

1 HOUSE BILL NO. 599

2 INTRODUCED BY S. GUNDERSON, D. ANKNEY, J. WELBORN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING OPENCUT MINING LAWS; PROVIDING
5 LESS STRINGENT APPLICATIONS FOR CERTAIN OPENCUT OPERATIONS; DEFINING "OCCUPIED
6 DWELLING UNIT"; PROVIDING EXEMPTIONS; AMENDING SECTIONS 76-2-209, 82-4-403, 82-4-431, 82-4-
7 432, 82-4-434, AND 82-4-439, MCA; REPEALING SECTION 82-4-440, MCA; AND PROVIDING AN
8 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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12 **SECTION 1. SECTION 76-2-209, MCA, IS AMENDED TO READ:**

13 **"76-2-209. Effect on natural resources.** (1) Except as provided in 82-4-431, 82-4-432, and
14 subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-
15 206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural
16 resources by the owner of any mineral, forest, or agricultural resource.

17 (2) The complete use, development, or recovery of a mineral by an operation that mines sand and
18 gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a
19 site that is located within a geographic area zoned as residential, as defined by the board of county
20 commissioners and in effect prior to the filing of a permit application or at the time a written request is received
21 for a preapplication meeting pursuant to 82-4-432.

22 (3) Zoning regulations adopted under this chapter and in effect prior to the filing of a permit
23 application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432 may
24 reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation
25 that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones
26 other than residential."

27
28 **Section 2.** Section 82-4-403, MCA, is amended to read:

1 **"82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the
2 context, the following definitions apply:

- 3 (1) "Affected land" means the area of land and land covered by water that is disturbed by opencut
4 operations. A private road may be included as affected land only with the landowner's consent.
5 (2) "Amendment" means a change to the approved permit.
6 (3) "Board" means the board of environmental review provided for in 2-15-3502.
7 (4) "Department" means the department of environmental quality provided for in 2-15-3501.
8 (5) "Landowner" means the holder of legal title to land subjected to an opencut operation.
9 (6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.
10 (7) "Occupied dwelling unit" means a structure with permanent water and sewer facilities that is used

11 as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a
12 primary residence.

13 ~~(7)~~ (8) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of
14 materials, including:

- 15 (a) mine site preparation;
16 (b) (i) removing the overburden and mining directly from the exposed natural deposits; or
17 (ii) mining directly from natural deposits of materials;
18 (c) processing of materials mined from the natural deposits, except that processing facilities located
19 more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut
20 operation;
21 (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity
22 occurs more than 300 feet from where the materials were mined or are permitted to be mined;
23 (e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;
24 (f) reclamation of affected land; and
25 (g) parking or staging of vehicles, equipment, or supplies unless:
26 (i) the activity is separated from other opencut operations by at least 25 feet and is connected to the
27 opencut operation by a single road that is no more than 25 feet wide; or
28 (ii) the activity is inside the construction disturbance area shown on a construction project plan.

1 ~~(8)~~ (9) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of
 2 enforcing the provisions of this part, the term also includes any person conducting opencut operations on
 3 affected land that is not covered by a permit.

4 ~~(9)~~ (10) "Overburden" means the earth that lies above a natural deposit of materials.

5 ~~(10)~~ (11) "Person" means:

- 6 (a) a natural person;
- 7 (b) a firm, association, partnership, cooperative, or corporation;
- 8 (c) a department, agency, or instrumentality of the state or any governmental subdivision; or
- 9 (d) any other entity.

10 ~~(11)~~ (12) "Plan of operation" means a plan that:

- 11 (a) meets the requirements of 82-4-434; and
- 12 (b) contains a description of current land use, topographical data, hydrologic data, soils data,
 13 proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate
 14 maps.

15 ~~(12)~~ (13) "Processing facilities" means:

- 16 (a) crushers, screens, and pug mills;
- 17 (b) asphalt, wash, and concrete plants;
- 18 (c) treatment, sedimentation, or retention areas for processing facilities; and
- 19 (d) areas receiving washout from vehicles and equipment using the processing facilities.

20 ~~(13)~~ (14) "Reclamation" means the reconditioning of affected land to make the area suitable for
 21 productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or
 22 industrial development.

