

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Subchapter 12

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Special Departmental Procedures and Program

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Subchapter 12

Strip and Underground Mine Reclamation Act:
Special Departmental Procedures and Programs

17.24.1201 FREQUENCY AND METHODS OF INSPECTIONS (1) The department shall conduct an average of at least one partial inspection per month of each active mining operation and such partial inspections of each inactive mining operation as are necessary to enforce the Act, the rules adopted under the Act and the permit, at least one complete inspection per calendar quarter of each active and inactive mining operation, and such periodic partial or complete inspections of prospecting operations as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit.

(2) A partial inspection is an on-site or aerial observation of the operator's compliance with some of the mining or prospecting permit conditions and requirements. Aerial inspections shall be conducted in a manner and at a time that reasonably ensure the identification and documentation of conditions at each operation in relation to permit conditions and requirements. Any potential violation observed during an aerial inspection shall be investigated on site within three days, provided that any indication of a violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources shall be investigated on site immediately. On-site investigations of potential violations observed during an aerial inspection may not be considered to be an additional partial or complete inspection for the purposes of ARM 17.24.1201.

(3) A complete inspection is an on-site observation of the operator's compliance with all of the mining or prospecting permit conditions and requirements within the entire area disturbed or affected by the operation.

(4) Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays. (History: 82-4-204, MCA; IMP, 82-4-205, 82-4-235, 82-4-237, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1980 MAR p. 2872, Eff. 10/31/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2012 MAR p. 737, Eff. 4/13/12.)

17.24.1202 CONSEQUENCES OF INSPECTIONS AND COMPLIANCE

REVIEWS (1) Inspectors shall examine mining and reclamation activities and promptly file with the department inspection reports adequate to determine whether violations exist.

(2) If it is determined on the basis of an inspection that the permittee is, or any condition or practice exists, in violation of any requirement of this part or any permit condition required by this part, the director or an authorized representative shall promptly issue a notice of noncompliance or order of cessation for the operation or the portion of the operation relevant to the condition, practice, or violation in accordance with 82-4-251, MCA, and this subchapter.

(3) The department may order changes in mining and reclamation plans as are necessary to ensure compliance with the Act and the rules adopted pursuant thereto.

(4) If on the basis of field inspection or review of records or reports the department determines that reclamation is unsuccessful in terms of the Act, the rules adopted pursuant thereto or permit conditions or requirements, the department shall order the operator to immediately investigate and determine the cause. The operator shall subsequently submit an investigative report along with a prescribed course of corrective action, so that alternatives can be employed to promptly ensure compliance with the Act, the rules adopted pursuant thereto, and the permit.

(History: 82-4-204, MCA; IMP, 82-4-205, 82-4-231, 82-4-233, 82-4-235, 82-4-237, 82-4-251, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1203 AVAILABILITY OF INSPECTION REPORTS (1) The department shall make copies of all records, reports, inspection materials, and information obtained must be made immediately available to the public at the department office closest to the operation involved or by mail. See ARM 17.24.426. (History: 82-4-205, MCA; IMP, 82-4-235, 82-4-237, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1204 INSPECTIONS IN RESPONSE TO CITIZEN COMPLAINTS

(1) Any person may request an inspection of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, or the permit or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The identity of any person supplying information to the department relating to a possible violation or imminent danger or harm must remain confidential with the department, if requested by that person, unless that person elects to accompany the inspector on the inspection.

(2) If the report or statement alleges facts that, if true, would constitute a prohibited condition, practice, or violation and states the basis upon which the facts are known or provides other corroborating evidence sufficient to give the department reason to believe that the prohibited condition, practice or violation exists, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed. If the department conducts an inspection pursuant to (1), it shall notify the person who requested the inspection as far in advance as practicable of when the inspection is to occur. The person who has provided the statement or report must be allowed to accompany the inspector. The person is under supervision and control of the inspector while within the permit area. The person does not have a right to enter buildings or structures without the consent of the person in control of the building or without a search warrant.

(3) Within ten days of the inspection, or if there is no inspection, within 15 days of receipt of the citizen's written statement, the department shall send the person and the alleged violator the following:

(a) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken and notice of the person's right to informal review;

(b) if no inspection was made, an explanation of the reason why and notice of the person's right to informal review.

(4) The department shall give copies of all materials in (3) within the time limits specified in that section to the person alleged to be in violation, except the name of the person supplying information must be removed unless disclosure of his or her identity is permitted under (1). (History: 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1205 INSPECTIONS IN RESPONSE TO NOTIFICATION BY THE FEDERAL COAL REGULATORY AUTHORITY (1) Whenever the department receives notice from the Federal Coal Regulatory Authority that it has reason to believe that there exists a violation of the Act, the rules adopted pursuant thereto, or the permit, or a condition or practice that creates an imminent danger to the public or that is causing or can reasonably be expected to cause significant, imminent harm to land, air, or water resources, the department shall make an inspection, determine whether such a violation, condition, or practice exists. It shall then take appropriate action to correct all such violations, conditions, or practices. If imminent danger to the public or imminent harm to land, air, or water resources exists or may exist, the department shall take appropriate action immediately. It shall act within ten days of notice of other violations. (History: 82-4-205, MCA; IMP, 82-4-235, 82-4-237, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 2852.)

17.24.1206 NOTICES, ORDERS OF ABATEMENT, AND CESSATION ORDERS: ISSUANCE AND SERVICE

(1) The department shall issue a cessation order for each violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, for failure to comply with an order of abatement, and for conducting mining operations or prospecting without a permit. Within 60 days after issuance of a cessation order, the department shall notify, in writing, any person who has been identified pursuant to ARM 17.24.303(1)(g) and (1)(h), and 17.24.413(1)(d), as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller. The department shall issue a notice of noncompliance for other violations.

(2) A notice of noncompliance, notice of violation, penalty order, or cessation order must be served upon the person to whom it is directed or his designated agent promptly after issuance by:

(a) tendering a copy of the notice or order at the operation to a designated agent, to the individual in charge of the operation or, if the designated agent or person in charge cannot be located at the operation, to any agent or employee at the operation;

(b) sending a copy of the notice or order by certified mail to the permittee or his designated agent; or

(c) hand delivery of a copy of the notice or order to the permittee or his designated agent. Designation of an agent other than the agent named in the permit application for service of process may be made by filing with the department a written designation signed by the former designated agent;

(d) service is complete upon tender of the document and is not incomplete because of refusal to accept.

