



AN ACT GENERALLY REVISING OPENCUT MINING LAWS; REQUIRING NOTICE OF INSPECTIONS; REVISING NOTICE AND HEARING PROVISIONS; REQUIRING FEE FOR MATERIALS MINED ILLEGALLY; AND AMENDING SECTIONS 7-14-2124, 82-4-403, 82-4-425, 82-4-427, 82-4-431, 82-4-432, 82-4-433, AND 82-4-437, MCA.

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

Section 1. Section 7-14-2124, MCA, is amended to read:

"7-14-2124. Disposition of surplus crushed rock and gravel. (1) ~~Any crushed~~ Crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to only a:

(a) ~~any person, firm, or corporation desiring to use it upon any public street or highway in the county;~~ or
 (b) landowner for personal use in an area within 5 miles of the opencut operation where the materials were mined.

(2) The proceeds of any ~~such sale shall~~ must be paid into the county road fund."

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

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

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut operations, ~~including the area from which overburden or materials are to be or have been removed and upon which the overburden is to be or has been deposited, existing private roads that are used and roads constructed to gain access to the materials, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, soil and materials stockpile areas on or contiguous to the opencut mine, and any other surface or subsurface disturbance associated with opencut operations.~~ For the purposes of this subsection, an existing A private road may be included as affected land only with the landowner's consent.

- (2) "Amendment" means a change to the approved permit.
- (3) "Board" means the board of environmental review provided for in 2-15-3502.
- (4) "Department" means the department of environmental quality provided for in 2-15-3501.
- (5) "Landowner" means the holder of legal title to land subjected to an opencut operation.
- (6) "Materials" means bentonite, clay, scoria, peat, sand, soil, gravel, or mixtures of those substances.
- (7) "Opencut operation" means ~~the following activities, if they are~~ conducted for the primary purpose of sale or utilization of materials, including:
 - (a) mine site preparation;
 - (b) (i) removing the overburden and mining directly from the exposed natural deposits; or
(ii) mining directly from natural deposits of materials;
 - ~~(b) mine site preparation, including access;~~
 - (c) processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;
 - (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;
 - ~~(d) transportation of materials on areas referred to in subsections (7)(a) through (7)(c);~~
 - (e) storing or stockpiling of materials on areas referred to in subsections (7)(a) through (7)(c) at processing facilities that are part of the opencut operation;
 - (f) reclamation of affected land; and
 - (g) ~~any other associated surface or subsurface activity conducted on areas referred to in subsections (7)(a) through (7)(c)~~ parking or staging of vehicles, equipment, or supplies unless:
 - (i) the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide; or
 - (ii) the activity is inside the construction disturbance area shown on a construction project plan.
- (8) "Operator" means ~~a person engaged in or controlling an opencut operation. When a permit has been issued for an operation, a person who removes materials from the site under the control of the operator is not considered an operator~~ who holds a permit issued pursuant to this part. For purposes of enforcing the provisions of this part, the term also includes any person conducting opencut operations on affected land that is not covered

by a permit.

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

(10) "Person" means:

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

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

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

(12) "Processing facilities" means:

- (a) crushers, screens, and pug mills;
- (b) asphalt, wash, and concrete plants; ~~and~~
- (c) ~~other equipment used in processing opencut materials~~ treatment, sedimentation, or retention areas for processing facilities; and
- (d) areas receiving washout from vehicles and equipment using the processing facilities.

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

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

Section 3. Section 82-4-425, MCA, is amended to read:

"82-4-425. Inspection of opencut operations. The department or its accredited representatives may enter upon lands subjected to opencut operations at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with. The department shall attempt to provide reasonable notice to a permitted operator when practicable under the circumstances."

Section 4. Section 82-4-427, MCA, is amended to read:

"82-4-427. Hearing -- appeal -- venue. (1) (a) A Subject to subsections (1)(b) and (1)(c), a person whose interests are or may be adversely affected by a final decision of the department to approve or disapprove a permit application and accompanying material or a permit amendment application and accompanying material under this part is entitled to a hearing before the board if a written request stating the reasons for the appeal is submitted to the board within 30 days of the department's decision.

(b) If an application was noticed publicly as required by this part, to be eligible to file for an appeal a person must have either submitted comments to the department on an application or submitted comments at a public meeting held under 82-4-432.

(c) Subsection (1)(b) does not apply to a person filing for an appeal of an application that was not required to be noticed publicly by this part.

(2) An operator may request a hearing before the board on:

(a) a final decision of the department director pursuant to 82-4-436(4) by submitting a request for a hearing within 15 days of receipt of notice of the director's decision; and

(b) an order of suspension or revocation issued under 82-4-442 by filing a request for hearing within 30 days of receipt of the decision.

(3) The operator or the landowner may request a hearing before the board on a decision on a bond release application.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(5) A petition for judicial review of a board decision made pursuant to this section must be brought in the county in which the permitted activity is proposed to occur or, if mutually agreed upon by both parties in the action, in the first judicial district, Lewis and Clark County. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(6) The petition for judicial review must include the party to whom the permit was issued or the applicant unless otherwise agreed to by the permit holder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for

an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action."