23 ~~(14)~~ (15) "Soil" means the dark or root-bearing surface matter that has been generated through time by
 24 the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining
 25 plant growth and is recognized and identified as such by standard authorities and methods.

26 (16) "WATER CONVEYANCE FACILITIES" MEANS EXISTING DIVERSIONS, AQUEDUCTS, CANALS, DITCHES,
 27 DRAINS, FLUMES, HEADGATES, SYPHONS, OR OTHER STRUCTURES OR INFRASTRUCTURE ACTIVELY USED TO FACILITATE
 28 THE BENEFICIAL USE OF A WATER RIGHT UNDER TITLE 85."

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Section 3. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for mining, processing, and reclamation required. (1) Except as provided in ~~82-4-440~~ subsections (2) and (3), a permit is required for an operator who:

(a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden; or

(b) ~~conducts more than one~~ an opencut operation where ~~each of the operations results in the removal of less than 10,000 cubic yards of materials and overburden but the operations result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate~~ are removed from the site and:

(i) affects surface water, including intermittent or perennial streams, ~~or~~ground water, OR WATER CONVEYANCE FACILITIES; or

(ii) has never held a permit pursuant to this part; or

(c) ~~removes materials or overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards.~~

(2) ~~(a) Except as provided in or conditioned under subsections (5) and (6), an~~ An operator who holds a permit under this part may conduct a limited opencut operation without first securing an additional permit or an amendment to an existing permit if the limited opencut operation meets the following criteria:

~~(a)~~ (i) the area to be disturbed by the limited opencut operation is located more than 4 one-half mile from the operator's nearest existing limited opencut operation;

~~(b)~~ (ii) the total amount of materials and overburden removed does not exceed 10,000 cubic yards and the total area from which the materials and overburden are removed does not exceed 5 acres; ~~and~~

~~(c)~~ (iii) the operator:

~~(i)~~ (A) submits appropriate site and opencut operation information on a limited opencut operation form provided by the department; ~~and~~

~~(ii)~~ (B) within 1 year of the department's receipt of the limited opencut operation 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

1 requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's
2 request must be sized to support the use of the road after opencut operations.

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

5 (iv) the limited opencut operation is not:

6 (A) in intermittent or perennial streams;

7 (B) in an area where the opencut operation will ~~intercept~~AFFECT surface water, ground water, A WATER
8 CONVEYANCE FACILITY, or any slope that is steeper than 3:1;

9 (C) in an area where mining would be restricted by other laws; or

10 (D) in violation of local zoning regulations adopted under Title 76, chapter 2.

11 ~~(3)~~ (b) At the operator's request and with department approval, the operator may have up to 1
12 additional year to perform the reclamation required by subsection ~~(2)(c)~~ (2)(a)(iii), provided the operator does
13 not apply to extend or continue the limited opencut operation pursuant to subsection ~~(4)~~ (2)(c).

14 ~~(4)~~ (c) ~~(a)~~ (i) An operator who commences a limited opencut operation pursuant to subsection ~~(2)~~
15 (2)(a) may apply for a permit to continue or expand that opencut operation pursuant to the provisions of this
16 subsection ~~(4)~~ (2)(c).

17 ~~(b)~~ (ii) The permit application must be complete within 180 days of the department's receipt of the
18 limited opencut operation form.

19 ~~(c)~~ (iii) If the complete permit application is acceptable within 1 year of the department's receipt of the
20 limited opencut operation form, the provisions of subsections ~~(2)(c)(ii) and (2)(c)(iii)~~ (2)(a)(iii)(B) and (2)(a)(iii)(C)
21 do not apply and reclamation must be conducted as prescribed in the permit.

22 ~~(d)~~ (iv) If the complete permit application is not acceptable within 1 year of the department's receipt of
23 the limited opencut operation form, the application is considered abandoned and void. Starting 3 days after the
24 department notifies the applicant that the application is considered abandoned and void, the applicant has 180
25 days to complete the reclamation provided for in subsections ~~(2)(c)(ii) and (2)(c)(iii)~~ (2)(a)(iii)(B) and
26 (2)(a)(iii)(C).

