

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.24.201, 17.24.202, 17.24.203, )  
17.24.206, 17.24.207, 17.24.212, )  
17.24.213, 17.24.214, 17.24.218, )  
17.24.219, 17.24.220, 17.24.221, )  
17.24.222, 17.24.223, 17.24.224, )  
17.24.225, and 17.24.226 and the repeal )  
of ARM 17.24.216 and 17.24.217 )  
pertaining to rules and regulations )  
governing the Opencut Mining Act )  
)

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

(RECLAMATION)

TO: All Concerned Persons

1. On December 11, 2015, at 9:00 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 23, 2015, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.24.201 APPLICABILITY (1) remains the same.

(2) An operator conducting a ~~sand, gravel, bentonite, clay, or scoria mining opencut operations pursuant to~~ must comply with the provisions of a ~~reclamation contract or permit issued under the Montana Opencut or Strip Mined Land Reclamation Act and this subchapter of 1971 is recognized as being in compliance with Montana law. However, should that operator begin a new opencut operation as defined in 82-4-431, MCA, or expand an opencut operation beyond the existing contract area, the operator shall be responsible for first obtaining a permit under the provisions of the Act as amended.~~ Except as provided in (5), a permit is required before an operator commences the following:

(a) an opencut operation that results in the removal of more than 10,000 cubic yards of materials and overburden;

(b) more than one opencut operation where each operation results in the removal of less than 10,000 cubic yards of materials and overburden, but the several

operations result in the removal of a total of 10,000 cubic yards or more of materials and overburden; or

(c) an opencut operation where overburden and materials are removed from a previously mined site and the amount mined, combined with the amount of previously removed materials and overburden, exceeds 10,000 cubic yards.

(3) Contracts and permits in effect on February 13, 2004 before [the effective date of this amendment], need not be amended to comply with rules and rule amendments adopted on February 13, 2004 [the effective date of this amendment]. Applications for permits, permit amendments, and permit transfers assignments that were submitted the department determined to be complete prior to February 13, 2004 [the effective date of this amendment], remain subject to provisions of this subchapter relating to application requirements as they read on the date the application was submitted department determined the application to be complete.

(4) Except as provided in (5) and ARM 17.24.226, a permit amendment is required before taking an action that expands or changes a permitted opencut operation.

(5) Except as provided in ARM 17.24.226(5), an operator holding a permit issued under the Act may commence a limited opencut operation that meets the criteria in ARM 17.24.226 and 82-4-431, MCA, after the operator has submitted the limited opencut operation form to the department.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

**REASON:** The proposed amendments to ARM 17.24.201 would implement Sec. 5, Ch. 198, Laws of 2013. The proposed amendments to (2) would restate the statutory threshold for obtaining an operating permit and are appropriate for restatement in the rule to notify applicants and operators that failure to obtain a permit before exceeding the 10,000 cubic-yard permit threshold is a violation of the Act.

The proposed amendments to (3) would notify permitted operators and applicants that the proposed amendments to the subchapter do not apply to permits and applications determined to be complete as of the effective date of these amendments.

New (4) would implement Sec. 5, Ch. 198, Laws of 2013 and would exclude limited opencut operations from the requirement to obtain a permit or an amended permit. In addition, new (4) would clarify that any action that expands or changes a permitted opencut operation requires an amended permit except when the action qualifies as a limited opencut operation.

New (5) would implement Sec. 5, Ch. 198, Laws of 2013 and would require an operator to submit the limited opencut information form to the department before commencing a limited opencut operation. Submittal of the information form to the department before commencing operations is necessary to afford the department the opportunity to notify the applicant soon after operations commence in the event that the operation does not meet the requirements for a limited opencut operation. New (5) would also notify operators that a limited opencut operation must meet the criteria set forth in ARM 17.24.226 and 82-4-431, MCA.

17.24.202 DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Access road" means an existing or proposed non-public road ~~used in connection with~~ that connects an opencut operations operation to a public road or highway. The term includes the roadbed, cut and fill slopes, ditches, and other structures and disturbances related to the construction, use, and reclamation of the access road establishment, use, and reclamation.

(2) "Bonded area" means a portion of the permit area that is subject to a reclamation bond or other security approved by the department under this subchapter.

(3) "Clean fill" means soil, overburden, fines, dirt, sand, gravel, rocks, and rebar-free concrete that have not been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons, inorganic metals, or contaminants that meet the definition of hazardous waste under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls). "Rebar-free concrete" means pieces of concrete that may contain rebar, but from which no rebar protrudes beyond the concrete.

~~(2)~~ (4) "Department" means the Department of Environmental Quality provided for in Title 2, chapter 15, part 35 2-15-3501, MCA;

~~(3)~~ "Facility-level area" means ~~access roads and areas where parking, equipment and material storage, soil and overburden stockpiling, fuel storage, mine material processing and stockpiling, other product production and storage, and water system and control structures are situated~~.

~~(4)~~ "Main permit area" means ~~facility-level areas and mine-level areas, except access roads~~.

~~(5)~~ "Mine-level area" means ~~areas where excavating, grading, and excess overburden and fines disposal occur~~.

~~(6)~~ (5) "Mine material Materials" means ~~sand, gravel, scoria, bentonite, clay, soil, and peat~~ has the meaning given in 82-4-403, MCA.

(6) "Non-bonded area" means the portion of a permit area that is not covered by a reclamation bond or other security approved by the department under this subchapter.

(7) "Opencut operation" means ~~the areas and activities related to opencut mine site preparation, access road use, mine material mining and processing, and reclamation~~ has the meaning given in 82-4-403, MCA.

(8) "Overburden" means ~~the material below the soil and above the mine material~~ has the meaning given in 82-4-403, MCA.