Section 5. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for mining, processing, and reclamation required. (1) ~~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. 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;

(b) conducts more than one 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; 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) Except as provided in or conditioned under subsections ~~(3) and (4)~~ (5) and (6), an operator who holds a permit under this part may conduct ~~an~~ 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) the area to be disturbed by the limited opencut operation is located more than 1 mile from the operator's nearest existing limited opencut operation;

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

~~(b)(c)~~ (c) the operator:

(i) submits appropriate site and opencut operation information on a limited opencut operation form

provided by the department; and

(ii) within 180 days of submitting the 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 requests in writing that specific roads or portions of the roads remain open. Roads left open at the landowner's request must be sized to support the use of the road after opencut operations.

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

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

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

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

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

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

(e) If the permit application is withdrawn by the applicant within 1 year of the department's receipt of the limited opencut operation form, the reclamation provided for in subsections (2)(c)(ii) and (2)(c)(iii) must be completed within 180 days of the date of the withdrawal.

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

this part, rules adopted under this part, or provisions of a permit.

~~(4)~~(6) The department may require an additional bond as a condition for the conduct of an opencut operation under subsection (2).

~~(5)~~(7) Opencut operations described in subsection (2) may not occur:

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

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

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

~~(6)~~(8) Sand and gravel opencut operations must meet applicable local zoning regulations adopted under Title 76, chapter 2."

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

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

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

(b) the type of operation to be conducted;

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

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

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

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

(2) The application must be accompanied by:

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

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

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

part related to 82-4-434;

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

(e) a list of surface owners of land located within one-half mile of the boundary of the proposed opencut permit area using the ~~most current known~~ owners of record as shown no more than 60 days prior to the submission of an application in the paper or electronic records of the county clerk and recorder in for the county where the proposed opencut operation is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) a legal description of the proposed opencut operation and a map, or directions on how to access a map, showing the location of the proposed opencut operation and immediately surrounding property; and

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

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

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

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

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

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

(7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public meeting for 45 days after the department sends notice to the applicant of a complete application. Within this period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant as to whether

or not the application is acceptable pursuant to subsection (10).

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

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

(a) hold a meeting; and

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

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

(i) the applicant; or

(ii) at least 30% of the property owners or 10 property owners, whichever is greater, notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), multiple property owners of the same parcel are to be counted as a single property owner.

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

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

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

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

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

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

(c) For amendment applications not subject to the public notice and public meeting requirements of this section, the department shall, within 45 days of notifying the applicant that the application is complete, notify the applicant as to whether or not the application is acceptable pursuant to subsection (10) ~~or that the application requires an extended review pursuant to 82-4-439.~~

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

Section 7. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) Before a permit or permit amendment may be issued, a surety bond made payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules adopted under this part, and the permit must be submitted to and approved by the department. The bond must be signed by the applicant as principal and by a good and sufficient corporate surety licensed to do business in the state of Montana. The bond amount must be determined by the department at the cost of reclamation of the affected land by the department. The applicant shall submit a bond that is no less than the amount determined by the department.

(2) (a) For opencut operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter

into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of submitting a surety bond pursuant to subsection (1), the operator may submit cash, ~~government securities~~ a certificate of deposit, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs.

(4) The bond or other security must be increased or reduced as provided in this part.

(5) The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the department has approved the reclamation and released the bond or security. The bond or security may cover only actual affected land and must be increased or reduced to cover only unreclaimed acreages.

(6) If the license of a surety that has issued a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute a good and sufficient bond from another surety licensed to do business in the state or shall submit another type of security pursuant to subsection (3). Upon failure of the operator to make the bond substitution within the 30-day time period, the department shall suspend the permit of the operator to conduct opencut operations upon the land described in the permit until the substitution has been made. If the operator demonstrates in writing that the operator has been pursuing a replacement bond in good faith but additional time is necessary to complete the transaction, the department may grant up to an additional 60 days for the operator to submit a replacement bond before suspending the permit.

(7) Whenever an operator has completed all of the reclamation requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements and may request bond release. If the department releases the operator from further obligation regarding any affected land, the bond must be reduced proportionately. The department shall notify the operator and the landowner in writing of the decision on the bond release application."

Section 8. Section 82-4-437, MCA, is amended to read:

"82-4-437. Annual report -- fee. (1) For each ~~permitted~~ opencut operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

(2) (a) Except as provided in subsection (2)(b), each ~~permitted~~ opencut operation shall submit with the annual report a fee of 2.5 cents per cubic yard of ~~material~~ materials for all operations mined during the period covered by the report.

(b) ~~Permitted~~ Opencut operations that mine, extract, or produce bentonite are not subject to the fee in this section.

(3) Pursuant to the provisions of 82-4-441, a person who mines materials without a permit in violation of this part shall submit a report and the fee required by subsection (2)(a)."

- END -

I hereby certify that the within bill,
SB 0332, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 332

INTRODUCED BY TUTVEDT, CONNELL

AN ACT GENERALLY REVISING OPENCUT MINING LAWS; REQUIRING NOTICE OF INSPECTIONS;
REVISING NOTICE AND HEARING PROVISIONS; REQUIRING FEE FOR MATERIALS MINED ILLEGALLY;
AND AMENDING SECTIONS 7-14-2124, 82-4-403, 82-4-425, 82-4-427, 82-4-431, 82-4-432, 82-4-433, AND
82-4-437, MCA.