27 ~~(e)~~ (v) If the permit application is withdrawn by the applicant within 1 year of the department's receipt
28 of the limited opencut operation form, the reclamation provided for in subsections ~~(2)(c)(ii) and (2)(c)(iii)~~

1 ~~(2)(a)(iii)(B) and (2)(a)(iii)(C)~~ must be completed within 180 days of the date of the withdrawal.

2 ~~(3) A landowner may remove up to 10,000 cubic yards of opencut materials on the landowner's~~
 3 ~~property for personal or agricultural uses without obtaining a permit, UNLESS THE REMOVAL AFFECTS SURFACE~~
 4 ~~WATER, INCLUDING INTERMITTENT OR PERENNIAL STREAMS, GROUND WATER, OR WATER CONVEYANCE FACILITIES.~~

5 ~~(5) (4)~~ The department may ~~refuse to approve~~ deny an application for issuance of a permit under
 6 subsection (1) or may prohibit the operator from conducting ~~an a limited~~ opencut operation under subsection ~~(2)~~
 7 ~~(2)(a)~~ if, at the time of application or notification ~~by the operator to the department~~, the operator has a pattern of
 8 violations or is in current violation of this part, rules adopted under this part, or provisions of a permit.

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

11 ~~(7) 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~~
 14 ~~that is steeper than 3:1; or~~

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

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

18 ~~(9) (5)~~ A permit is effective when the department provides written notice to the applicant that the
 19 information and materials provided to the department meet the requirements of this part and rules adopted
 20 pursuant to this part.

21 ~~(10) (6)~~ (a) Except as provided in subsection ~~(10) (b)~~ ~~(6)(b)~~, a permit issued under this part expires on
 22 the reclamation date proposed by the operator and approved by the department.

23 (b) Prior to the expiration of a permit:

24 (i) the operator may file an application to amend the plan of operation to extend the reclamation date
 25 pursuant to 82-4-434(4)(a);

26 (ii) the department may amend the plan of operation pursuant to 82-4-436;

27 (iii) the department may revoke the permit pursuant to 82-4-442; ~~or~~

28 (iv) the operator and the department may agree to terminate the permit upon mutual written consent;

1 (v) (A) for a site permitted or for which an amendment was approved in 2010 or later, the operator
 2 may apply to extend the reclamation date on a site by submitting a form furnished by the department and
 3 provide an updated landowner consultation form and bond, if applicable; or

4 (B) for a site permitted or for which an amendment was approved prior to 2010, the department may
 5 use its discretion to allow the operator to request an extended reclamation date pursuant to subsection
 6 (6)(b)(v)(A); or

7 (vi) the operator may change the post mine land use on a site by submitting the request on a form
 8 furnished by the department and provide an updated landowner consultation form and bond, if applicable.

9 ~~(14)~~ (7) The expiration or termination of a permit issued under this part does not relieve an operator
 10 from the obligation to conduct reclamation as required by the plan of operation or the liability for costs of
 11 reclamation exceeding the amount of the bond."

12

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

14 "**82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) (a) An operator who
 15 requires a permit pursuant to 82-4-431 shall apply for a permit on forms furnished by the department prior to
 16 commencing operations.

17 (b) Operations subject to subsections (2) through (13) are those:

18 (i) that ~~intercept~~ AFFECT ground water or surface water, including intermittent or perennial streams, OR
 19 WATER CONVEYANCE FACILITIES; or

20 (ii) where 10 or more occupied dwelling units are within one-half mile of the permit boundary of the
 21 operation.

22 (c) All other operations are subject to subsection (14).

23 (2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using forms
 24 furnished by the department and must contain the following:

25 ~~(a)~~ (i) the name of the applicant and, if other than the owner of the land, the name and address of the
 26 owner;

27 ~~(b)~~ (ii) the type of operation to be conducted;

28 ~~(c)~~ (iii) the estimated volume of overburden and materials to be removed;

1 ~~(d)~~ (iv) the location of the proposed opencut operation by legal description and county accompanied
 2 by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed
 3 site; and

4 ~~(e)~~ (v) a statement that the applicant has the legal right to mine the designated materials in the lands
 5 described.