(3) Whenever an abatement order has been complied with, the department shall inspect or review the abatement, and, if the abatement is satisfactorily completed, shall terminate the order of abatement. The termination must be issued onsite at the time of the inspection.

(4) Filing of an application for review does not operate as a stay of any order.

(5)(a) Except as provided in (5)(b)(ii), an abatement order must specify compliance within a reasonable period of time, not exceeding 90 days.

(b) The department may impose an abatement period of more than 90 days whenever:

(i) the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(ii) a valid judicial order as to which the permittee has diligently pursued all rights of appeal and as to which he has no other effective legal remedy precludes abatement within 90 days;

(iii) the permittee cannot abate within 90 days due to a labor strike;

(iv) climatic conditions preclude abatement within 90 days, or due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(v) abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977; and

(vi) the failure to abate has not been caused by a lack of diligence or intentional delay by the permittee.

(c) Whenever an abatement time in excess of 90 days is permitted, the department shall impose interim abatement measures to the extent necessary to minimize harm to the public or the environment.

(d) Whenever any of the conditions in (5)(b) exist, the permittee may request extension of the abatement period beyond 90 days. The department may not grant an extension for more time than is necessary for abatement. The permittee has the burden of establishing by clear and convincing proof that he is entitled to an extension. In determining whether or not to grant an abatement period exceeding 90 days, the department may consider any relevant written or oral information from the permittee or any other source. The department shall promptly and fully document in the file its reasons for granting or denying the request. The department's decision on an application for extension beyond 90 days is subject to hearing if a hearing is requested by a person with an interest that is or may be adversely affected; such a request must be submitted in writing to the Board of Environmental Review within 30 days of notice of the department's decision on the application. The hearing must be a contested case hearing in accordance with 82-4-206, MCA.

(e) An extension granted under this section must not exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension. (History: 82-4-204, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1984 MAR p. 442, Eff. 3/16/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1995 MAR p. 30, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1207 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: INFORMAL HEARINGS (1) Except as provided in (2) and (3), if a notice of noncompliance or cessation order requires cessation of mining or prospecting, expressly or by necessary implication, that notice or order expires within 30 days after it is served unless an informal public hearing has been held within that time. The hearing must be held at or reasonably close to the mine site so that the alleged violation may be viewed during the hearing or at any other location acceptable to the department and the person to whom the notice or order was issued. The departmental office nearest to the mine site is hereby deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the department. For purposes of this rule, "mining" means extracting coal from the earth or waste piles and transporting it within or from the permit area.

(2)(a) A notice of noncompliance or cessation order that requires cessation of prospecting or mining does not expire as provided in (1) if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal hearing is held later than 30 days after the notice or order.

(b) The informal public hearing will be deemed waived if the person to whom the notice or order was issued is informed, as provided in (c), that he or she will be deemed to have waived the informal public hearing unless he or she requests one within 30 days after service of the notice and he or she fails to request an informal public hearing within that time.

(c) The written notice provided in (b) must be delivered to the person by personal service by an authorized agent of the department or certified mail within five days after the notice or order that requires cessation of mining is served on that person.

(3) The department shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(a) the person to whom the notice or order was issued; and

(b) any person who filed a report which led to that notice or order.

(4) The department shall also post notice of the hearing at its office closest to the mine site and issue a news release notice regarding the informal hearing, whenever practicable, to a newspaper of general circulation in the area of the mine.

(5) An informal public hearing must be conducted by a representative of the department; the representative may accept oral or written arguments and any other relevant information from any person attending.

(6) Within five days after the close of the informal public hearing, the department shall affirm, modify, or vacate the notice or order in writing. The decision must be sent to:

- (a) the person to whom the notice or order was issued; and
- (b) any person who filed a report which led to the notice or order.

(7) The granting or waiver of an informal public hearing does not affect the right of any person to formal review under 82-4-251(3) or (6), or 82-4-254(3), MCA. At the formal review proceedings, evidence as to statements made or evidence produced at an informal public hearing must not be introduced as evidence or to impeach a witness. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1984 MAR p. 442, Eff. 3/16/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1208 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: EFFECT OF INABILITY TO COMPLY (1) A cessation order or notice of noncompliance may not be vacated because of inability to comply. Inability to comply may not be considered in determining whether a pattern of violations exists. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1984 MAR p. 442, Eff. 3/16/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1209 NOTICES OF NONCOMPLIANCE AND CESSATION ORDERS: CONTINUATION OF HEALTH AND SAFETY RELATED ACTIVITIES

(1) Reclamation operations and other activities intended to protect public health and safety and the environment must continue during the period of any order unless otherwise provided in the order. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1984 MAR p. 442, Eff. 3/16/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1210 CESSATION ORDERS: ADDITIONAL AFFIRMATIVE OBLIGATIONS (1) If a cessation order will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the director or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice, or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 2875, Eff. 10/31/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1211 PROCEDURE FOR ASSESSMENT AND WAIVER OF CIVIL PENALTIES (1) The department shall review each notice of noncompliance to determine whether the violation is a minor one for which a civil penalty should be waived or, if not, the amount of civil penalty.

(2) Within 90 days after issuance of the notice of noncompliance, the department shall serve a notice of violation and penalty order or notice of violation and waiver of penalty. Failure to serve the notice of violation and proposed penalty within 90 days is not grounds for dismissal of the penalty unless the person against whom the penalty is assessed demonstrates actual prejudice resulting from the delay and makes objection in the normal course of administrative review. If the notice of violation and penalty order is tendered by mail at the address of the person, as set forth in the permit in case of a permittee, and he or she refuses to accept delivery of or to collect such mail, service is completed upon such tender. In order to contest the fact of violation or the amount of penalty, the person charged with the violation must file a written request for hearing to the Board of Environmental Review within 30 days of service of the notice of violation and penalty order. The hearing must be a contested case hearing in accordance with 82-4-206, MCA. If the department vacates the notice of violation, it shall also vacate the notice of noncompliance. At any time after issuance of the notice of violation and penalty order and before commencement of the hearing, or, if a hearing is not requested, before the notice and order become final, the person may confer with the department regarding the proposed penalty.

