

1 HOUSE BILL NO. 581  
 2 INTRODUCED BY L. BISHOP, W. CURDY, J. ELLIS, P. FLOWERS, S. MORIGEAU, J. COHENOUR, T.  
 3 FRANCE, M. MARLER  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING OPENCUT MINING LAWS; REVISING  
 6 DEFINITIONS; REQUIRING THAT RECLAMATION BE COMPATIBLE WITH EXISTING USES; EXPANDING  
 7 PUBLIC COMMENT REQUIREMENTS; SUBJECTING AMENDMENTS TO THE PUBLIC HEARING  
 8 PROCESS; REQUIRING PLANS OF OPERATION TO PREVENT RUNOFF AND MINIMIZE NOISE AND  
 9 VISUAL IMPACTS; ALLOWING FOR MONITORING; AND AMENDING SECTIONS 82-4-403, 82-4-431, 82-4-  
 10 432, AND 82-4-434, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 13

14 **Section 1.** Section 82-4-403, MCA, is amended to read:

15 **"82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the  
 16 context, the following definitions apply:

17 (1) "Affected land" means the area of land and land covered by water that is disturbed by opencut  
 18 operations. A private road may be included as affected land only with the landowner's consent.

19 (2) "Amendment" means a change to the approved permit.

20 (3) "Board" means the board of environmental review provided for in 2-15-3502.

21 (4) "Department" means the department of environmental quality provided for in 2-15-3501.

22 (5) "Landowner" means the holder of legal title to land subjected to an opencut operation.

23 (6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those  
 24 substances.

25 (7) "Occupied dwelling unit" means a structure with ~~permanent~~ water and sewer facilities that is  
 26 used as a home, residence, or sleeping place ~~by at least one person who maintains a household that is lived in~~  
 27 ~~as a primary residence.~~

28 (8) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of

1 materials, including:

2 (a) mine site preparation;

3 (b) (i) removing the overburden and mining directly from the exposed natural deposits; or

4 (ii) mining directly from natural deposits of materials;

5 (c) processing of materials mined from the natural deposits, except that processing facilities

6 located more than 300 feet from where materials were mined or are permitted to be mined are not part of the

7 opencut operation;

8 (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the

9 activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;

10 (e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;

11 (f) reclamation of affected land; and

12 (g) parking or staging of vehicles, equipment, or supplies unless:

13 (i) the activity is separated from other opencut operations by at least 25 feet and is connected to

14 the opencut operation by a single road that is no more than 25 feet wide; or

15 (ii) the activity is inside the construction disturbance area shown on a construction project plan.

16 (9) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of

17 enforcing the provisions of this part, the term also includes any person conducting opencut operations on

18 affected land that is not covered by a permit.

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

20 (11) "Person" means:

21 (a) a natural person;

22 (b) a firm, association, partnership, cooperative, or corporation;

23 (c) a department, agency, or instrumentality of the state or any governmental subdivision; or

24 (d) any other entity.

25 (12) "Plan of operation" means a plan that:

26 (a) meets the requirements of 82-4-434; and

27 (b) contains a description of current land use, topographical data, hydrologic data, soils data,

28 proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate

1 maps.

2 (13) "Processing facilities" means:

3 (a) crushers, screens, and pug mills;

4 (b) asphalt, wash, and concrete plants;

5 (c) treatment, sedimentation, or retention areas for processing facilities; and

6 (d) areas receiving washout from vehicles and equipment using the processing facilities.

7 (14) "Reclamation" means the reconditioning of affected land to make the area suitable for

8 productive use that is compatible with existing surrounding land uses, including but not limited to forestry,

9 agriculture, grazing, wildlife, recreation, or residential or industrial development.

10 (15) "Soil" means the dark or root-bearing surface matter that has been generated through time by

11 the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining

12 plant growth and is recognized and identified as such by standard authorities and methods.

13 (16) "Water conveyance facilities" means existing diversions, aqueducts, canals, ditches, drains,

14 flumes, headgates, syphons, or other structures or infrastructure actively used to facilitate the beneficial use of

15 a water right under Title 85."

16

17 **Section 2.** Section 82-4-431, MCA, is amended to read:

18 **"82-4-431. Permit for mining, processing, and reclamation required.** (1) Except as provided in

19 subsections (2) and (3), a permit is required for an operator who:

20 (a) conducts an opencut operation that results in the removal of more than 10,000 cubic yards of

21 materials and overburden; or

22 (b) conducts an opencut operation where less than 10,000 cubic yards of materials and

23 overburden are removed from the site and:

24 (i) the open cut operation ~~affects~~ may affect surface water, including ephemeral, intermittent, or

25 perennial streams, ground water, or water conveyance facilities; or

26 (ii) has never held a permit pursuant to this part.