(9) "Pattern of violations" means three or more violations of the Act or this subchapter that harm or have the potential to harm human health or the environment. A violation does not contribute to a pattern of violations:

(a) until such time as the opportunity for administrative review, judicial review, or appeal have passed for the violation; or

(b) after the violator demonstrates compliance with all the terms of an administrative or judicial order in an action taken by the department under authority of the Act and this subchapter because of the violation.

(10) "Permit area" means the areas subject to a permit granted under this subchapter.

(11) "Removal" means excavation of soil, overburden, and material from its natural condition.

(12) "Slope" means the measure of an incline by means of a ratio of horizontal to vertical distance indicated by a pair of numbers separated by a colon, for example, 3:1, which means one foot of rise over three horizontal feet.

(9) (13) "Soil" means the dark or root-bearing surface material, which is typically the O, A, E, and B horizons in soil profile descriptions has the meaning given in 82-4-403, MCA.

(14) "Tilling" means breaking up the substrate or soil before seeding to a depth of at least one foot to improve conditions for plant growth.

AUTH: 82-4-422, MCA

IMP: 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.202 are necessary to update definitions and bring them into compliance with changes to the Opencut Mining Act made by Sec. 2, Ch. 198, Laws of 2013.

The proposed amendments would revise the definition of "access road" in (1) because Sec. 2, Ch. 198, Laws of 2013 excludes "private roads" from the definition of "affected lands" that require reclamation. The amended definition is necessary to identify the elements of an access road that would be subject to reclamation at the request of the landowner. The other amendments are necessary to improve syntax and readability.

New (2), (6), and (10) are necessary to clarify the distinction within a "permit area" between a "bonded area" where opencut operations are allowed, because the area is covered by a reclamation bond, and a "non-bonded area" where opencut operations are prohibited, because the area is not covered by a reclamation bond. The proposed new terms codify the department's practice of allowing an operator to bond only a portion of the permit area thereby limiting the burden of bond costs.

The proposed deletion of (3), (4), and (5) would eliminate the definitions of "facility level area," "main permit area," and "mine level area" that are proposed to be deleted throughout the subchapter because they are regulatory concepts that operators have found confusing. Elimination of these terms would improve regulatory clarity.

The proposed amendment of existing (6), (8), and (9) and proposed new (14) would substitute the restatement of those definitions that are currently in the rule in favor of reference to the definitions set forth in the Act. The proposed amendments improve clarity and avoid confusion that results from restatement of terms that are defined in statute. The proposed amendment of existing (6) substitutes "materials" as set forth in the statute for "mine materials" in order to eliminate a distinction in terminology that is unnecessary.

New (9) would implement considerations that the department would use to determine whether it could refuse to approve an application under 82-4-431(5), MCA, for an operator who has engaged in a "pattern of violations." It would establish three violations, the minimum number to establish a pattern, as the threshold for disqualification. New (9)(a) would maximize due process protections for alleged violators by excluding a violation that is the subject of pending

administrative or judicial review from consideration from counting as a pattern violation. New (9)(b) is necessary to exclude from consideration, as a pattern of violations, a violation described in an administrative or judicial order for which the operator has demonstrated compliance. The board has determined that having three unabated violations that harm public health or the environment indicates a lack of diligence sufficient to withhold permit issuance.

New (11) would add a definition for "removal" to clarify when opencut activities, which are not subject to the permit exclusion for limited opencut operations, reach the 10,000-cubic-yard permit threshold. The new definition implements Sec. 5, Ch. 198, Laws of 2013, which amends 82-4-431(1)(c), MCA, to require a permit for an operator who "removes materials and overburden at a previously mined site where the removal, combined with the amount of previously mined materials and overburden, exceeds 10,000 cubic yards." (emphasis added) That provision, construed in conjunction with the definition of "opencut operation" to include "mining directly from natural deposits of materials" in 82-4-403(7)(c), MCA, demonstrates the intent of the Legislature that disturbance, rather than removal from the site of soil, overburden, or materials, triggers the obligation to obtain a permit. The proposed definition would mean that volumes of soil and overburden that have been removed from their natural condition and stockpiled at the site will not be deducted from the volume of the excavation for the purposes of determining whether the 10,000-cubic-yard threshold in 82-4-431(1), MCA, has been exceeded. The new definition would recognize the remedial intent of the Opencut Mining Act to provide for reclamation of sites where opencut operations have occurred.

New (13) would codify terminology used on opencut forms for determining the steepness of a slope. The definition is necessary to avoid confusion when a slope is described by a simple ratio.

New (15) would clarify "tilling," a term used in ARM 17.24.219, and is necessary to establish a minimum depth for preparation of land prior to seeding. The one-foot tillage depth is generally considered to be the minimum necessary to achieve successful revegetation.

17.24.203 BOND OR OTHER SECURITY (1) An application for a permit by a non-government operator must be accompanied by a bond or other security acceptable to the department under 82-4-433, MCA, ~~of at least \$200 for each acre of affected land as defined in 82-4-403, MCA and this subchapter.~~ After the department has evaluated the site it may require an increase in the amount of bond or other security in accordance with 82-4-433, MCA.

(2) The department may adjust the amount of the bond or other security levels:

(a) based on information available to the department; and  
(b) yearly when necessary to secure the department's estimate of costs to reclaim the affected land. Should the department determine that additional bond or other security is required, the operator shall submit it a bond or security in the increased amount within 30 days of notification by the department.

(3) The operator shall immediately notify the department if the bond or other security is canceled or becomes ineffective. If the bond or other security is canceled or ~~otherwise~~ becomes ineffective, the operator shall reinstate it or replace it the

canceled or ineffective bond or security with another bond or other security acceptable to the department under 82-4-433, MCA, and this subchapter, within 30 days of notification by the department of the cancellation that the canceled or ineffective bond or other security must be replaced. Upon failure of In the event that the operator fails to reinstate or replace such bond or other security within that time the time provided in this rule, the department may suspend the any permit(s) secured by such the canceled or ineffective bond or other security until its reinstatement or replacement in accordance with 82-4-442, MCA. The operator shall immediately cease opencut operations, except reclamation activities, on lands covered by a suspended permit.

