

1 SENATE BILL NO. 391

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC NOTICE AND PUBLIC
6 PARTICIPATION REQUIREMENTS FOR OPENCUT MINING PERMITS; REQUIRING DEPARTMENT
7 RESPONSE TO PUBLIC COMMENTS FOR AN OPENCUT MINING PERMIT APPLICATION; ELIMINATING A
8 DEFINITION; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 82-4-403 AND 82-4-
9 432, MCA."

10

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

12

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

14 **"82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the
15 context, the following definitions apply:

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

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

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

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

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

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

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

27 (8)(7) "Opencut operation" means activities conducted for the primary purpose of sale or utilization of
28 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;
- (c) processing of materials mined from the natural deposits, except that processing facilities more than 300 feet from where materials were mined or are permitted to be mined are not part of the operation;
- (d) transporting, depositing, staging, and stockpiling of overburden and materials unless the occurs more than 300 feet from where the materials were mined or are permitted to be mined;
- (e) storing or stockpiling of materials at processing facilities that are part of the opencut operation;
- (f) reclamation of affected land; and
- (g) 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 ncut 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.
- (9)(8) "Operator" means a person who holds a permit issued pursuant to this part. For purposes of nting the provisions of this part, the term also includes any person conducting opencut operations on d land that is not covered by a permit.

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

(11)(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.

(12)(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, and mine areas, proposed mining and processing operations, proposed reclamation, and appropriate

1 (13)(12)"Processing facilities" means:
2 (a) crushers, screens, and pug mills;
3 (b) asphalt, wash, and concrete plants;
4 (c) treatment, sedimentation, or retention areas for processing facilities; and
5 (d) areas receiving washout from vehicles and equipment using the processing facilities.

6 (14)(13)"Reclamation" means the reconditioning of affected land to make the area suitable for
7 productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential or
8 industrial development.

9 (15)(14)"Soil" means the dark or root-bearing surface matter that has been generated through time by
10 the interaction of biological activity, climate, topography, and parent material and that is capable of sustaining
11 plant growth and is recognized and identified as such by standard authorities and methods.

12 (16)(15)"Water conveyance facilities" means existing diversions, aqueducts, canals, ditches, drains,
13 flumes, headgates, syphons, or other structures or infrastructure actively used to facilitate the beneficial use of
14 a water right under Title 85."

15

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

17 **"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) (a) An operator who
18 requires a permit pursuant to 82-4-431 shall apply for a permit on forms furnished by the department prior to
19 commencing operations.

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

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

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

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

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

28 (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 and residential

23 addresses on which occupied dwelling units exist located within one-half mile of the proposed permit boundary

24 using the owners of record as shown no more than 60 days prior to the submission of an application in the

25 paper or electronic records of the county clerk and recorder for the county where the proposed opencut

26 operation is located; and

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

28 archaeological or historical values on the affected land.

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

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

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

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

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

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

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

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

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

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

28 (b) a description of the acreage, the estimated volume of overburden and materials to be removed,

1 the type of materials to be removed, the facilities, the duration of activities, and the access points of the
2 proposed opencut operation;

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

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

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

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

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

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

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

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

27 (b) If the applicant and the department mutually agree or the applicant submits documentation on
28 a form provided by the department showing that a public meeting will not be required pursuant to subsection

1 (9), the department shall inform the applicant within 30 days of the notice of a complete application as to
2 whether or not the application is acceptable pursuant to subsection (10).

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

5 (a) hold a meeting; and

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

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

10 (i) the applicant; or

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

13 For the purposes of this subsection (9)(a)(ii), multiple owners of the same occupied dwelling unit are to be

14 counted as a single real property owner 30% of the residents within 1 mile of the proposed operation permit

15 boundary who are notified pursuant to this section. For the purposes of this subsection (9)(a)(ii), a residence is
16 counted as one resident.

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

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

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

28 (c) If the application is acceptable, the department shall issue a permit to the operator that entitles

1 the operator to engage in the opencut operation on the land described in the application.

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

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

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

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

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

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

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

24 (i) a landowner consultation form;

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

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

- 1 either present prior to operations or as specified by the landowner, including all access roads used for the
- 2 operation unless the landowner requests in writing that specific roads or portions of roads remain in place.
- 3 Roads left at the landowner's request must be sized to support the use of the road after operations."

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- END -

AMEND