphalt plant or a concrete plant;
20 and

21 (c) the operator submits, on forms furnished by the department:

22 (i) the name of the applicant and, if the applicant is not the owner of the land, the name and address of
23 the owner;

24 (ii) the type of operation to be conducted;

25 (iii) the estimated volume of overburden and materials to be removed;

26 (iv) the location of the proposed opencut operation by legal description and county;

27 (v) the date when the opencut operation is proposed to commence;

28 (vi) a statement that the applicant has the legal right to mine the designated materials in the land
29 described;

30 (vii) written documentation that the landowner has been consulted about the proposed plan of operation;

1 and

2 (viii) a statement from the local governing body having jurisdiction over the area to be mined certifying
3 that the proposed opencut operation complies with applicable local zoning regulations adopted under Title 76,
4 chapter 2.

5 (6) (a) Within 5 working days of submitting the information required in subsection (5)(c), the department
6 shall review the information and notify the person as to whether or not the information is complete. An application
7 is complete if it contains the items listed in subsection (5)(c). If the department determines that the information
8 is not complete, the department shall notify the applicant in writing and include a detailed identification of
9 information necessary to make the application complete.

10 (b) Unless waived by the operator, within 30 days of verification that the information required by
11 subsection (5)(c) is complete, the department and the operator shall meet to discuss the requirements of this
12 section.

13 (c) Within 10 days of the meeting required by subsection (6)(b), the department shall issue a provisional
14 permit pursuant to this section if the operator agrees in writing that within 5 years after receiving a provisional
15 permit, the operator shall:

16 (i) to continue the opencut operation, obtain a permit as required by this part; or

17 (ii) to discontinue the opencut operation, file a plan of operation that meets the requirements of 82-4-434
18 and post a bond as required by 82-4-433.

19 (7) Issuance of a provisional permit pursuant to subsection (5) is not subject to the provisions of Title 75,
20 chapter 1, parts 1 and 2. However, the continuation of the opencut operation or the discontinuing of the opencut
21 operation pursuant to subsection (6)(c) are subject to the provisions of Title 75, chapter 1, parts 1 and 2.

22 (8) Except as provided in subsections (5) through (7), an operator with a provisional permit shall comply
23 with other state laws and regulations related to the opencut operation.

24 (9) An operator may not hold more than five provisional permits pursuant to subsection (5) at the same
25 time.

26 (10) The department may prohibit an operator from conducting an opencut operation under subsection
27 (4) or may refuse to issue a provisional permit under subsection (5) if, at the time of notification by the operator
28 to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under
29 this part, or provisions of a permit."

30

1 **Section 2.** Section 82-4-441, MCA, is amended to read:

2 **"82-4-441. Administrative and judicial penalties -- enforcement.** (1) When the department has reason
3 to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or
4 condition of a permit or provisional permit issued under this part, it shall send a violation letter to the person. The
5 violation letter must describe the provision of the statute, rule, order, ~~or~~ permit, or provisional permit alleged to
6 be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions
7 that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the
8 authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate
9 an administrative enforcement action.

10 (2) By issuance of an order pursuant to subsection (5), the department may assess against a person
11 who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a
12 permit or a provisional permit:

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

14 (b) an additional administrative penalty of not less than \$100 or more than \$1,000 for each day during
15 which a violation continues.

16 (3) The department may bring a judicial action seeking a penalty of not more than \$5,000 against a
17 person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions
18 of a permit or a provisional permit and a penalty of not more than \$5,000 for each day that the violation continues.
19 In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

20 (4) Penalties assessed under this section must be determined in accordance with the penalty factors
21 in 82-4-1001.

22 (5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue
23 an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify
24 the provision of the part, rule, order, or permit, or provisional permit alleged to be violated and the facts alleged
25 to constitute the violation. The order may require necessary corrective action within a reasonable period of time,
26 may assess an administrative penalty determined in accordance with this section, or both. The order must be
27 served personally or by certified mail.

28 (b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order
29 is served, the person to whom the order is issued submits to the board a written request for a hearing stating the
30 reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a

1 hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the
 2 Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify,
 3 or rescind the order.

4 (6) The department may bring an action to enjoin an operator or other person violating or threatening
 5 to violate this part, rules adopted pursuant to this part, or provisions of a permit or provisional permit issued
 6 pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which
 7 the open-cut operation is located or, if mutually agreed on by both parties in the action, in the first judicial district,
 8 Lewis and Clark County.

9 (7) The provisions of this section do not limit the authority of the department to bring a judicial action for
 10 penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part."
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12 **Section 3.** Section 82-4-442, MCA, is amended to read:

13 **"82-4-442. Suspension and revocation orders.** (1) (a) The department may, after affording the
 14 operator an opportunity for an informal conference, order the suspension of a permit or a provisional permit if:

15 (i) the operator fails to comply with a penalty order or a corrective action order issued pursuant to
 16 82-4-441; or

17 (ii) the operator has violated this part, a rule adopted pursuant to this part, or ~~the~~ a provision of a permit
 18 or a provisional permit and the violation could reasonably be expected to create a danger to the health or safety
 19 of persons outside the permit area or significant environmental harm to land, air, or water. The order of
 20 suspension must be served on the operator personally or by certified mail addressed to the permanent address
 21 shown on the most recently filed annual report. The order of suspension must specify the provision of this part,
 22 the rules adopted under this part, ~~or~~ the permit, or the provisional permit that was violated and the facts alleged
 23 to constitute the violation and must, if the violation has not been corrected, order corrective action within a
 24 specified time period.

25 (b) The department may order immediate suspension of a permit or a provisional permit whenever it finds
 26 that a violation of this part, the rules adopted under this part, ~~or~~ or the provisions of a permit or a provisional
 27 permit is creating an imminent danger to the health or safety of persons outside the permit area. The order must
 28 require immediate corrective action.

29 (c) The operator upon whom an order is served may file a request for hearing with the board within 30
 30 days of service of the order. The request for hearing must specify the reason for the request. The filing of a

1 request for hearing on an order issued does not stay the suspension or corrective action requirement, but the
2 board may, upon written request of the operator, stay either or both of these requirements.

3 (2) If the operator has not complied with the requirements set forth in the order of suspension within the
4 time limits set in the order, the permit or the provisional permit may be revoked by order of the department and
5 the performance bond forfeited to the department. The operator may request a hearing before the board by
6 submitting a written request stating the reason for the request to the board within 30 days after service of the
7 order. If a hearing is requested within the 30-day period, the permit or provisional permit may not be revoked and
8 the bond may not be forfeited until the board makes a final decision.

9 (3) If an operator fails to file the report required under 82-4-437, the department shall serve personally
10 or by certified mail a notice letter informing the operator of the failure. If the operator does not file the report within
11 30 days of receipt of the letter, the department may issue a penalty order pursuant to 82-4-441 or a suspension
12 order pursuant to this section. If the permit has been suspended, the department shall reinstate the permit or
13 provisional permit upon compliance.

14 (4) Maintenance, monitoring, reporting, reclamation, and other activities required by statute, rule, or the
15 permit, or the provisional permit and intended to protect public health or safety or the environment must continue
16 during any period of suspension unless otherwise provided in the order."

17 - END -