27 (2) (a) An operator who holds a permit under this part may conduct a limited opencut operation

28 without first securing an additional permit or an amendment to an existing permit if the limited opencut operation

1 meets the following criteria:

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

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

6 (iii) the operator:

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

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

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

17 (iv) the limited opencut operation is not:

18 (A) in ephemeral, intermittent, or perennial streams;

19 (B) in an area where the opencut operation will affect surface water, ground water, a water  
20 conveyance facility, or any slope that is steeper than 3:1;

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

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

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

26 (c) (i) An operator who commences a limited opencut operation pursuant to subsection (2)(a) may  
27 apply for a permit to continue or expand that opencut operation pursuant to the provisions of this subsection  
28 (2)(c).

1 (ii) The permit application must be complete within 180 days of the department's receipt of the  
2 limited opencut operation form.

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

6 (iv) If the complete permit application is not acceptable within 1 year of the department's receipt of  
7 the limited opencut operation form, the application is considered abandoned and void. Starting 3 days after the  
8 department notifies the applicant that the application is considered abandoned and void, the applicant has 180  
9 days to complete the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C).

10 (v) If the permit application is withdrawn by the applicant within 1 year of the department's receipt  
11 of the limited opencut operation form, the reclamation provided for in subsections (2)(a)(iii)(B) and (2)(a)(iii)(C)  
12 must be completed within 180 days of the date of the withdrawal.

13 (3) A landowner may remove up to 10,000 cubic yards of opencut materials on the landowner's  
14 property for personal or agricultural uses without obtaining a permit, unless the removal affects surface water,  
15 including intermittent or perennial streams, ground water, or water conveyance facilities.

16 (4) The department may deny an application for issuance of a permit under subsection (1) or may  
17 prohibit the operator from conducting a limited opencut operation under subsection (2)(a) if, at the time of  
18 application or notification, the operator has a pattern of violations or is in current violation of this part, rules  
19 adopted under this part, or provisions of a permit.

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

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

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

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

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

- 1 (iii) the department may revoke the permit pursuant to 82-4-442;
- 2 (iv) the operator and the department may agree to terminate the permit upon mutual written  
3 consent;
- 4 (v) (A) for a site permitted or for which an amendment was approved in 2010 or later, the operator  
5 may apply to extend the reclamation date on a site by submitting a form furnished by the department and  
6 provide an updated landowner consultation form and bond, if applicable; or
- 7 (B) for a site permitted or for which an amendment was approved prior to 2010, the department  
8 may use its discretion to allow the operator to request an extended reclamation date pursuant to subsection  
9 (6)(b)(v)(A); or
- 10 (vi) the operator may not change the postmine land use on a site ~~by submitting unless the~~  
11 permittee notifies adjacent landowners and the department accepts public comment on the proposed change.  
12 The operator shall submit the request on a form furnished by the department and provide an updated  
13 landowner consultation form and bond, if applicable.
- 14 (7) The expiration or termination of a permit issued under this part does not relieve an operator  
15 from the obligation to conduct reclamation as required by the plan of operation or the liability for costs of  
16 reclamation exceeding the amount of the bond."

17

18 **Section 3.** Section 82-4-432, MCA, is amended to read:

19 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) (a) An operator who  
20 requires a permit pursuant to 82-4-431 shall apply for a permit on forms furnished by the department prior to  
21 commencing operations.

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

23 (i) that affect ground water or surface water, including ephemeral, intermittent, or perennial  
24 streams, or water conveyance facilities; or

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

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

28 (2) (a) An application for a permit pursuant to subsections (2) through (13) must be made using

1 forms furnished by the department and must contain the following:

2 (i) the name of the applicant and, if other than the owner of the land, the name and address of the  
3 owner;

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

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

6 (iv) the location of the proposed opencut operation by legal description and county accompanied  
7 by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed  
8 site; and

9 (v) a statement that the applicant has the legal right to mine the designated materials in the lands  
10 described.

11 (b) The application must be accompanied by:

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

13 (ii) a statement from the local governing body having jurisdiction over the area to be mined  
14 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning  
15 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the  
16 time a written request is received for a preapplication meeting pursuant to this section;

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

19 (iv) written documentation that the landowner has been consulted about the proposed plan of  
20 operation;

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

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

28 (vii) documentation of consultation with the state historic preservation office regarding possible

1 archaeological or historical values on the affected land.

2 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an  
3 application and requests that the department examine the area to be mined, the department shall examine the  
4 area and make recommendations to the person regarding the proposed opencut operation. The person may  
5 request a preapplication meeting with the department. The department shall hold a meeting if requested.

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

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

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

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

18 (iii) The department shall post the application materials on its website and accept public comment  
19 throughout the review process.