(4) An operator may apply for release of the bond in phases as follows:

(a) upon completion of phase I reclamation, which includes completion of all the requirements in ARM 17.24.219(1), except the requirements of ARM 17.24.219(1)(h)(ii)(K), (L), and (M). Any phase I reclamation bond or security release must leave sufficient bond or security to secure the estimated cost of completion of phase II reclamation;

(b) upon completion of phase II reclamation, which includes completion of all the requirements of ARM 17.24.219(1).

(4) (5) Requests An application for full phase I or partial phase II bond release of bond or release of other security must be submitted on forms provided by the department, and must include:

(a) a site map that shows:

(i) the existing permit area and release request area;

(ii) the landowner material stockpile area and remaining soil stockpile, if applicable;

(iii) roads; and

(iv) other pertinent mapping items as required by ARM 17.24.221(5);

(b) at least four photographs taken from the north, south, west, and east corners of the release request area; and

(c) for applications for release of bond amounts for phase II reclamation, at least three photographs taken at three different locations in the permit area showing typical vegetation within an area approximately five feet wide and including an object to define scale.

(6) The department may release a portion of the bond or security when the operator demonstrates completion of a reclamation phase, as defined in (4), for a discrete portion of the permit area if:

(a) the remaining reclamation can be accomplished without disturbance of completed reclamation; and

(b) the remaining amount of bond or security is sufficient to cover estimated cost to complete reclamation of the affected land.

(7) Release of a portion of the bond or security after completion of phase I reclamation does not relieve the operator from responsibility for any reclamation or any increased costs of reclamation necessary to comply with the Act, this subchapter, and the permit until phase II bond release.

(8) State and federal agencies and counties, cities, and towns are not required to post a bond or security. These government operators may request release from responsibility for reclamation in the same manner as nongovernmental

operators request bond or security release in accordance with this rule, including release of a portion of the permitted area, except that government operators may not request release of responsibility for phase I reclamation.

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-433, MCA

**REASON:** The proposed amendments to ARM 17.24.203 would implement changes to the Act by Sec. 12, Ch. 385, Laws of 2007 for determination of the amount of a reclamation bond or other security. The proposed amendments to (1) would clarify that the requirement to post a reclamation bond or security only applies to nongovernment operators and deletes the provision for the \$200 per acre minimum bond amount that was specifically repealed by Sec. 12, Ch. 385, Laws of 2007.

The proposed amendments to (2)(a) would provide notice to applicants, in the rule, of the authority of the department under 82-4-432(2)(a), MCA, to withhold issuance of a permit pending increase in the bond amount, if the department determines, based on available information, that the amount of the bond submitted with the permit application is inadequate. The amendments would ensure that the amount of the bond is adequate before opencut operations may begin, thereby reducing the risk that the state would need to rely on public funds to reclaim the site. The proposed amendments to (2)(b) are necessary to notify operators that exercise by the department of its authority to require an operator to provide additional bond would be based on the department's determination of estimated reclamation costs. Otherwise the amendments to (2)(b) are necessary to improve the syntax and readability of the rule.

The proposed amendments to (3) would improve the syntax and readability of the rule. In addition, the amendments would require the operator, as well as the insurer or other guarantor, to immediately notify the department in the event that a reclamation bond is canceled or becomes ineffective. This would ensure that the department has the opportunity to immediately suspend the operation or take other action to make sure that there is coverage of a bond or other security sufficient for reclamation of all disturbances. Amended (3) would also reference the department's suspension authority under 82-4-442, MCA, to notify operators that suspension of a permit under the rule must follow the procedures set forth in the statute.

New (4) would codify the department's practice of allowing an applicant to apply for phased bond release. New (4) also accommodates proposed amendments to ARM 17.24.219, which would provide more flexibility for an operator applying for bond release. New (4) would follow ARM 17.24.219 by establishing two phases of bond release, phase I and phase II. New (4) would make an operator eligible for phase I bond release upon completion of all reclamation activities that would presumably be completed in the first season after opencut activities cease, i.e., all activities except demonstration of successful revegetation. New (4) would make demonstration of revegetative success during the second growing season the benchmark for phase II or full bond release. Providing for phased bond release is necessary to allow an operator to release a portion of the bond after backfilling, grading, and revegetation have been completed and avoid the costs of maintaining

the full bond amount pending demonstration of revegetative success.

Revised (5), previously numbered (4), would codify the department's practice regarding the information required for an application for bond release. Revised (5) would allow an operator to request partial bond release when all reclamation is complete, except demonstration of revegetative success. The submittal requirements set forth in (5)(a) and (b) are the minimum necessary to demonstrate reclamation in accordance with ARM 17.24.219. Revised (5)(b) and (c) would facilitate timely processing of bond release applications by requiring the operator to provide pictorial evidence of successful reclamation in advance of the site inspection, so that the department may address any problems in advance of the inspection.

New (6) would codify the considerations that the department uses to evaluate an application for partial bond release, meaning release of a reclamation bond for only a portion of the permit area. The considerations are necessary and practical in that they would ensure that full reclamation is possible without disturbing areas where the bond has been released and that the amount of the bond remaining after partial release is sufficient to cover the costs of reclamation of the unreclaimed portion of the site.

New (7) provides that partial release of a reclamation bond does not prohibit the department from increasing the amount of the remaining bond in the event that the department concludes that the amount of the remaining bond is insufficient to cover estimated reclamation costs. The provision will ensure that the amount of the remaining bond will be sufficient to cover the costs of reclamation, thereby reducing the risk that the department would resort to public funds to complete reclamation.

New (8) would allow government operators, who are exempt from the requirement to obtain a reclamation bond, to apply for a release of responsibility for reclamation in the same manner that a nongovernmental operator would apply for partial bond release. New (8) would deny government operators the opportunity to apply for phased bond release based on vegetative success in recognition of the limited financial incentive for a government operator to do so. Phased bond release is intended to relieve operators from the holding costs for a reclamation bond or other security. Therefore, phased bond release is not applicable to government operators because they are not required to post reclamation security.