(3) The department shall determine the civil penalty in accordance with 82-4-1001, MCA.

(4) The violation is minor and the civil penalty may be waived if a consideration of the penalty factors set forth in 82-4-1001, MCA, demonstrates that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of the Act. The department shall set forth the basis for waiving the penalty in writing. The department may not waive the penalty on the basis that the waiver could be used to offset the costs of abatement. (History: 82-4-204, 82-4-254, MCA; IMP, 82-4-254, MCA; NEW, 1984 MAR p. 442, Eff. 3/16/84; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1212 POINT SYSTEM FOR CIVIL PENALTIES AND WAIVERS
(REPEALED) (History: 82-4-204, 82-4-254, MCA; IMP, 82-4-254, MCA; NEW, 1984 MAR p. 442, Eff. 3/16/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1994 MAR p. 2957, Eff. 11/11/94; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04; REP, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1213 SUSPENSION AND REVOCATION OF PERMITS:
DETERMINATION OF PATTERN OF VIOLATIONS (1) In implementing 82-4-251(3), MCA, the department:

(a) may determine that a pattern of violations exists or has existed, based on two or more inspections of the permit area within any 12-month period, after considering the circumstances, which circumstances shall include:

(i) the number of violations, cited on more than one occasion, of the same or related requirements of the Act, the rules adopted pursuant thereto, or the permit;

(ii) the number of violations, cited on more than one occasion, of different requirements of the Act, the rules adopted pursuant thereto, or the permit; and

(iii) the extent to which the violations were isolated departures from lawful conduct; and

(iv) the number of violations caused by unwarranted failure of the permittee to comply or willfully caused by the permittee; and

(b) shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements during three or more inspections of the permit area within any 12-month period.

(2) Whenever a permittee fails to abate a violation contained in a notice of noncompliance or cessation order within the abatement period set in the notice or order or as subsequently extended, the department shall review the permittee's history of violations to determine whether a pattern of violations exists.

(3) If the department determines that a pattern exists, it shall issue an order to show cause why the permit should not be suspended or revoked. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1214 SUSPENSION AND REVOCATION OF PERMITS: PUBLIC NOTICE OF SHOW CAUSE ORDER (1) At the same time as the issuance of a show cause order pursuant to 82-4-251(3), MCA, the department shall:

(a) if practicable, publish notice of the order, including a brief statement of the procedure for intervention in the proceeding, in a newspaper of general circulation in the area of operations; and

(b) post notice at the departmental office closest to the operations.

(2) If the permittee files an answer to the show cause order and requests a hearing, a public hearing must be held. The department shall give 30 days written notice of the date, time, and place to the permittee and any intervenors and, if practicable, publish notice in a newspaper of general circulation in the area of the operations. The department shall also post the notice in the departmental office closest to those operations. The department shall issue a decision within 60 days of hearing. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1215 SUSPENSION AND REVOCATION OF PERMITS: SERVICE OF PROCESS (1) A show cause order must be served in the same manner as a notice of violation pursuant to ARM 17.24.1206. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1216 SUSPENSION AND REVOCATION OF PERMITS: EFFECT OF SUSPENSION OR REVOCATION If a permit has been suspended or revoked, the permittee may not conduct any operations or prospecting on the permit area and shall:

(1) if the permit is revoked, complete reclamation within the time specified in the order;

(2) if the permit is suspended, complete all affirmative obligations to abate all conditions, practices, or violations, as specified in the order. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1217 INDIVIDUAL CIVIL PENALTIES: WHEN ASSESSED

(1) Except as provided in (2), the department may assess an individual civil penalty against any corporate director, office or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(2) The department may not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the department to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days. (History: 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1218 INDIVIDUAL CIVIL PENALTIES: AMOUNT (1) In determining the amount of an individual civil penalty assessed under ARM 17.24.1217, the department shall consider the criteria specified in 82-4-1001, MCA, including:

(a) the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular coal mining operation;

(b) the seriousness of the violation, failure or refusal (as indicated by the extent of damage, the cost of reclamation or both), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

(c) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(2) The penalty may not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the department may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the department, until abatement or compliance is achieved. (History: 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1219 INDIVIDUAL CIVIL PENALTIES: PROCEDURE FOR ASSESSMENT

(1) The department shall serve on each individual to be assessed an individual civil penalty a notice of violation and penalty order.

(2) The notice of violation and penalty order becomes a final order 30 days after service upon the individual unless:

(a) the individual files within 30 days of service of the notice of violation and penalty order a request for hearing pursuant to 82-4-254(3), MCA; or

(b) the department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

(3) For purposes of this section, service is sufficient if it would satisfy Rule 4 of the Montana Rules of Civil Procedure for service of a summons and complaint.

(4) The hearing on the individual civil penalty must be a contested case hearing conducted in accordance with 82-4-206(2), MCA. (History: 82-4-204, MCA; IMP, 82-4-254, MCA; NEW, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1220 INDIVIDUAL CIVIL PENALTIES: PAYMENT (1) If a notice of violation and penalty order become final in the absence of a request for hearing, the penalty is due within 30 days after the expiration of the period for requesting a hearing.

(2) If an individual named in a notice of violation and penalty order files a request for hearing, the penalty is due within 30 days after the issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty, unless enforcement of the order is stayed pursuant to 2-4-702, MCA.

(3) If the department and the corporate permittee or individual have agreed in writing on a plan for the abatement of the violation, the individual named in the notice of violation and penalty order may postpone payment until receiving either a final order stating that the penalty is due on the date of the final order or a written notice that abatement is satisfactory and the penalty has been withdrawn.

(4) Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty is subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the federal government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury Current Value of Funds Rate is published by the fiscal service in the notices section of the Federal Register. Interest on unpaid penalties runs from the date payment first was due until the date of payment.

(5) Failure to pay overdue penalties may result in initiation of litigation; reporting to the Department of Revenue, the State Auditor, the Internal Revenue Service, credit bureaus, or to all or any combination of them; or referral to collection agencies. These remedies are not exclusive.

