

SENATE BILL NO. 391

INTRODUCED BY S. MORIGEAU, S. FYANT, W. CURDY, J. MORIGEAU, T. RUNNING WOLF, J.

COHENOUR, P. FLOWERS, C. KEOGH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC NOTICE AND PUBLIC PARTICIPATION REQUIREMENTS FOR OPENCUT MINING PERMITS; REQUIRING DEPARTMENT RESPONSE TO PUBLIC COMMENTS FOR AN OPENCUT MINING PERMIT APPLICATION; ELIMINATING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 82-4-403 AND 82-4-432, MCA."

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

Section 1. 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. 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) "Occupied dwelling unit" means a structure with permanent water and sewer facilities that is used as a home, residence, or sleeping place by at least one person who maintains a household that is lived in as a primary residence.~~

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

- 1 (a) mine site preparation;
- 2 (b) (i) removing the overburden and mining directly from the exposed natural deposits; or
- 3 (ii) mining directly from natural deposits of materials;
- 4 (c) processing of materials mined from the natural deposits, except that processing facilities
- 5 located more than 300 feet from where materials were mined or are permitted to be mined are not part of the
- 6 opencut operation;
- 7 (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the
- 8 activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;
- 9 (e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;
- 10 (f) reclamation of affected land; and
- 11 (g) parking or staging of vehicles, equipment, or supplies unless:
- 12 (i) the activity is separated from other opencut operations by at least 25 feet and is connected to
- 13 the opencut operation by a single road that is no more than 25 feet wide; or
- 14 (ii) the activity is inside the construction disturbance area shown on a construction project plan.
- 15 ~~(9)~~(8) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of
- 16 enforcing the provisions of this part, the term also includes any person conducting opencut operations on
- 17 affected land that is not covered by a permit.
- 18 ~~(10)~~(9) "Overburden" means the earth that lies above a natural deposit of materials.
- 19 ~~(11)~~(10) "Person" means:
- 20 (a) a natural person;
- 21 (b) a firm, association, partnership, cooperative, or corporation;
- 22 (c) a department, agency, or instrumentality of the state or any governmental subdivision; or
- 23 (d) any other entity.
- 24 ~~(12)~~(11) "Plan of operation" means a plan that:
- 25 (a) meets the requirements of 82-4-434; and
- 26 (b) contains a description of current land use, topographical data, hydrologic data, soils data,
- 27 proposed mine areas, proposed mining and processing operations, proposed reclamation, and appropriate
- 28 maps.

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

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

(14)(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.

(15)(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.

(16)(15)"Water conveyance facilities" means existing diversions, aqueducts, canals, ditches, drains, flumes, headgates, syphons, or other structures or infrastructure actively used to facilitate the beneficial use of a water right under Title 85."

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

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

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

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

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

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

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

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

- 1 owner;
- 2 (ii) the type of operation to be conducted;
- 3 (iii) the estimated volume of overburden and materials to be removed;
- 4 (iv) the location of the proposed opencut operation by legal description and county accompanied
- 5 by a map showing the location of the proposed operation sufficient to allow the public to locate the proposed
- 6 site; and
- 7 (v) a statement that the applicant has the legal right to mine the designated materials in the lands
- 8 described.
- 9 (b) The application must be accompanied by:
- 10 (i) a bond or security meeting the requirements as set out in this part;
- 11 (ii) a statement from the local governing body having jurisdiction over the area to be mined
- 12 certifying that the proposed sand and gravel opencut operation complies with applicable local zoning
- 13 regulations adopted under Title 76, chapter 2, and in effect prior to the filing of a permit application or at the
- 14 time a written request is received for a preapplication meeting pursuant to this section;
- 15 (iii) a plan of operation that contains information sufficient to initiate acceptability review by
- 16 addressing the requirements of 82-4-434 and rules adopted pursuant to this part related to 82-4-434;
- 17 (iv) written documentation that the landowner has been consulted about the proposed plan of
- 18 operation;
- 19 (v) a written agreement between the landowner and the operator authorizing the operator access
- 20 to the site to perform reclamation if the landowner revokes or otherwise terminates the operator's right to mine;
- 21 (vi) a list that is certified by the operator and generated on a form furnished by the department
- 22 using cadastral and field information at the time of permit application of owners of real property on which
- 23 occupied dwelling units exist located within one-half mile of the proposed permit boundary using the owners of
- 24 record as shown no more than 60 days prior to the submission of an application in the paper or electronic
- 25 records of the county clerk and recorder for the county where the proposed opencut operation is located; and
- 26 (vii) documentation of consultation with the state historic preservation office regarding possible
- 27 archaeological or historical values on the affected land.
- 28 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) a description of the acreage, the estimated volume of overburden and materials to be removed,
28 the type of materials to be removed, the facilities, the duration of activities, and the access points of the

1 proposed opencut operation;

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

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

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

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

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

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

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

22 (7) (a) Except as provided in subsection (7)(b), the department shall accept requests for a public
23 meeting for 45 days after the department sends notice to the applicant of a complete application. Within this
24 period, unless a public meeting is required pursuant to subsection (9), the department shall notify the applicant
25 as to whether or not the application is acceptable pursuant to subsection (10).

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

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

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

4 (a) hold a meeting; and

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

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

9 (i) the applicant; or

10 (ii) ~~at least 51% of the real property owners on which occupied dwelling units exist or 10 real~~
11 ~~property owners on which occupied dwelling units exist, whichever is greater, notified pursuant to this section.~~
12 ~~For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be~~
13 ~~counted as a single real property owner~~ 30% of the residents within 1 mile of the proposed operation who are
14 notified pursuant to this section.

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

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

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

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

28 (11) (a) An operator may amend a permit by submitting an amendment application to the

1 department. ~~Upon~~On receipt of the amendment application, the department shall review it in accordance with
2 the requirements and procedures in this section. If the amendment application is acceptable, the department
3 shall issue an amendment to the original permit.

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

7 ~~(c)(b) For amendment applications not subject to the public notice and public meeting requirements~~
8 ~~of this section, the department shall, within 45 days of notifying the applicant that the application is complete,~~
9 ~~notify the applicant as to whether or not the application is acceptable pursuant to subsection (10), the~~
10 ~~department shall follow the public notice and participation provisions of subsections (8) through (10), except for~~
11 ~~ministerial amendments.~~

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

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

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

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

22 (i) a landowner consultation form;

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

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

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

28 (v) 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, and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to this section;

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

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

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

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

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

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

(B) mailed to surface owners of land located within ~~one-half~~ 1 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 for the county where the proposed opencut operation is located. If the notice does not include a map, the applicant shall promptly provide a copy to a requestor.

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

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

(b) Except as provided in 75-1-208(4)(b), ~~upon-on~~ receipt of an application under this subsection (14), 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 subsection (14)(a). 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.

(c) ~~Upon-On~~ determining that an application is complete, the department shall:

(i) ~~begin reviewing the application for acceptability pursuant to this section. Public comment may be submitted throughout the review period ;~~

(ii) require the applicant to notify residents within 1 mile of the proposed operation;

(iii) accept public comments for 30 days after the notification; and

(iv) respond in writing to all public comments.

(d) Within 15 days of receiving the information required by subsection (14)(a) and 5 days after the close of the public comment period required by subsection (14)(c), the department shall determine if the information meets the requirements of subsection (14)(a) and notify the operator in writing. If the requirements are met, the operator may commence the operation on receipt of the notification.

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

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

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

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

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

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

- END -