#### 17.24.206 LANDOWNER CONSENT FOR RECLAMATION

CONSULTATION (1) ~~An operator shall secure the consent of the owner of the land to be affected by opencut operations to allow the operator, the department, or agents or contractors of the department to enter and reclaim the affected land as provided in the plan of operation. An application for a permit or for an amendment to add acreage, for an asphalt or concrete plant, to change postmining land use, or to extend the reclamation date must demonstrate that the applicant consulted with the~~ The landowner consent must be submitted on a about the proposed opencut operations by supplying a form provided by the department. No application for a permit, or an amendment to add acreage or change the postmining land use, may be approved unless accompanied by a landowner consent form.

(2) The landowner consultation form must require the landowner to:

(a) acknowledge receipt of a copy of the application for a permit or

amendment submitted to the department;

(b) affirm ownership of the property that is described in the application;

(c) affirm that the operator consulted with the landowner about the opencut operations described in the application;

(d) indicate whether access roads, haul roads, or other roads used in opencut operations are on affected land and are subject to the reclamation requirements of this subchapter;

(e) acknowledge the exclusive right of the operator, its agent, or assignee to conduct opencut operations on the property that is identified in the application; and

(f) acknowledge and consent to entry and enforcement of the Act and this subchapter by the department on all landowner property affected by opencut operations.

(3) The landowner consultation form also must require the operator and the landowner to consent to entry at reasonable times by the department and its employees, agents, or contractors to inspect the property and complete reclamation of all affected lands in accordance with the permit and the plan of operation in the event that the operator fails to do so.

AUTH: 82-4-422, MCA

IMP: 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.206 would implement the changes to the Act enacted under Sec. 11, Ch. 385, Laws of 2007. The proposed amendment to (1) would specify when landowner consultation is required. The proposed amendment would recognize that every change to a permit is not worthy of revised landowner consultation. However, the proposed amendment would require an operator to consult with the landowner for permit amendments that would result in an increase in permitted acreage, a change to postmining land use, an extension of the deadline for reclamation, or to add an asphalt or a concrete plant, which are all changes considered to be material to the interest of the landowner.

New (2)(a) would specify the information that the department currently requires on the landowner consultation form. It has been the experience of the department that some landowners do not understand the implications of permitted opencut operations on their land. Accordingly, new (2)(a) would require the landowner to acknowledge receipt of a copy of the opencut permit application submitted to the department.

New (2)(b) and (c) would require the landowner to acknowledge: 1) ownership of the subject lands; and 2) that the applicant has consulted with the landowner. This is being proposed in order to ensure that the landowners consultation requirement has been met.

New (2)(d) would also notify the landowner of elections he or she must make with regard to reclamation of roads. The information required is necessary, as it is the minimum needed to inform the landowner of the implications of landowner consent.

New (2)(e) is proposed to notify the landowner of the operator's exclusive right to conduct opencut operations under the permit to avoid conflicts between the

operator and the landowner about the use and control of the permitted area.

New (2)(f) also would require the landowner and the operator to consent to entry of department staff to inspect property where an opencut operation is located and to inspect or complete reclamation of the property as permitted by 82-4-442, 82-4-445, and 82-4-446, MCA. This would facilitate the department's performance of its regulatory functions without interference.

17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES (1) In addition to the requirements imposed by ARM 17.24.203, 17.24.206, and ~~17.24.216~~ 17.24.218 through 17.24.222, the department may require the following information as part of the plan of operation for a bentonite mining operation:

(a) an analysis of the soil and each major stratum in the overburden, including that includes determinations of:

(i) saturation percentage;

(ii) pH;

(iii) electrical conductivity;

(iv) sodium adsorption ratio;

(v) texture; and

(vi) additional characteristics the department may require.

(2) A soil analysis required under (1)(a) must describe:

~~(i) In submitting this information, the operator shall also list:~~

~~(A) (a) the identifying number and depth of each samples taken;~~

~~(B) (b) the methods by which they were the samples were taken;~~

~~(C) the location and depths from which they were taken;~~

(D) remains the same, but is renumbered (c).

~~(E) (d) the analytical methods of analysis used; and~~

(F) remains the same, but is renumbered (e).

~~(ii) (3) The A soil analysis required by (1)(a) must be accompanied by a map that describes delineating:~~

~~(A) (a) the soil types identified;~~

~~(B) (b) the location and depth of each sample taken site locations;~~

(C) remains the same, but is renumbered (c).

~~(D) (d) the dominant vegetative species present on each soil type; and~~

~~(b) (4) The department may also require that the plan of operation contain a description of the location and method of disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. Such materials must be buried under at least three feet of material suitable for sustaining the postmining vegetation, but if suitable burial material is not available, then the material that is unsuitable for plant growth must be laid and graded to a condition that is as good or better than the pre-mine condition, minimizes adverse impacts to plant growth, and blends into the surrounding area.~~

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-434, MCA

REASONS: The amendments to ARM 17.24.207 are proposed to improve the syntax and readability of the rule. No substantive amendments are proposed,

except that the language to be added to (1)(d) would provide flexibility for operations where the pre-mine conditions do not permit burial of materials unsuitable for plant growth beneath three feet of suitable material.

17.24.212 APPROVAL OR DISAPPROVAL REVIEW OF AN APPLICATION FOR A PERMIT

~~(1) Upon receipt of an a permit application to conduct opencut operations and within the time limits provided in 82-4-432(4), MCA, the department shall inspect the proposed site and evaluate the application to determine if the requirements of the Act and this subchapter will be are satisfied. If the department is unable to evaluate a permit application because weather or other field conditions prevent an adequate site inspection, then the application must be disapproved.~~

(2) Except as provided in 75-1-208(4)(b), MCA, within five working days of receipt of an application to conduct opencut operations, the department shall determine and notify the applicant whether the application is complete. A complete application must be submitted on forms provided by the department and must contain the materials and information required by 82-4-432(1) and (2), MCA, and the plan of operation required by ARM 17.24.218 through 17.24.223.