(6) Delinquent penalties are subject to a late payment penalty, in addition to the interest specified in (4), of 6% per annum. This penalty begins to accrue on the 92nd day and runs until the date of payment.

(7) For all delinquent fees, interest and any penalties, the debtor shall pay a processing and handling charge based upon the following components:

(a) for debts referred to a collection agency, the amount charged to the department by the collection agency;

(b) for debts processed and handled by the department, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection. In addition, if the case is referred to the department's attorneys but paid prior to litigation, the estimated average cost to prepare the case for litigation as of the time of payment must also be paid;

(c) for debts referred to the department's attorneys and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(d) if not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(8) No prejudgment interest accrues on any processing and handling charges. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2006 MAR p. 1139, Eff. 5/5/06.)

17.24.1221 SMALL OPERATOR ASSISTANCE PROGRAM: PROGRAM SERVICES (1) To the extent possible with available federal funds, the department shall, for a coal mine operating permit applicant who meets the criteria of ARM 17.24.1222 and who requests assistance, select and pay a qualified laboratory, contractor, or consultant to:

(a) determine for the applicant the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with ARM 17.24.1225;

(b) prepare a statement of the results of test borings or core samplings in accordance with ARM 17.24.1225;

(c) collect and provide general hydrology information on the basin or subbasin areas within which the anticipated mining will occur. The information provided must be limited to that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area; and

(d) provide other services specified in ARM 17.24.1225. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1222 SMALL OPERATOR ASSISTANCE PROGRAM: ELIGIBILITY FOR ASSISTANCE An applicant is eligible for assistance if he or she:

- (1) intends to apply for a permit pursuant to the Act;
- (2) establishes that the probable total actual and attributed coal production of the operation for each year of the permit will not exceed 300,000 tons. Production from the following operations must be attributed to the applicant:
 - (a) the pro rata share, based upon percentage of ownership by the applicant, of coal produced by operations in which the applicant owns more than a 10% interest;
 - (b) all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of stock ownership, direction of the management or in any other manner whatsoever;
 - (c) the pro rata share, based upon percentage of ownership of the applicant, of coal produced in other operations owned or controlled by persons who own more than 10% of the applicant's operation;
 - (d) all coal produced by operations owned by the family and relatives of the applicant, unless there is no direct or indirect business relationship between or among the individuals; and
- (3) has not organized or reorganized his or her company solely for the purpose of obtaining assistance. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1223 SMALL OPERATOR ASSISTANCE PROGRAM: FILING FOR ASSISTANCE Each applicant shall submit the following information to the department:

- (1) a statement of intent to file a permit application;
- (2) the name and addresses of:
 - (a) the potential permit applicant; and
 - (b) the potential operator if different from the applicant;
- (3) a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant. The schedule must include for each location:
 - (a) the name under which coal is or will be mined;
 - (b) the permit number and mining enforcement and safety administration identification number if the mine is operating;
 - (c) the actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant;
 - (d) the estimated coal production for each year of the proposed permit and that portion attributed to the applicant; and
 - (e) the estimated total reserves within the proposed permit area and the method by which those reserves were calculated;

- (4) a description of:
 - (a) the method of strip or underground coal mining operation proposed;
 - (b) the anticipated starting and termination dates of mining operations;
 - (c) the number of acres of land to be affected by the proposed mining; and
 - (d) a general statement on the probable depth and thickness of the coal resource;
- (5) a topographic map of 1":400' scale or other scale approved by the department that clearly shows:
 - (a) the area of land to be affected and the natural drainage above and below the affected area;
 - (b) the names of property owners within the area to be affected and of adjacent lands;
 - (c) the location of existing structures and developed water sources within the area to be affected and on adjacent lands;
 - (d) the location of existing and proposed test boring or core samplings; and
 - (e) the location and extent of known workings of any underground mines; and
 - (6) copies of documents which show that:
 - (a) the applicant has a legal right to enter and commence mining within the permit area; and
 - (b) a legal right of entry has been obtained for the department, contractor, consultant, and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1224 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICATION APPROVAL AND NOTICE

(1) If the department finds the applicant eligible, and it does not have information readily available which would preclude issuance of a permit to the applicant for mining in the area proposed, it shall:

(a) determine the minimum data requirements necessary to meet the provisions of ARM 17.24.1225;

(b) select the services of one or more qualified laboratories, contractors, and/or consultants to perform the required work. A copy of the contract or other appropriate work must be provided to the applicant.

(2) The department shall inform the applicant in writing if the application is denied and shall state the reason for denial.

(3) The granting of assistance under ARM 17.24.1221 through 17.24.1228 must not be a factor in decisions by the department on a subsequent permit application. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1225 SMALL OPERATOR ASSISTANCE PROGRAM: DATA REQUIREMENTS (1) The department shall determine the data collection requirements for each applicant based on:

(a) the extent of currently available hydrologic, core analysis, and other resource or environmental data for the applicable area; and

(b) the data collection and analysis requirements of subchapter 3 and any other applicable portions of these rules.

(2) Data collection and the results provided must be sufficient to satisfy the requirements for:

(a) a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off-site.

(i) The data required for this determination must be collected pursuant to ARM 17.24.304(1)(e) and (1)(f);

(ii) The determination of probable hydrologic consequences must be made pursuant to ARM 17.24.314;

(iii) The report of the determination must include engineering analyses and designs necessary for the determination;

(b) a statement of the results of test borings or core samplings from the proposed permit area, including information on overburden and coal, as required by ARM 17.24.304(1)(g)(i) and 17.24.322(2)(a);

(c) the preparation of maps, cross-sections, and plans under subchapter 3 to the extent allowed by 30 CFR 779.25 and 783.25;

(d) cultural and historic information pursuant to ARM 17.24.304(1)(b) and (1)(d) and the development of mitigation measures pursuant to ARM 17.24.318;

(e) preblasting surveys pursuant to ARM 17.24.622;

(f) climatological information and an air pollution control plan pursuant to ARM 17.24.304(1)(h) and 17.24.311, respectively;

(g) a vegetation survey and revegetation plan pursuant to ARM 17.24.304(1)(i) and 17.24.313(5) and applicable rules in subchapter 7, respectively;

(h) a fish and wildlife survey and a fish and wildlife plan pursuant to ARM 17.24.304(1)(j) and 17.24.312, respectively;

(i) a soil survey and a soil salvage and redistribution plan pursuant to ARM 17.24.304(1)(k) and 17.24.313(1)(f) and applicable rules in subchapter 7, respectively; and

(j) a statement of the condition, capability and productivity of the land pursuant to ARM 17.24.304(1)(l).