6 ~~(2)~~ (b) The application must be accompanied by:

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

8 ~~(b)~~ (ii) a statement from the local governing body having jurisdiction over the area to be mined
 9 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning
 10 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the
 11 time a written request is received for a preapplication meeting pursuant to ~~82-4-432~~ THIS SECTION;

12 (c) a plan of operation that contains information sufficient to initiate acceptability review by addressing
 13 the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434;

14 (d) written documentation that the landowner has been consulted about the proposed plan of
 15 operation;

16 (e) a written agreement between the landowner and the operator authorizing the operator access to
 17 the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;

18 (f) a list that is certified by the operator and generated on a form furnished by the department using
 19 cadastral and field information at the time of permit application of surface-owners of land real property on which
 20 occupied dwelling units exist located within one-half mile of the ~~boundary of the proposed opencut permit area~~
 21 permit boundary using the owners of record as shown no more than 60 days prior to the submission of an
 22 application in the paper or electronic records of the county clerk and recorder for the county where the
 23 proposed opencut operation is located; and

24 (g) documentation of consultation with the state historic preservation office regarding possible
 25 archaeological or historical values on the affected land.

26 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an
 27 application and requests that the department examine the area to be mined, the department shall examine the
 28 area and make recommendations to the person regarding the proposed opencut operation. The person may

1 request a preapplication meeting with the department. The department shall hold a meeting if requested.

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

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

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

12 (ii) Upon determining that an application is complete, the department shall begin reviewing the
13 application for acceptability pursuant to this section.

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

15 (c) The department may declare an application abandoned and void if:

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

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

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

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

24 (a) the name, address, and telephone number of the applicant;

25 (b) a description of the acreage, the estimated volume of overburden and materials to be removed,
26 the type of materials to be removed, the facilities, the duration of activities, and the access points of the
27 proposed opencut operation;

28 (c) a legal description of the proposed opencut operation and a map, or directions on how to access a

1 map, showing the location of the proposed opencut operation and immediately surrounding property; and

2 (d) on a form provided by the department, notification that the application is complete and information
3 on how to request a public meeting pursuant to this section.

4 (6) To provide public notice, the applicant shall:

5 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed
6 opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed
7 opencut operation, the notice provides an address for the map posted on the department's website and
8 instructions for obtaining a paper copy of the map from an applicant. If the notice does not include a map, the
9 applicant shall promptly provide a paper copy to a requestor.

10 (b) mail the notice by first-class mail to the board of county commissioners of the county in which the
11 proposed opencut operation is located and to surface owners of land located within one-half mile of the
12 boundary of the proposed opencut permit area using the most current known owners of record as shown in the
13 paper or electronic records of the county clerk and recorder for the county where the proposed opencut
14 operation is located;

15 (c) post the notice in at least two prominent locations at the site of the proposed opencut operation,
16 including near a public road if possible; and

17 (d) provide the department with the names and addresses of those notified pursuant to subsection
18 (6)(b).

19 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public
20 meeting for 45 days after the department sends notice to the applicant of a complete application. Within this
21 period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant
22 as to whether 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 on a
24 form provided by the department showing that a public meeting will not be required pursuant to subsection (9),
25 the department shall inform the applicant within 30 days of the notice of a complete application as to whether or
26 not the application is acceptable pursuant to subsection (10).

27 (8) If a public meeting is required pursuant to subsection (9), within 30 days from the closing date of
28 the public meeting request period in subsection (7), the department shall:

1 (a) hold a meeting; and

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

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

6 (i) the applicant; or

7 (ii) at least ~~30%~~51% of the real property owners on which occupied dwelling units exist or 10 real
8 property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section.

9 For the purposes of this subsection (9)(a)(ii), multiple ~~property~~ owners of the same ~~parcel~~ occupied dwelling
10 unit are to be counted as a single real property owner.

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

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

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

22 (c) If the application is acceptable, the department shall issue a permit to the operator that entitles the
23 operator to engage in the opencut operation on the land described in the application.

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

28 (b) An application for an amendment is not subject to the public notice or public meeting requirements

1 of this section or an extended review pursuant to 82-4-439 unless it proposes an increase in permitted acreage
 2 of 50% or more of the amount of permitted acreage in the current permit.

3 (c) For amendment applications not subject to the public notice and public meeting requirements of
 4 this section, the department shall, within 45 days of notifying the applicant that the application is complete,
 5 notify the applicant as to whether or not the application is acceptable pursuant to subsection (10).

