

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Sub-Chapter 13

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Sub-Chapter 13

Strip and Underground Mine Reclamation Act:
Miscellaneous Provisions

17.24.1301 MODIFICATION OF EXISTING PERMITS: ISSUANCE OF REVISIONS AND PERMITS (1) Within one year of October 22, 2004, each operator and each test pit prospector shall submit to the department an application for all permit revisions necessary to bring the permit and operations conducted thereunder into compliance with subchapters 3 through 12 as they read on October 22, 2004.

(2) A permit revision application submitted solely for purposes of (1) is a minor revision for purposes of subchapter 4.

(3) No permittee may continue to mine or reclaim under an operating permit after the midterm (date that is two and one-half years after permit issuance or renewal) of the permit or the permit renewal date, whichever occurs later, unless the permit has been revised to comply with subchapters 3 through 12, as amended on October 22, 2004. (History: 82-4-204, MCA; IMP, 82-4-221, 82-4-222, MCA; NEW, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 964, Eff. 5/18/90; AMD, 1991 MAR p. 465, Eff. 4/12/91; AMD, 1992 MAR p. 232, Eff. 2/14/92; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04.)

17.24.1302 NONCONFORMING STRUCTURE (1) No application for a permit or revision under subchapter 3 or 4 which proposes to use an existing structure which does not conform to the design criteria of this subchapter may be approved unless the department finds, in writing, on the basis of information set forth in the application that:

(a) the structure meets the performance standards of subchapters 5 through 10; and

(b) no significant harm to the environment or public health or safety will result from use of the structure.

(2) If the department finds that an existing structure does not meet the design and performance standards of subchapters 5 through 10 but that:

(a) modification or reconstruction of the structure will bring it into compliance with the design and performance standards of subchapters 5 through 10 within six months of the issuance of the permit;

(b) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(c) the applicant will monitor the structure to determine compliance with the performance standards of subchapters 5 through 10; then the applicant shall submit and adhere to an approved compliance plan for modification or reconstruction of the structure to comply with subchapters 5 through 10.

(3) If the department finds that the existing nonconforming structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant shall abandon the existing structure on a schedule approved by the department. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-231, 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.)

17.24.1303 RULES APPLICABLE TO COAL OPERATIONS ONLY

(1) The following rules are applicable only to the strip and underground mining of coal: ARM 17.24.763 (Coal Conservation), 17.24.801, 17.24.802, 17.24.804 through 17.24.806 (Alluvial Valley Floors), 17.24.811 and 17.24.815 (Prime Farmlands), 17.24.1131 through 17.24.1138 (Areas Upon Which Mining Is Prohibited), 17.24.1141 through 17.24.1148 (Designation of Lands Unsuitable), and 17.24.1221 through 17.24.1228 (Small Operator Assistance Program), and those portions of subchapter 3 that apply to these rules. In addition, certain portions of other rules may be applicable only to coal mining if the text of the rule clearly so indicates. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-235, 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.)

17.24.1304 APPLICABILITY OF FEDERAL LAW (1) Wherever subchapters 3 through 12 require compliance with both state and federal law or regulations, compliance only with state law is required when, with consent of the federal regulatory agency, state law and rules are being enforced in lieu of federal law and regulations. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-202, MCA; NEW, 1980 MAR p. 725 Eff. 4/1/80; TRANS, from DSL, 1996 MAR p. 3042.)

Rules 17.24.1305 and 17.24.1306 reserved

17.24.1307 LITIGATION EXPENSES: WHEN DEPARTMENT MAY AWARD

(1) Whenever any final order is issued at the request of any person other than the permittee, permit applicant, or the department as a result of any administrative proceeding under the Act, appropriate and reasonable costs, expenses, and attorney fees incurred for or in connection with that person's participation in those proceedings may be assessed against either party.

(2) Whenever any final order is issued in any administrative proceeding under the Act at the request of the permittee, permit applicant, or the department, appropriate and reasonable costs, expenses and attorney fees incurred by the permittee, permit applicant, or the department for or in connection with participation in the proceeding may be assessed against any party if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee, permit applicant, or the department.

(3) For the purposes of (1) and (2) of this rule, a final order is considered to have been issued at a person's request if the person made a substantial contribution to the issuance of that order.

(4) Attorney fees, costs and expenses recoverable under (1) and (2) of this rule include attorney fees, costs and expenses reasonably and necessarily incurred in seeking an award under this rule. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 2875, Eff. 10/31/80; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1308 LITIGATION EXPENSES: FILING OF PETITION

(1) The petition for an award of costs, expenses, and attorney fees must be filed within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award. (History: 82-4-204, 82-4-205, MCA; IMP, 82-4-251, MCA; NEW, 1980 MAR p. 2875, Eff. 10/31/80; TRANS, from DSL, 1996 MAR p. 3042.)

17.24.1309 LITIGATION EXPENSES: CONTENTS OF PETITION AND ANSWER (1) A petition for costs, expenses, or attorney fees must include the name of the person from whom costs and expenses are sought and the following must be submitted in support of the petition:

(a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with, the person's participation in the proceedings;

(b) receipts or other evidence of such costs and expenses; and

(c) where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(2) Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition. (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.)

Subchapters 14 through 17 reserved