(3) The statement under (2)(b) may be waived by the department by a written determination that such requirements are unnecessary with respect to the specific permit application.

(4) Data collected under this program must be made available to all interested persons. (History: 82-4-204, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1226 SMALL OPERATOR ASSISTANCE PROGRAM: QUALIFICATION OF LABORATORIES, CONSULTANTS, AND CONTRACTORS

(1) The department shall designate qualified laboratories, consultants, and contractors. To receive such a designation, firms shall apply to the department and provide the information necessary to establish the qualifications required by (2).

(2)(a) To qualify for designation a firm shall demonstrate that it:

(i) is staffed with experienced, professional personnel capable of performing any or all of the work described in ARM 17.24.1225(2);

(ii) is capable of collecting necessary field data and samples;

(iii) has adequate space for material preparation cleaning and sterilizing necessary equipment, stationary equipment, storage, and space to accommodate periods of peak work loads;

(iv) meets the requirements of the Department of Labor and Industry Safety Bureau;

(v) has the financial capability and business organization necessary to perform the work required;

(vi) has analytical, monitoring and measuring equipment capable of meeting the applicable standards and methods contained in ARM 17.24.645 and 17.24.646; and

(vii) is capable of performing either the determination or statement under ARM 17.24.1225(2)(a) and (b).

(b) Subcontractors may be used to provide the services required if their use is described in the application for designation and approved by the department. (History: 82-4-204, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1227 SMALL OPERATOR ASSISTANCE PROGRAM: ASSISTANCE FUNDING

(1) Funds authorized for this program must not be used to cover administrative costs or the costs of test boring or core sampling.

(2) The department shall to the extent practicable establish a formula for allocating funds among eligible small operator permit applicants if available funds are less than those required to provide the services. This formula must include such factors as the applicant's:

(a) anticipated date of filing a permit application;

(b) anticipated date for commencing mining; and

(c) performance history.

(3) Funding must not be given unless it is clear that the applicant would not be restricted in any manner from receiving a permit. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1228 SMALL OPERATOR ASSISTANCE PROGRAM: APPLICANT LIABILITY (1) The applicant shall reimburse the department for the cost of the services performed pursuant to ARM 17.24.1224 if the applicant:

- (a) submits false information;
- (b) fails to submit a permit application within one year from the date of receipt of the approved laboratory, consultant, and/or contractor report;
- (c) fails to mine after obtaining a permit;
- (d) produces coal in excess of 300,000 actual and attributable tons at all operations during the 12-month period immediately following the date on which the applicant was issued a coal mining permit; or
- (e) sells, transfers, or assigns the permit and the total actual and attributed production of the transferee exceeds the 300,000-ton annual production limit during the 12-month period immediately following the date on which the applicant was issued a coal mining permit. Under this section, the applicant and its successor are jointly and severally obligated to reimburse the department.

(2) The department may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-221, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

Rules 17.24.1229 through 17.24.1245 reserved

17.24.1246 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF THE DIRECTOR The director shall:

- (1) provide advice, assistance, and guidance to each state employee, to determine if the employee is required to file a statement pursuant to ARM 17.24.1249;
- (2) promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employer has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a strip or underground mining operation;
- (3) resolve prohibited financial interests by ordering or initiating remedial action or by reporting the violations to the Federal Coal Regulatory Authority;
- (4) certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;
- (5) submit to the Federal Coal Regulatory Authority such statistics and information as he or she may request to enable preparation of the required annual report to congress;
- (6) submit to the Federal Coal Regulatory Authority the initial listing and the subsequent annual listings of positions as required in ARM 17.24.1249;
- (7) furnish a blank statement 45 days in advance of the filing date established in ARM 17.24.1249 to each employee required to file a statement;
- (8) inform annually each employee required to file a statement of the person whom they may contact for advice and counseling; and
- (9) comply with ARM 17.24.1247. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1247 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESPONSIBILITIES OF EMPLOYEES State employees performing any duties or functions under the Act shall:

- (1) have no direct or indirect financial interest in coal mining operations;
- (2) file a fully completed statement of employment and financial interest upon entrance to duty and annually thereafter on the specified filing date; and
- (3) comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1248 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: DEFINITIONS For purposes of ARM 17.24.1246 through 17.24.1254, the following definitions apply:

(1) "Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such operations occur.

(2) "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(3) "Indirect financial interest" means the same financial relationships as for direct ownership, except that the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee does not have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(4) "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1249 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: FILING OF STATEMENT (1)(a) Any state employee who performs any function or duty under the Act is required to file a statement of employment and financial interests.

(b) The director shall prepare a list of those positions within the department and other departments that have employees performing any functions under the Act and the title of bureaus or divisions within those departments that do not perform any functions or duties under the Act.

(c) The director shall submit to the Federal Coal Regulatory Authority the listing of positions that do not involve performance of any functions or duties under the Act.

(d) The director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Federal Coal Regulatory Authority and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required must be submitted to the Federal Coal Regulatory Authority no later than September 30 of each year. The director may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the law or ARM 17.24.1246 through 17.24.1254. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(2)(a) Employees performing functions or duties under the Act shall file annually on February 1 of each year.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act shall file at the time of entrance to duty.

(c) A new employee is not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after his or her initial statement was filed.

(3) The director shall file his or her statement with the Federal Coal Regulatory Authority. All other employees shall file their statement with the director. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1250 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: CONTENTS OF STATEMENT (1) Each employee who performs any function or duty under the Act shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report must be on OSM Form 23.