(3) If the department determines that an application is complete, the applicant shall comply with the public notice requirements required by 82-4-432, MCA, and the department shall review the application for acceptability.

~~(2) (4) The department shall approve a A permit application is acceptable if it determines that: the materials and information provided to the department demonstrate that the proposed opencut operation complies with requirements of 82-4-432(1) and (2), MCA, and contains a plan of operation that meets the requirements of this subchapter.~~

~~(a) the application contains the following:~~

~~(i) \$50 application fee, if required;~~

~~(ii) a completed copy of the permit application form provided by the department;~~

~~(iii) plan of operation submitted on a form provided by the department;~~

~~(iv) bond or other security, if required;~~

~~(v) a completed copy of the landowner consent form; and~~

~~(vi) a completed copy of the zoning compliance form; and~~

~~(b) the application materials satisfy the requirements of the Act and this subchapter.~~

(3) (5) Before approving determining that an operator's permit application for a permit is acceptable, the department shall submit a copy of the plan of operation, including site and area maps map(s), to the state historic preservation office for evaluation of possible cultural resources in the proposed permit area. If the site is likely to contain significant cultural resources Based on information provided by the state historic preservation office and as required by law, the department may require that the operator sponsor a cultural resources survey by a competent an archaeological professional authority prior to approving the application and provide a plan to protect archeological and historical values on affected lands. Unless prohibited by law, the department shall make available a response received from the state historic preservation office.

~~(4) (6) A permit must provide that the operator shall comply with the~~

requirements of the Act and this subchapter. Before determining that an application for a permit or amendment is acceptable, the department may condition a permit as necessary to accomplish the requirements of the Act and this subchapter including, but not limited to, requiring surface water and ground water quality and quantity monitoring before, during, and after opencut operations inside and outside the permit area.

~~(5) (7) A permit does not become operative until issued by the department, and an applicant may not begin opencut operations until a permit is issued~~ becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the permit is approved and issued by the department.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.212 would implement the amendments enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed amendments to (1) are necessary to improve syntax and readability of the rule. The last sentence of (1) would be deleted in favor of proposed new (5).

New (2) and (3) would restate the requirements of 82-4-432, MCA, in order to consolidate all necessary information for applicants in one place in the rule. The proposed last sentence of (2) is necessary to notify applicants which rules are relevant to an application for a permit.

New (4) would restate current (2) and would substitute terms that follow the applicable statute, 82-4-432, MCA, for clarity. New (4) would also delete the provisions of (2)(a) and (b) because they have been invalidated by changes enacted by Sec. 11, Ch. 385, Laws of 2007, and otherwise merely paraphrase the statute.

The proposed amendments to (5), currently (3), would improve syntax and readability of the rule and articulate the department's understanding of the legal requirements arising from the Montana antiquities laws provided in 22-3-421, MCA, et seq. and 82-4-434(3)(h), MCA. The last sentence of (5) would respond to concerns of applicants that they are unable to review communications from the State Historic Preservation Office to the department.

The proposed amendment to (6), currently (4), would allow the department to condition a permit as necessary to accomplish the requirements of the Act or rules. This amendment would provide a process to ensure compliance that is less drastic, time-consuming, and costly than permit denial and reapplication. Revised (6) would add language that is proposed to be deleted from current ARM 17.24.218(1)(e) and (i). The language would be relocated to improve the logic and flow of the rule.

The proposed amendments to (7), currently (5), are proposed to improve the syntax and clarity of the rule. The proposed amendments would establish a clear time when opencut operations may commence after approval of a permit and prevent operations from commencing before the permit has been issued.

17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an ~~amendment~~ application to on a form

provided by the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432(4), MCA, the department shall, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and evaluate the amendment application to determine if the requirements of the Act and this subchapter will be satisfied. If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.

~~(2) The department shall approve an amendment application if it determines that~~ An application to amend a permit is acceptable if it meets the requirements of ARM 17.24.212 and includes the following:

~~(a) the application contains a completed copy of the amendment application form provided by the department, a new or additional bond if necessary, or other security sufficient to cover additional estimated costs of reclamation required by~~ ARM 17.24.203 and 17.24.220;

~~(b) a new landowner consent~~ consultation form if required under ARM 17.24.206(1);

~~(c) a new zoning compliance form if required under ARM 17.24.223;~~ and

~~(d) a revised plan of operation revisions, if necessary; and~~

~~(b) the application and plan of operation revisions satisfy the requirements of the Act and this subchapter.~~

(3) For an amendment application solely to extend the reclamation date for a period of no more than five years that is submitted no later than five years after the first approval date of the permit, the applicant shall apply to extend the reclamation date on a form provided by the department and provide an updated landowner consultation form.

~~(3) (4) An amendment does not become operative until approved becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the amendment is approved and issued by the department. Once approved, an amendment becomes part of the original permit.~~

~~(4) An amendment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA

IMP: 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.213 would implement the changes to the Act enacted by Sec. 11, Ch. 385, Laws of 2007 and Sec. 7, Ch. 477, Laws of 2009. The proposed strikeouts in (1) delete provisions for mandatory inspections in accordance with the amendments enacted by Sec. 7, Ch. 477, Laws of 2009.

The proposed amendments to (2) would recognize that the procedures for amendment of a permit generally follow the procedures for application for an original permit set forth in ARM 17.24.212. See 82-4-432(12), MCA. Accordingly, descriptions of procedures are stricken in favor of reference to the applicable rule. Current (2)(b) would be deleted for regulatory clarity because it generally repeats

language set forth in (1). The proposed amendments to (2) would improve syntax and readability of the rule and conform the rule to language proposed elsewhere in the subchapter.