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

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

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

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

27 (5) Within 15 days after the department sends notice of a complete application to the applicant, the  
28 ~~applicant~~ department shall provide public notice, which must include and post the following on its website:



- 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,  
3 the type of materials to be removed, the facilities, the duration of activities, and the access points of the  
4 proposed opencut operation;
- 5 (c) a legal description of the proposed opencut operation and a map, or directions on how to  
6 access a map, showing the location of the proposed opencut operation and immediately surrounding property;  
7 and
- 8 (d) ~~on a form provided by the department,~~ notification that the application is complete and  
9 information on how to request a public meeting pursuant to this section.
- 10 (6) To provide public notice, the ~~applicant~~ department shall require the applicant to:
- 11 (a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed  
12 opencut operation. A map is not required in the notice if, in addition to the legal description of the proposed  
13 opencut operation, the notice provides an address for the map posted on the department's website and  
14 instructions for obtaining a paper copy of the map from an applicant. ~~If the notice does not include a map, the~~  
15 ~~applicant shall promptly provide a paper copy to a requestor.~~
- 16 (b) mail the notice by first-class mail to the board of county commissioners of the county in which  
17 the proposed opencut operation is located and to surface owners of land located within one-half mile of the  
18 boundary of the proposed opencut permit area using the most current known owners of record as shown in the  
19 paper or electronic records of the county clerk and recorder for the county where the proposed opencut  
20 operation is located;
- 21 (c) post the notice in at least two prominent locations at the site of the proposed opencut  
22 operation, including near a public road if possible; and
- 23 (d) provide the department with the names and addresses of those notified pursuant to subsection  
24 (6)(b).
- 25 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public  
26 meeting for 45 days after ~~the department sends notice to the applicant of a complete application~~ publication of  
27 the public notice in subsection (6). Within this period, unless a public meeting is required pursuant to subsection  
28 (9), the department shall notify the applicant as to whether or not the application is acceptable pursuant to

1 subsection (10).

2 (b) If the applicant and the department mutually agree or the applicant submits documentation on  
3 a form provided by the department showing that a public meeting will not be required pursuant to subsection  
4 (9), the department shall inform the applicant within 30 days of the notice of a complete application as to  
5 whether or not the application is acceptable pursuant to subsection (10).

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

8 (a) hold a meeting; and

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

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

13 (i) the applicant; or

14 (ii) ~~at least 51% of the real property owners on which occupied dwelling units exist or 10 real~~  
15 ~~property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section.~~  
16 ~~For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be~~  
17 ~~counted as a single real property owner~~ an occupant of an occupied dwelling unit located within one-half mile of  
18 the proposed operation boundary.

19 (b) To provide notice for a public meeting, the department shall notify by first-class mail or  
20 electronically the property owners on the list provided by the applicant pursuant to this section, tribal  
21 governments whose reservation boundary is within 5 miles of the proposed project, and the board of county  
22 commissioners in the county where the proposed opencut operation is located.

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

27 (b) Within 10 working days of receipt of the applicant's response to the identified deficiencies, the  
28 department shall review the responses and notify the applicant as to whether or not the application is

1 acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a  
2 detailed identification of the deficiencies.

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

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

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

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

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

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

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

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

25 (i) a landowner consultation form;

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

28 (iii) a reclamation bond calculated pursuant to the requirements of 82-4-433 unless exempt

1 pursuant to 82-4-405;

2 (iv) if applicable, documentation of compliance with Title 87, chapter 5, part 9;

3 (v) a statement from the local governing body having jurisdiction over the area to be mined  
4 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning  
5 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the  
6 time a written request is received for a preapplication meeting pursuant to this section;

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

8 (vii) the appropriate fee as set forth in 82-4-437 and a \$500 fee to be deposited in the opencut fund  
9 pursuant to 82-4-438;

10 (viii) a plan of operation;

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

12 ~~(ix)~~(x) a certification from the operator that there are fewer than 10 occupied dwelling units within one-  
13 half mile of the permit boundary of the operation no more than 60 days from the date the application materials  
14 are submitted;

15 ~~(x)~~(xi) certification from the operator that notice of the proposed opencut operation was:

16 (A) published at least twice in a newspaper of general circulation in the locality of the proposed  
17 opencut operation;

18 (B) mailed to surface owners of land located within one-half mile of the boundary of the proposed  
19 opencut permit area using the most current known owners of record as shown in the paper or electronic records  
20 of the county clerk and recorder for the county where the proposed opencut operation is located. If the notice  
21 does not include a map, the applicant shall promptly provide a copy to a requestor.

22 (C) posted in at least two prominent locations at the site of the proposed opencut operation,  
23 including near a public road if possible;

24 (D) inclusive of information about how to find the application on the department's website and how  
25 to submit public comments;

26 ~~(xi)~~(xii) the date the site is to be fully reclaimed.