(2) The employee shall set forth the following information regarding any financial interest:

(a) employment: any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the department;

(b) securities: any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in strip or underground coal mining operations;

(c) real property: ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(d) creditors: debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(3) The statement shall provide for a signed certification by the employee that to the best of his or her knowledge, none of the listed financial interests represent an interest in a strip or underground coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and the information shown on the statement is true, correct, and complete. The exceptions shown in the employee certification of the form must provide enough information for the director to determine the existence of a direct or indirect financial interest. Accordingly, the certification form must:

- (a) list the financial interests;
- (b) show the number of shares, estimated value or annual income of the financial interests; and
- (c) include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) An employee is expected to:

- (a) have a complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and
- (b) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public. (History: 82-4-204, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1251 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS:
EFFECT OF FAILURE TO FILE STATEMENT (1) Failure to file the statement of employment and financial interest as required in ARM 17.24.1249 subjects the employee to removal from his or her position. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1252 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: GIFTS AND GRATUITIES (1) Except as provided in (2) of this rule, an employee who performs any function or duty under the Act may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company that:

(a) conducts or is seeking to conduct operations that are regulated by the department; or

(b) has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(2) The prohibitions in (1) do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, whenever the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors. An employee may accept:

(a) food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(b) unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(3) An employee who violates any of the provisions of this rule is subject to suspension without pay for a single violation and termination for repeated violations in accordance with existing rules on policies for termination and suspension.

(History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1253 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS: RESOLUTION OF PROHIBITED INTERESTS OF EMPLOYEES (1) Whenever an employee who performs any function or duty under the Act has a prohibited financial interest, the director shall promptly advise the employee that remedial action that will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(a) reassignment of the employee to a position which performs no function or duty under the Act; or

(b) divestiture of the prohibited financial interest; or

(c) other appropriate action that either eliminates the prohibited interest or eliminates the situation creating the conflict.

(3) Failure of the employee to comply with an order of the director to resolve the prohibited financial interest may result in suspension or termination of the employee subject to the employee grievance procedure. An employee has 30 calendar days to exercise this right to file a grievance before disciplinary action is taken. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1254 RESTRICTIONS ON EMPLOYEE FINANCIAL INTERESTS:
RESOLUTION OF PROHIBITED FINANCIAL INTERESTS OF THE DIRECTOR

(1) If it is determined that the director has a prohibited financial interest, the Governor shall promptly advise the director that remedial action which will resolve the prohibited interest is required within 90 days. Remedial action for the director should be consistent with the procedures prescribed for other state employees.

(2) If the director fails to resolve a prohibited financial interest as directed by the Governor, the Governor shall immediately report this fact to the Federal Coal Regulatory Authority and shall take whatever further action is deemed appropriate. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1255 RESTRICTIONS ON FINANCIAL INTERESTS: MULTIPLE
INTEREST ADVISORY BOARDS (1) Members of advisory boards and commissions (established in accordance with state law or rules to represent multiple interests) who perform a function or duty under the Act shall file an OSM Form 23 with the director in accordance with the schedule established for employees in ARM 17.24.1219(2). They shall recuse themselves from proceedings that may affect their direct or indirect financial interests. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-254, MCA; NEW, 1990 MAR p. 936, Eff. 5/18/90; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

Rules 17.24.1256 through 17.24.1259 reserved

17.24.1260 REQUIREMENTS FOR THE CONDUCT OF BLASTING OPERATIONS (1) Each operator shall conduct each blasting operation under direction of an individual who has been certified by the department pursuant to ARM 17.24.1261 and who is familiar with the operation's blasting plan and site-specific blasting performance standards. The certified blaster's responsibilities include, but are not limited to, determining blasting pattern, hole pattern, type and quantity of explosives, maintenance of blasting records, and safety of employees involved in the storage, transportation, and use of explosives.

(2) A certified blaster may not delegate the direction of blasting operations to any individual who is not a certified blaster.

(3) A certified blaster and at least one other person must be present during the detonation of each blast.

(4) A certified blaster shall immediately exhibit on-site or at the mine office his certificate to any authorized representative of the department or the Federal Coal Regulatory Authority upon request.

(5) An operator shall require that persons who are not certified blasters receive direction and on-the-job training from a certified blaster before those persons assist in the storage, transportation, and use of explosives. (History: 82-4-204(4), 82-4-205(7), 82-4-231(10)(e), MCA; IMP, 82-4-231(10)(e), MCA; NEW, 1984 MAR p. 1373, Eff. 9/14/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1261 CERTIFICATION OF BLASTERS (1)(a) A person seeking certification as a blaster shall submit to the department an application on a form provided by the department. The applicant shall include a verifiable statement that he has successfully completed a training course, provided by the department, the operator, or other person, meeting the requirements of ARM 17.24.1262(1) and incorporating the training manual prepared by the department.

(b) The department shall make available to the public, upon request and payment of a reasonable fee, a copy of the training manual. The training manual must be updated as necessary.

(2) The department shall issue a blaster certification to each applicant who:

(a) has two years field experience in blasting;

(b) has successfully completed a 24-hour blaster training course meeting the requirements of ARM 17.24.1262; and

(c) achieves a grade of 80% or higher on an examination administered by the department. The examination must, at a minimum, reflect the training manual prepared by the department and examine in the topics set forth in ARM 17.24.1262. The examination must also incorporate an equally weighted section that covers practical field experience on blasting procedures and occurrences. An applicant who fails may retake the examination. If the applicant fails the examination a second time, he shall successfully complete a blaster training course again and reapply for certification before retaking the examination.

(3) Blaster certifications are nontransferable.

(4) A certification shall expire three years after issuance. The department shall recertify if the blaster:

(a) submits to the department, at least 60 days prior to the expiration of his certification, an application for recertification on a form provided by the department;

(b) has documented successful completion of 16 hours of refresher training meeting the requirements of ARM 17.24.1262 during the certification period; and

(c) has conducted or directed blasting operations within the 12 months immediately preceding the date of application for recertification or receives a grade of 80% or better on a recertification examination. The only new developments that the department may include in the recertification examination are those that have been included in the updates to the training manual. The applicant for recertification may take the examination twice.

(5) The department shall certify any person who has a current state or federal blaster certificate under any program approved by the Federal Coal Regulatory Authority under 30 CFR Part 850 and can demonstrate that he or she has met requirements equivalent to those in (1) and (2). The period of the department's certification must be coextensive with the period of certification under the other program but may not exceed three years. (History: 82-4-204(4), 82-4-205(7), 82-4-231(10)(e), MCA; IMP, 82-4-231(10)(e), MCA; NEW, 1984 MAR p. 1373, Eff. 9/14/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99.)