New (3) would provide an expedited procedure in the event that an operator only desires to extend the reclamation date within five years of having obtained the original permit. The expedited procedure is justified because the information provided in the original application is unlikely to have materially changed within the five-year period.

The proposed amendments to (4), currently (3), are necessary to inform the applicant that a permit amendment does not become effective until the department notifies the applicant in writing that the amendment application is approved and the amendment is issued. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to amendments to a permit and prevent the operator from commencing operations under the amended permit until it is issued. The new language in (4) is proposed so that the rule more closely follows proposed ARM 17.24.212(7). The language proposed in ARM 17.24.212(7) would be restated in (4) to notify operators that expanded operations under an amended permit may only commence after the department provides written notice of approval.

17.24.214 ANNUAL PROGRESS PRODUCTION REPORT (1) An operator ~~who possesses one or more permits~~ shall submit one annual progress production report ~~for that addresses all opencut operations during~~ the previous calendar year to the department on or before March 1 of each year.

(2) The annual progress production report must be submitted on a form provided by the department. ~~In addition to the requirements in 82-4-403, MCA, the~~ The report must list all of the operator's permitted sites and provide the information required by the department for each of those sites where the operator engaged in permitted, unpermitted, or limited opencut operations and describe the amount of materials removed for each site.

(3) The annual production report must be accompanied by payment of the annual fee, in accordance with 82-4-437, MCA, for the sites listed according to (2).

(4) The department may require an operator to provide documentation of materials removed for the purpose of verifying the amounts reported under this rule.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.214 would implement changes to annual reporting requirements enacted by Sec. 9, Ch. 477, Laws of 2009 and Sec. 8, Ch. 198, Laws of 2013. The proposed revision of the title of the rule provides regulatory clarity because "production" more accurately describes the subject matter of the report. The proposed amendments to (1) would implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report requirement to unpermitted as well as permitted operators.

The proposed amendments to (2) would also implement Sec. 8, Ch. 198, Laws of 2013, to expand the applicability of the annual report requirement to

unpermitted as well as permitted operators. The proposed deletion of the reference to 82-4-403, MCA, is necessary because the reference was made obsolete by enactment of 82-4-437, MCA, in 2007. In addition, the proposed amendments to (2) would clarify that the annual report must include production from limited opencut operations.

New (3) would implement Sec. 9, Ch. 477, Laws of 2009, which enacted the \$0.025 per cubic yard production fee and to inform operators that the fee, if applicable, must be submitted along with the annual report.

New (4) would provide a means of verifying the accuracy of annual production reports submitted to the department.

17.24.218 PLAN OF OPERATION--(SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS--) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following ~~site preparation, mining, and processing plan commitments and information:~~

(a) ~~an access road and main permit area boundary a markers section, including that includes a statement that the operator has clearly marked on the ground all required boundaries and the permitted access road segments roads to be improved or constructed and the main permit area boundary segments that require marking, and will maintain the markings as required by this rule. Boundary and Rroad markers segments to be improved or constructed must be marked at every corner and along each segment placed so that the no less than two consecutive markers are easily readily visible with the naked eye from in any direction from any point on a line one to the next and no more than approximately 300 feet apart. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:~~

(i) markers must be in place prior to submitting an application for a permit or an amendment;

(ii) markers should be durable stout steel, wood, or similar quality posts and painted or flagged to be readily visible, except that a prominent, permanent feature such as a pole, tree, or large rock, flagged or painted, may serve as a marker;

(iii) road markers may be removed as the road is constructed, but each boundary marker must be maintained in place and readily visible until the adjacent permit area is reclaimed and released;

(iv) the following areas and features must be marked according to this rule:

(A) proposed permit or proposed amended permit boundaries;

(B) non-bonded areas;

(C) proposed permitted access roads to be improved or constructed;

(D) phase 1 release areas previously approved by the department; and

(E) prior to submission of an application for bond release, areas that are the subject of an application for phase I or phase II bond release;

(v) Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in the requirements of (1)(a) do not apply to active hayland, or cropland, need not be marked or existing roads to be

~~permitted. Other boundary segments must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker;~~

~~(b) an access road establishment construction, and use, and reclamation section that is consistent, including with the landowner's acknowledgements contained in the landowner consultation form required by ARM 17.24.206;~~

~~(i) a statement that the operator will appropriately establish, use, and reclaim access roads, and downsize to the premine condition or totally reclaim these roads by retrieving and properly handling surfacing materials; backfilling and grading road locations in a manner that leaves stable surfaces blended into the surrounding topography and drainageways; and ripping, resoiling, reconditioning, and seeding or planting the locations with the approved vegetative species, unless the landowner requests in writing that specific roads or portions thereof remain open and the department approves the request; and~~

~~(ii) a description of the access roads or portions thereof to be improved or constructed, including their locations, lengths, widths, drainageway crossings, and surfacing; and of the roads or portions thereof proposed to remain open, per landowner request, at the conclusion of opencut operations, including their locations, intended uses, and final widths. Some or all of this information may be presented on the site or area map. Improvements include, but are not limited to, blading, widening, and surfacing. A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use;~~

~~(c) a soil and overburden characterization section that includes the average soil and overburden thicknesses in the permit area determined on the basis of no less than three test holes spaced representatively to describe proposed permit areas of less than nine acres and one test hole per each three-acre area for proposed permit areas of nine acres or more, with a maximum of 20 representatively spaced test holes for proposed permit areas that exceed 60 acres, or as otherwise approved by the department in the permit;~~

~~(i) for the purposes of this subsection:~~

~~(A) test holes must be of sufficient depth to measure the thicknesses of soil and overburden;~~

~~(B) representative test holes must be located in both bonded and non-bonded areas;~~

~~(C) exposures of the soil and overburden profile, such as a roadcut, may be used in lieu of a test hole; and~~