27 (b) Except as provided in 75-1-208(4)(b), upon receipt of an application under this subsection (14),  
28 the department shall post the application on its website and, within 5 working days of it being posted on the

1 website, review the application and notify the person as to whether or not the application is complete. An  
2 application is complete if it contains the items listed in subsection (14)(a). If the department determines that the  
3 application is not complete, the department shall notify the applicant in writing and include a detailed  
4 identification of information necessary to make the application complete.

5 (c) Upon determining that an application is complete, the department shall begin reviewing the  
6 application for acceptability pursuant to this section. ~~Public comment may be submitted~~ The department shall  
7 accept public comment throughout the review period.

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

11 (e) If the information submitted does not meet the requirements of subsection (14)(a), the  
12 department shall notify the applicant in writing and include a detailed identification of all deficiencies.

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

17 (g) If the information submitted to the department meets the requirements of subsection (14)(a),  
18 the department shall notify the operator in writing. On receipt of the notification, the operator may commence  
19 open-cut operations on the land described in the application.

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

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

25 (j) Prior to the final reclamation date, the operator shall grade the affected land to 3:1 or flatter  
26 slopes for rangeland and to 5:1 or flatter slopes for farmland and cropland, blend the graded land into the  
27 surrounding topography, replace an appropriate amount of overburden and all soils, and reclaim to conditions  
28 either present prior to operations or as specified by the landowner, including all access roads used for the

1 operation unless the landowner requests in writing that specific roads or portions of roads remain in place.

2 Roads left at the landowner's request must be sized to support the use of the road after operations."

3

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

5 **"82-4-434. Plan of operation -- requirements.** (1) The department shall accept a plan of operation if  
6 the department finds that the plan complies with the requirements of this part and the rules adopted pursuant to  
7 this part and that after the opencut operation is completed, the affected land will be reclaimed to a productive  
8 use consistent with surrounding uses. ~~Once~~ After the plan of operation is accepted by the department, it  
9 becomes a part of the permit but is subject to annual review and amendment by the department. Any  
10 amendment by the department must comply with the provisions of 82-4-436(2).

11 (2) A plan of operation must provide:

12 (a) that the affected land will be reclaimed for one or more specified uses, including but not limited  
13 to agriculture, forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including  
14 food, cover, or water, or other reasonable, practical, and achievable uses;

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

19 (c) that grading will result in a postmining topography conducive to the designated postmining land  
20 use;

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

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

25 (f) that archaeological and historical values on affected lands will be given legally required  
26 protection;

27 (g) that except for those postmining land uses that do not require vegetation, each surface area of  
28 the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no

1 longer required;

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

4 (i) that reclamation will be as concurrent with the opencut operation as feasible and will be  
5 completed within a specified length of time;

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

8 (k) for the construction of berms between the opencut operation and residences located within 300  
9 feet of the permit boundary; ~~and~~

10 (l) procedures to prevent physical harm to water conveyance facilities or that allow the owner of a  
11 water conveyance facility to authorize in writing the relocation or disturbance of the water conveyance facility;

12 (m) that the opencut operation:

13 (i) does not create sedimentation on or in adjoining lands or streams, catchments, or ponds; and

14 (ii) includes the construction and maintenance of reasonable devices to control water drainage  
15 and sediment that do not interfere with other landowners' rights or contribute to water pollution;

16 (n) that the opencut operation is conducted to avoid range and wildland fires. Approval of the plan  
17 for fire prevention and control under this part does not relieve the operator of the duty to comply with the air  
18 quality permitting and protection requirement of Title 75, chapter 2.

19 (o) that surface water and ground water are given appropriate protection, consistent with state law,  
20 from deterioration of water quality and quantity from effects of the opencut operation;

21 (p) that noise and visual impacts on residential areas are minimized to the degree practicable  
22 through berms, vegetation screens, and reasonable limits on hours of operation;

23 (q) that any additional procedures, including monitoring, that are necessary, consistent with the  
24 purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures,  
25 improvements, or life forms are implemented.

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

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

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

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

4 (d) on request of the operator:

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

8 (ii) change the postmine land use by submitting the request on a form furnished by the  
9 department, ~~and provide an updated landowner consultation form and bond, as appropriate~~ and provide for  
10 public notice and an opportunity for public comment.

11 (4) (a) At any time during the term of the permit, the operator may for good reason submit to the  
12 department a new plan of operation or amendments to the existing plan, including extensions of time for  
13 reclamation.

14 (b) The department may approve the proposed new plan of operation or amendments to the  
15 existing plan if, after public notice and the opportunity for public comment:

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

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

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

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

23 - END -