17.24.1262 BLASTER TRAINING COURSES (1) A blaster training course must provide appropriate training in and discuss practical applications of:

(a) use of explosives, including:

(i) selection of the type of explosive to be used;

(ii) determination of the properties of explosives which will produce desired results at an acceptable level of risk;

(iii) handling, transportation and storage;

(b) design of blasts, including:

(i) geologic and topographic considerations;

(ii) blast hole design;

(iii) pattern design, field layout, and timing of blast holes;

(iv) field applications;

(c) loading of blast holes, including priming and boosting;

(d) use of initiation systems and blasting machines;

(e) effects of blasting vibrations, airblast, and flyrock, including:

(i) monitoring techniques;

(ii) methods to control adverse effects;

(f) use of secondary blasting;

- (g) discussion of current federal and state rules applicable to the use of explosives;
- (h) maintenance of blast records;
- (i) determination of blasting schedules;
- (j) design and use of preblasting surveys including availability, coverage, and use of in-blast design;
- (k) requirements of blast plans;
- (l) signs, warning signals, and site control;
- (m) identification of unpredictable hazards including:
 - (i) lightning;
 - (ii) stray currents;
 - (iii) radio waves;
 - (iv) misfires; and
- (n) updates to the department's training manual. (History: 82-4-204(4), 82-4-205(7), 82-4-231(10)(e), MCA; IMP, 82-4-231(10)(e), MCA; NEW, 1984 MAR p. 1373, Eff. 9/14/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 1999 MAR p. 811, Eff. 4/23/99.)

17.24.1263 SUSPENSION OR REVOCATION OF BLASTER

CERTIFICATION (1) The following are grounds for suspension or revocation of blaster certification:

- (a) failure to comply with any order of the department;
- (b) conviction of criminal possession or sale of dangerous drugs;
- (c) unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;
- (d) violation of any state or federal explosives laws or regulations;
- (e) providing of false information or a misrepresentation to obtain certification;
- (f) failure to present blaster certification upon request of the department or Federal Coal Regulatory Authority personnel;
- (g) delegating responsibility to any individual who is not a certified blaster;
- (h) storage, transportation, or use of explosives in a manner that could threaten life or limb or cause environmental harm.

(2) If the department finds that a certified blaster has committed one or more of the acts prohibited in (1), the department may, and upon a finding of willful conduct shall, suspend or revoke the certification of the blaster. The department shall determine whether to suspend or revoke and the length of suspension on the basis of determination of reasonable necessity to protect human life or limb and to prevent environmental degradation.

(3) If the department has probable cause to believe that a certified blaster has committed any of the acts prohibited in (1) and that the blaster's certification should or must be suspended or revoked, the department shall notify the blaster and his employer in writing by certified mail at the address contained in the blaster's application for certification or at a subsequent address of which the blaster has notified the department in writing. The blaster does not defeat service by refusing to accept or failing to pick up the notice. The notice must advise the blaster of the department's proposed action, the alleged facts upon which the proposed action is based, and the blaster's right to request a contested case hearing before the Board of Environmental Review. If the department determines that suspension of the blaster's certification is reasonably necessary in order to protect human life or limb or the environment, it may suspend the certification until the hearing is held; provided, however, that no such suspension may be in effect for longer than 45 days. At the close of the hearing, the hearing officer may, based on a finding that the department will probably prevail and that continued suspension is reasonably necessary, continue the suspension until a final decision is made. (History: 82-4-204, 82-4-231, MCA; IMP, 82-4-231, MCA; NEW, 1984 MAR p. 1373, Eff. 9/14/84; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1264 THE DEPARTMENT'S OBLIGATIONS REGARDING THE APPLICANT/VIOLATOR SYSTEM (1) The department shall enter into the applicant/violator system (AVS) the following data:

- (a) information that the applicant is required to submit under ARM 17.24.303(1)(f), (g), and (h);
 - (b) information submitted by the applicant pursuant to ARM 17.24.303(1)(m) and (n) pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired; and
 - (c) any additional information of the kind described in (1)(a) or (b) submitted or discovered during the department's permit application review, upon verification by the department of that additional information.
- (2) If, at any time, the department discovers that any person owns or controls an operation with an unabated or uncorrected violation, the department shall take appropriate enforcement action. The department shall enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(3) The information provided to or obtained by the department must be entered into AVS pursuant to the following table:

The department shall enter into AVS all:	Within 30 days after:
1. permit records	the permit is issued or subsequent changes are made
2. unabated or uncorrected violations	the abatement or correction period for a violation expires
3. changes to information initially required to be provided by an applicant under ARM 17.24.303(1)(g)(i) through (iv) and (h)	receiving notice of a change
4. changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal
5. additional information submitted or discovered during the department's permit application, permit renewal application, or permit amendment application review	verification by the department of the additional information

(4) If, at any time, the department identifies a person who owns or controls an entire coal mining operation or any relevant portion or aspect of a coal mining operation, the department shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(5) A person subject to a preliminary finding under (4) has 30 days in which to submit to the department information tending to demonstrate that person's lack of ownership and control. If, after reviewing the submitted information, the department determines the person is not an owner or controller, the department shall serve written notice of that determination on that person. If, after reviewing the submitted information, the department determines the person is an owner or controller or if no information is submitted during the 30-day period, the department shall issue its finding in writing and shall enter that finding into AVS.

(6) A person identified as an owner or controller under (5) may challenge the finding using the provisions of ARM 17.24.1266.

(7) Whenever a court of competent jurisdiction enters a judgment against a person under 82-4-254(4) or convicts a person under 82-4-254(6) or (7), MCA, the department shall update the AVS. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 2012 MAR p. 1349, Eff. 4/13/12.)

17.24.1265 DEPARTMENT ELIGIBILITY REVIEW (1) In making a permit eligibility determination, the department shall rely upon the information supplied by the applicant pursuant to ARM 17.24.1264(1), information from AVS, and any other available information to review. The department shall review:

(a) the organizational structure and ownership or control relationships of the applicant and the operator;

(b) the permit histories of applicant and the operator;

(c) the previous mining experience of the applicant and the operator; and

(d) the history of compliance with Surface Mining Control and Reclamation Act and the Montana Strip and Underground Mine Reclamation Act (the Act), implementing rules, any permits issued thereunder, and any other applicable air or water quality laws, by the applicant, the operator, operations the applicant owns or controls, and operations the operator owns or controls.