~~(D) clearly labeled photos showing the top three feet of the soil profile with a visible scale must be taken and provided to the department for each test hole;~~

~~(d) a soil and overburden handling section that includes a statement that the operator shall:~~

~~(i) upon commencing opencut operations, strip and stockpile overlying soil to the depth specified in the permit before excavating overburden and materials;~~

~~(ii) before mining, remove and stockpile overburden separately from soil and~~

designate soil and overburden stockpiles with signage that is legible, readily visible, and placed so that equipment operators and inspectors may readily identify the type of stockpile for the life of the stockpile;

(iii) never stockpile overburden or soil on slopes greater than 3:1 or in drainages or in a manner that will cause pollution to state waters;

(iv) remove all soil and overburden from a minimum ten-foot-wide strip along the crest of a highwall;

(v) haul soil and overburden directly to areas prepared for backfill and grading or resoiling or to separate stockpiles;

(vi) never stockpile overburden on areas where soil has not been stripped to the depth required by the permit; and

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

~~(e)~~ (e) a construction, mining, processing, and hauling section, including that includes:

(i) a description of the materials to be sold or used by the operation;

(ii) a construction project plan that describes the locations and construction schedules for all areas to be disturbed and location of all facilities including offices, parking, vehicle staging areas, roads designated by the landowner as affected land, and processing plants;

~~(iii) a description of the methods and equipment to be used to mine, haul, and process mine material, and to haul it and the products made from it. The department may require;~~

~~(iv) a description of the anticipated general mining progression, including where the location of the first stripping and excavation will occur, the direction of mining will progress, and other relevant information. The anticipated location and timing for the installation mobilization and setup of processing facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities may also be required; and~~

(v) other information necessary to fully describe the nature and progress of opencut operations;

~~(d) (f) a section describing the an hours of operation section, including a description of the proposed hours of operation of the proposed opencut operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. A The department may require an operator to keep and maintain a complete and accurate log that lists general on-site activities and the dates and times they occurred must be maintained for an opencut operation subject to restricted hours. Log information must be presented to the department upon request record of the hours operated. The operator shall submit the record to the department within two work days after receipt of a request from the department;~~

(g) a water resources section that includes:

(i) the depths, water levels, and uses of water wells in and within 1,000 feet

of the permit area;

(ii) identification of the sources of the information reported, such as landowners, field observations, and water well logs;

(iii) copies of all available well logs;

(iv) the estimated seasonal high and seasonal low water table levels in the permit area and the information sources used, such as landowners, field observations, and water well logs; and

(v) in the event that the proposed opencut operation involves or may result in the diversion, capture, or use of water, acknowledgement that the operator consulted with the regional office of the Department of Natural Resources and Conservation, Water Resources Division, concerning the requirements to obtain water rights and possible adverse impacts to existing water rights;

(e) (h) a water quality protection and management section, including that includes:

(i) a statement that the operator will take appropriate measures to protect on- and off-site surface water and ground water from deterioration of water quality and quantity that could be caused by opencut operations; take appropriate measures to prevent, minimize, or mitigate adverse impacts to on- and off-site surface water and ground water systems and structures that could be caused by opencut operations a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations;

(ii) an explanation of measures to prevent pollution of state waters or impairment of a water right including, but not limited to:

(A) an explanation of water management and erosion control plans for stormwater, ground water, and surface disturbances that discharge off-site or intercept any waterway with a defined channel; and

(B) an explanation of proposed measures to protect the water rights of other parties or to replace an adversely affected water source that has a beneficial use;

(iii) a statement that the operator will keep non-mobile equipment above the ordinary seasonal high water level of surface water and ground water; appropriately establish, use, and reclaim opencut-operation-related hydrologic systems and structures;

(i) a spill prevention and management section that includes a statement that the operator will:

(i) install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within 500 feet of access roads and 1,000 300 feet of the main permit area; and

(ii) routinely inspect and maintain these tanks to prevent leaks and spills; retrieve and discard spilled fuel and contaminated materials in a lawful manner; and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or that is greater than 25 gallons. The department may require on- and off-site surface water and ground water quality and quantity monitoring before, during, and after opencut operations. When opencut operations will cause the diversion, capture, or use of water, the operator shall consult with the regional office of the department of natural resources and conservation, water resources division, concerning water rights and submit a summary of that consultation with the plan of

operation; and

~~(ii) a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations; special measures to be used to protect on- and off-site surface water and ground water from deterioration of water quality and quantity; special measures to be used to prevent, minimize, or mitigate on- and off-site impacts on surface water and ground water systems and structures; water management and erosion control plans for surface disturbances that will intercept a drainageway, significant runoff, or ground water; measures to be used to protect the water rights of other parties or to replace an adversely affected water source that had a beneficial use; and fuel storage containment structures to be installed or constructed;~~

~~(f) a mine material handling section, including:~~

~~(i) a statement that the operator will keep mine material stockpiles out of drainage bottoms and off of slopes greater than 3:1, and a statement that, at the conclusion of opencut operations, the operator will, except as provided in (ii), remove from the permit area or bury all excavated or processed mine material, unless the landowner requests on the landowner consent form that specific types, grades, and quantities of mine material remain stockpiled; consolidate mine materials to remain stockpiled into piles of similar type and grade; and leave the quantity of soil that was stripped from the unreclaimed area under and around a mine material stockpile in a shaped and seeded pile within 100 feet of that stockpile. The operator remains liable for the unreclaimed area under and around a mine material stockpile until the mine material is removed and the site reclaimed, or ownership of the stockpile or possession of the permit is transferred to the landowner or another party; and~~

~~(ii) a description of the types, grades, and quantities of mine material proposed to remain stockpiled, per landowner request, at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided;~~