6 (12) (a) Except as provided in subsection (12)(b), if weather or other field conditions prevent the
 7 department from conducting an adequate site inspection to evaluate a permit or amendment application, the
 8 time limits provided in subsections (7) and (11) are suspended until the weather or other field conditions allow
 9 for an adequate site inspection.

10 (b) Before suspending time limits, the department shall allow the operator to provide the information
 11 needed from a site inspection by other means, including but not limited to surveys, photos, videos, or other
 12 reports.

13 (13) The department shall post a copy of an acceptable permit or amendment on its website.

14 (14) (a) Operations not described by subsection (1)(b) that apply for a permit or an amendment shall
 15 submit:

16 (i) a landowner consultation form;

17 (ii) documentation of consultation with the state historic preservation office regarding possible
 18 archaeological or historical values on the affected land;

19 (iii) a reclamation bond calculated pursuant to the requirements of 82-4-433 unless exempt pursuant to
 20 82-4-405;

21 (iv) if applicable, documentation of compliance with Title 76, chapter 22, part 1;

22 (v) a zoning form from the county or counties where the operation is proposed A STATEMENT FROM THE
 23 LOCAL GOVERNING BODY HAVING JURISDICTION OVER THE AREA TO BE MINED CERTIFYING THAT THE PROPOSED SAND
 24 AND GRAVEL OPENCUT OPERATION COMPLIES WITH APPLICABLE LOCAL ZONING REGULATIONS ADOPTED UNDER TITLE 76,
 25 CHAPTER 2, AND IN EFFECT PRIOR TO THE FILING OF A PERMIT APPLICATION OR AT THE TIME A WRITTEN REQUEST IS
 26 RECEIVED FOR A PREAPPLICATION MEETING PURSUANT TO THIS SECTION;

27 (vi) results from three soil test pits meeting the soil guideline requirements;

28 (vii) the appropriate fee as set forth in 82-4-437 and a \$500 fee to be deposited in the opencut fund

1 pursuant to 82-4-438;

2 (viii) the proposed permit boundary in a format acceptable to the department and a location map;

3 (ix) a certification from the operator that there are fewer than 10 occupied dwelling units within one-half
 4 mile of the permit boundary of the operation no more than 30 60 days from the date the application materials
 5 are submitted; and

6 (x) CERTIFICATION FROM THE OPERATOR THAT NOTICE OF THE PROPOSED OPENCUT OPERATION WAS:

7 (A) PUBLISHED AT LEAST TWICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE LOCALITY OF THE
 8 PROPOSED OPENCUT OPERATION;

9 (B) MAILED TO SURFACE OWNERS OF LAND LOCATED WITHIN ONE-HALF MILE OF THE BOUNDARY OF THE
 10 PROPOSED OPENCUT PERMIT AREA USING THE MOST CURRENT KNOWN OWNERS OF RECORD AS SHOWN IN THE PAPER
 11 OR ELECTRONIC RECORDS OF THE COUNTY CLERK AND RECORDER FOR THE COUNTY WHERE THE PROPOSED OPENCUT
 12 OPERATION IS LOCATED. IF THE NOTICE DOES NOT INCLUDE A MAP, THE APPLICANT SHALL PROMPTLY PROVIDE A COPY
 13 TO A REQUESTOR.

14 (C) POSTED IN AT LEAST TWO PROMINENT LOCATIONS AT THE SITE OF THE PROPOSED OPENCUT OPERATION,
 15 INCLUDING NEAR A PUBLIC ROAD IF POSSIBLE;

16 ~~(x)~~(xi) the date the site is to be fully reclaimed.

17 (b) Except as provided in 75-1-208(4)(b), upon receipt of an application under this subsection (14),
 18 the department shall, within 5 working days, review the application and notify the person as to whether or not
 19 the application is complete. An application is complete if it contains the items listed in subsection (14)(a). If the
 20 department determines that the application is not complete, the department shall notify the applicant in writing
 21 and include a detailed identification of information necessary to make the application complete.

22 (c) Upon determining that an application is complete, the department shall begin reviewing the
 23 application for acceptability pursuant to this section. PUBLIC COMMENT MAY BE SUBMITTED THROUGHOUT THE
 24 REVIEW PERIOD.

25 (d) Within 15 days of receiving the information required by subsection (14)(a), the department shall
 26 determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If
 27 the requirements are met, the operator may commence the operation on receipt of the notification.