(2) If the applicant and the operator have no previous mining experience, the department may conduct an additional review to determine if someone else with mining experience controls the mining operation.

(3) Based on the reviews pursuant to (1) and (2), the department shall determine whether the applicant is eligible for a permit under (4).

(4) Except as provided in ARM 17.24.405(6)(h), the applicant is not eligible for a permit if approval is prohibited by 82-4-227(11) or (12), MCA.

(5) After approving a permit under ARM 17.24.405, the department may not issue the permit until:

(a) the applicant updates and certifies all information required by ARM 17.24.303(1)(g), (h), and (i) and ARM 17.24.1264(1); and

(b) the department obtains and reviews an updated compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect permit eligibility under (5) and (6). The department shall request this report no more than five business days before issuance under ARM 17.24.405.

(6) If the applicant is ineligible for a permit under this rule, the department shall send written notification of the decision to the applicant, stating the reason for the finding of ineligibility and giving notice of the applicant's right to challenge the decision under ARM 17.24.1266. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 2012 MAR p. 737, Eff. 4/13/12.)

17.24.1266 QUESTIONS ABOUT AND CHALLENGES TO OWNERSHIP OR CONTROL FINDINGS (1) At any time a person listed in AVS as an owner or controller of a surface coal mining operation in Montana may request an informal explanation from the department as to the reason that person is shown in AVS in an ownership or control capacity. Within 14 days of the request, the department shall provide a response describing why the person is listed in AVS.

(2) An applicant or permittee affected by an ownership or control listing or finding, a person listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, or person found to be an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, may challenge an ownership or control listing or finding to:

- (a) the board if the challenge concerns a pending permit application; or
- (b) the department if the challenge concerns the challenger's ownership or control of a surface coal mining operation, and the challenger is not currently seeking a permit.

(3) Challenges to an ownership or control listing or finding may be made as follows:

(a) when the challenge is made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by submitting a request for a hearing to the board pursuant to 82-4-206, MCA; or

(b) when the challenge is not made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by submitting to the department a challenge, including written explanation of the basis for the challenge, along with evidence and explanatory materials.

(4) A person who challenges a finding of ownership or control under ARM 17.24.1264(5) or a listing or finding of ownership or control bears the burden of proving by a preponderance of the evidence that the person either:

(a) does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(b) did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

(5) In meeting that burden of proof, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the board or department. The materials presented in connection with the challenge must become part of the permit file, an investigation file, or another public file. The challenger may request that information be kept confidential. The board or department shall determine whether the information may be kept confidential under Montana law. If the board or department determines that the information may not be kept confidential, the board or department shall notify the challenger and shall hold the documents confidential for ten days in order to allow the challenger to obtain a court order requiring the board or department to keep the documents confidential.

(6) Materials that may be submitted in response to the requirements of (8) include, but are not limited to:

(a) notarized affidavits containing specific facts concerning the specific duties the challenger performed for the relevant operation, the beginning and ending dates of the challenger's ownership or control of the operation, and the nature and details of any transaction creating or severing the challenger's ownership or control of the operation;

(b) certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(c) certified copies of documents filed with or issued by any state, municipal, or federal governmental agency; and

(d) an opinion of counsel, when supported by:

(i) evidentiary materials;

(ii) a statement by counsel that he or she is qualified to render the opinion;

and

(iii) a statement that counsel has personally and diligently investigated the facts of the matter.

(7) When the department receives a written challenge to an ownership or control listing pursuant to (2)(b), the department shall review and investigate the evidence and explanatory materials submitted with the challenge and any other reasonably available information that has bearing on the challenge, and shall issue a written decision within 60 days of receipt of the challenge, stating whether the department finds that the person who submitted the challenge owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. The department shall send its decision to the challenger by certified mail or by any means consistent with the rules governing service of a summons and complaint under the Montana Rules of Civil Procedure. Service of the decision is complete upon delivery and is not incomplete if the challenger refuses to accept delivery.

(8) The department shall post all decisions made under this rule on AVS.

(9) Following the department's written decision or any decision by the board or a court, the department shall review the information in AVS to determine if it is consistent with the decision. If it is not, the department shall promptly revise the information in AVS to reflect the decision. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 2012 MAR p. 737, Eff. 4/13/12.)

17.24.1267 INFORMATION REQUIREMENTS FOR PERMITTEES

(1) Except as provided in (2), within 30 days after the issuance of a cessation order under 82-4-251, MCA, the permittee of the operation subject to the cessation order shall provide or update the following information:

(a) a statement indicating whether the permittee and any operator are corporations, partnerships, associations, sole proprietorships, or other business entities;

(b) taxpayer identification numbers for the permittee and any operator;

(c) the name, address, and telephone number for:

(i) the permittee;

(ii) the permittee's resident agent who will accept service of process; and

(iii) any operator;

(d) each business entity in the applicant's and any operator's organizational structures, up to and including the ultimate parent entity of the applicant and any operator and, for every such business entity, the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, ten percent or more of the entity;

(e) for the permittee and any operator, the information required by (f) for every:

(i) officer;

(ii) partner;

(iii) member;

(iv) director;

(v) person performing a function similar to a director; and

(vi) person who owns, of record, ten percent or more of the permittee or operator; and

(f) the following information for each person listed in (e):

(i) the person's name, address, and telephone number;

(ii) the person's position title and relationship to the permittee or operator, including percentage of ownership and location in the organizational structure; and

(iii) the date the person began functioning in that position.

(2) The permittee is not required to submit the information required in (1) if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

(3) Within 60 days of any addition, departure, or change in position of any person identified in (1)(e), the permittee must notify the department in writing of the addition, departure, or change. The notice must include:

(a) the information required in (1)(f); and

(b) the date of any departure. (History: 82-4-204, MCA; IMP, 82-4-227, MCA; NEW, 2012 MAR p. 737, Eff. 4/13/12.)