28 (e) If the information submitted does not meet the requirements of subsection (14)(a), the department

1 shall notify the applicant in writing and include a detailed identification of all deficiencies.

2 (f) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the
3 department shall review the responses and notify the applicant as to whether the information submitted meets
4 the requirements of subsection (14)(a). If the information submitted does not meet the requirements, the
5 department shall notify the applicant in writing and include a detailed identification of the deficiencies.

6 (g) If the information submitted to the department meets the requirements of subsection (14)(a), the
7 department shall notify the operator in writing. On receipt of the notification, the operator may commence
8 opencut operations on the land described in the application.

9 (h) The department may prohibit an operation under this section if, at the time of submission of
10 information required by subsection (14)(a), the operator has a pattern of violations of this part or is in current
11 violation of this part, rules adopted under this part, or provisions of a permit.

12 (i) Prior to removing materials, the operator shall salvage all of the soil from the area to be disturbed.

13 (j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter slopes
14 for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the surrounding
15 topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions either present
16 prior to operations or as specified by the landowner, including all access roads used for the operation unless
17 the landowner requests in writing that specific roads or portions of roads remain in place. Roads left at the
18 landowner's request must be sized to support the use of the road after operations."

19

20 **Section 5.** Section 82-4-434, MCA, is amended to read:

21 **"82-4-434. Plan of operation -- requirements.** (1) The department shall accept a plan of operation if
22 the department finds that the plan complies with the requirements of this part and the rules adopted pursuant to
23 this part and that after the opencut operation is completed, the affected land will be reclaimed to a productive
24 use. Once the plan of operation is accepted by the department, it becomes a part of the permit but is subject to
25 annual review and amendment by the department. Any amendment by the department must comply with the
26 provisions of 82-4-436(2).

27 (2) ~~The department may not accept a~~ A plan of operation unless the plan provides must provide:

28 (a) that the affected land will be reclaimed for one or more specified uses, including but not limited to

1 agriculture, forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food,
2 cover, or water, or other reasonable, practical, and achievable uses;

3 ~~(b) that whenever the opencut operation results in a need to prevent acid drainage or sedimentation~~
4 ~~on or in adjoining lands or streams, catchments, ponds, or other reasonable devices to control water drainage~~
5 ~~and sediment will be constructed and maintained, provided the devices will not interfere with other landowners'~~
6 ~~rights or contribute to water pollution;~~

7 (e) ~~(b)~~ that soil and other suitable overburden will be salvaged and replaced on affected land, when
8 required by the postmining land use, after completion or termination of that particular phase of the opencut
9 operation. The depth of soil and other suitable overburden to be placed on the reclaimed area must be
10 specified in the plan.

11 ~~(d)~~ ~~(c)~~ that grading will result in a postmining topography conducive to the designated postmining land
12 use;

13 ~~(e)~~ ~~(d)~~ that waste will be buried on site in a manner that protects water quality and is compatible with
14 the postmining land use or will be disposed of off site in accordance with state laws and rules;

15 ~~(f)~~ ~~(e)~~ that all access, haul, and other support roads will be located, constructed, and maintained in a
16 manner that controls and minimizes erosion;

17 ~~(g) that the opencut operation will be conducted to avoid range and wildland fires and spontaneous~~
18 ~~combustion and that open burning will be conducted in accordance with suitable practices for fire prevention~~
19 ~~and control. Approval of the plan for fire prevention and control under this part does not relieve the operator of~~
20 ~~the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.~~

21 ~~(h)~~ ~~(f)~~ that archaeological and historical values on affected lands will be given ~~appropriate~~ legally
22 required protection;

23 ~~(i)~~ ~~(g)~~ that except for those postmining land uses that do not require vegetation, each surface area of
24 the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no
25 longer required;

26 ~~(j)~~ ~~(h)~~ that seeding and planting will be done in a manner to achieve a permanent vegetative cover
27 that is suitable for the postmining land use and that retards erosion;

28 ~~(k)~~ ~~(i)~~ that reclamation will be as concurrent with the opencut operation as feasible and will be

1 completed within a specified length of time;

2 ~~(l) that surface water and ground water will be given appropriate protection, consistent with state law,~~
3 ~~from deterioration of water quality and quantity that may arise as a result of the opencut operation;~~

4 ~~(m) that noise and visual impacts on residential areas will be minimized to the degree practicable~~
5 ~~through berms, vegetation screens, and reasonable limits on hours of operation; and~~

6 ~~(n) that any additional procedures, including monitoring, that are necessary, consistent with the~~
7 ~~purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures,~~
8 ~~improvements, or life forms will be implemented~~

9 (j) a declaration by the operator that the operator will comply with applicable federal, state, county, or
10 local regulations, ordinances and permits, licenses, and approvals for the operation; and

11 (k) for the construction of berms between the opencut operation and residences located within 300
12 feet of the permit boundary; AND

13 (L) PROCEDURES TO PREVENT PHYSICAL HARM TO WATER CONVEYANCE FACILITIES, OR THAT ALLOW THE
14 OWNER OF A WATER CONVEYANCE FACILITY TO AUTHORIZE IN WRITING THE RELOCATION OR DISTURBANCE OF THE
15 WATER CONVEYANCE FACILITY.

16 (3) If reclamation according to the plan of operation is not completed in the time specified, the
17 department may:

18 (a) pursue an administrative order pursuant to 82-4-441;

19 (b) after 30 days' written notice, order the operator to cease mining and, if the operator does not
20 cease, issue an order to reclaim, a notice of violation, or an order of abatement; or

21 (c) institute an action to enjoin further operation; or

22 (d) on request of the operator:

23 (i) extend the timeframe for reclamation-only activities, including revegetation, up to 5 years by
24 submitting the request on a form furnished by the department and provide an updated landowner consultation
25 form and bond, as appropriate; or

26 (ii) change the post mine land use by submitting the request on a form furnished by the department
27 and provide an updated landowner consultation form and bond, as appropriate.

28 (4) (a) At any time during the term of the permit, the operator may for good reason submit to the

1 department a new plan of operation or amendments to the existing plan, including extensions of time for
2 reclamation.

3 (b) The department may approve the proposed new plan of operation or amendments to the existing
4 plan if:

5 (i) the new plan of operation or amendments comply with the requirements of this section; and

6 (ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of
7 operation; or

8 (B) it is highly improbable that reclamation will be successful unless the existing plan of operation is
9 replaced or amended.

10 (5) The permit, plan of operation, and amendments accepted by the department are a public record
11 and are open to inspection."
12

13 **Section 6.** Section 82-4-439, MCA, is amended to read:

14 **"82-4-439. Extended review -- criteria -- timeframes.** (1) The department may subject an opencut
15 application to an extended review if the department determines that comments received at a public meeting
16 held pursuant to 82-4-432 reveal ~~substantial issues not adequately satisfied in~~ the proposed plan of operation
17 violates provisions of this part.

18 (2) (a) For a complete application subject to an extended review, the department shall, within 60 days
19 from the date the department determines the application warrants an extended review, inspect the proposed
20 site if the department determines an inspection is necessary and notify the applicant as to whether or not the
21 application is acceptable pursuant to 82-4-432. If the application is unacceptable, the notice must include a
22 detailed explanation of the deficiencies.

23 (b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department
24 shall review the responses and notify the applicant as to whether or not the application is acceptable. If the
25 application is unacceptable, the department shall notify the applicant in writing and include a detailed
26 identification of the deficiencies.

27 (c) The department may for sufficient cause extend either or both of the review periods in subsection
28 (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the

1 respective original period. The department shall include in the notification of extension the reason for the
2 extension.

3 (d) If the application is acceptable, the department shall issue a permit or a permit amendment to the
4 operator that entitles the operator to engage in the opencut operation on the land described in the application."

5

6 NEW SECTION. Section 7. Repealer. The following sections of the Montana Code Annotated are
7 repealed:

8 82-4-440. Limited borrow operations -- notice -- limitations -- rulemaking -- definition.

9

10 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

11

12 NEW SECTION. Section 9. Retroactive applicability. [Sections ~~2-3~~ and ~~4-5~~] apply retroactively,
13 within the meaning of 1-2-109, to amendments for opencut operations in existence on [the effective date of this
14 act] THAT PROPOSE TO CHANGE THE RECLAMATION DATE OR THE POST MINE LAND USE.

15

- END -