~~(g) a mined-area backfill section, including:~~

~~(i) a statement that the operator will use only clean fill from any source, on-site-generated asphaltic pavement as mined-area backfill; dispose of other wastes in compliance with applicable state laws and rules; bury on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation; and, at the conclusion of opencut operations, remove stockpiled asphaltic pavement, concrete with protruding metal, and clean fill from the permit area. Clean fill consists of dirt, sand, fines, gravel, oversize rock, and concrete with no protruding metal. On-site-generated asphaltic pavement must be disposed of at least 25 feet above the ordinary high water table. The operator may propose that excess on-site-generated overburden and fines be disposed of at a site outside of the mined area but within the permit area. Fines consist of natural or crushed rock that is 1/4 inch or smaller; and~~

~~(ii) a description of the material types, estimated quantities, and fill designs for mined-area backfill, and of the plan for stockpiling and recycling imported asphaltic pavement and concrete;~~

(j) a statement by the operator that:

(i) opencut operations may not occur within a prohibited area described in the permit for purposes that include, but are not limited to, reclamation of a highwall or protection of an easement, a right of way, a drainage, or a waterway area;

(ii) no opencut operations will occur within an easement unless written permission to do so is obtained from the holder of the dominant estate; and

(iii) before commencing opencut operations, the operator, on a form provided by the department, notified the weed board in the county or counties in which the proposed operation is located. A copy of the form that the applicant submitted to the weed board must be attached to the application;

~~(h)~~ (k) an additional impacts section, including that includes:

(i) a description of the methods and materials to be used to minimize impacts, as necessary, on the residential areas and structures identified under ARM 17.24.217(1)(e) 17.24.221(4)(h);

(ii) repair or replacement of man-made structures affected by opencut operations within the permit area; and

(iii) address identification of other opencut operation impacts not addressed in other sections of the plan of operation; and

~~(i)~~ (l) an additional commitments section, including that includes a statement that the operator will:

(i) inform key personnel and subcontractors involved in opencut operations of the requirements of the plan of operation;

(ii) take proper precautions to prevent wildfires;

(iii) provide appropriate protection for cultural resources that could be affected by opencut operations; and

(iv) promptly notify the state historic preservation office should such resources be found; and submit an annual progress report to the department.

(2) Approval of an application does not relieve the operator from the requirements of any applicable federal, state, county, or local statute, regulation, rule, or ordinance, including requirements to obtain any other permit, license, approval, or permission necessary for the actions described in or required by the application and the permit.

(2) remains the same, but is renumbered (3).

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

**REASON:** The proposed amendments to ARM 17.24.218 implement changes enacted by Sec. 13, Ch. 385, Laws of 2007. The proposed amendments would also restate language proposed for deletion in ARM 17.24.217 to include all requirements relevant to mining operations in one rule. Similarly, language in ARM 17.24.218 that would be more appropriately included in ARM 17.24.219, which provides for the reclamation portion of the plan of operations, has been deleted and added to the latter rule in order to improve regulatory clarity and the logic and flow of the rules.

The proposed deletion of language in (1) is necessary for regulatory clarity because it partially restates the requirements for a mining plan that are serially set

forth in the rule. Otherwise, the proposed amendments to (1)(a) would improve syntax and readability of the rule.

More specifically, the proposed amendments to (1)(a) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that an applicant or operator mark the location of proposed access roads outside the permit boundary. The new language proposed at (1)(a) and (1)(a)(i) would require placement of markers so that boundaries may be readily located during site inspections and during operations. The new language proposed at (1)(a)(ii) would ensure that the materials used for boundary markers are durable and readily visible in the field. The new language proposed at (1)(a)(iii) relieves operators from the obligation to maintain road markers after the road is constructed. The new language proposed at (1)(a)(iv) restates each requirement for marking boundaries in separate statements to improve the syntax of the rule. New (1)(a)(iv) also proposes marker requirements for phased bond release in order to minimize the time required to perform site inspections for bond release. The proposed amendments at new (1)(a)(v) would delete language that has been revised and restated elsewhere in the rule as explained above.

The proposed amendments to (1)(b) would implement the deregulation of access and other roads enacted by Sec. 2, Ch. 198, Laws of 2013, by deleting the requirement that a plan of operation explain construction, use, and reclamation of access roads except as necessary to achieve the expectations of the landowner about the reclamation of roads constructed on affected land.

New (1)(c) would combine and restate requirements for characterization of soil and overburden currently set forth in ARM 17.24.217(1)(d) and 17.24.219(1)(b) in one place in the rule. The proposed amendments to (1)(c) are necessary to improve the logic and flow of the rule by combining all requirements relevant to site characterization and mining operations into the provisions for the plan of operation. The proposed provision for test holes generally restates the current provisions of ARM 17.24.217(1)(d) and would notify applicants of the department's practice regarding the number of test holes that are necessary to represent the depths of soil and overburden. New (1)(c)(i)(D) would require an applicant to provide labeled photos showing the top three feet of the soil profile which is necessary to reduce the time required for preapproval site visits by allowing the department to identify in advance specific test holes that should be inspected.

New (1)(d) would restate requirements for explaining how soil and overburden will be handled during mining that are currently set forth in (1)(f)(i) and the requirements for the reclamation plan in ARM 17.24.219(1)(b). The proposed amendment is necessary to improve the logic and flow of the rule relating to soil and overburden handling because it gathers all related provisions at one place in the rule. Also, soil and overburden handling has a stronger nexus to operations as opposed to reclamation and logically should be addressed as part of the plan of operation. The restated requirements for soil and overburden handling would generally follow the current requirements of (1)(f)(i) and ARM 17.24.219(1)(b), but are restated such that each requirement is a separate subsection to improve readability. New (1)(d)(ii) would require operators to post signs identifying soil and overburden stockpiles and is necessary as a best management practice to avoid commingling of soil and overburden during mining. The requirement is necessary to

ensure that soil stockpiles are not contaminated with other materials because the availability of soil on site is critical to keeping the costs of reclamation within the principal amount of the reclamation bond.

The proposed amendments to (1)(e), currently numbered as (1)(c), would restate requirements for explaining the proposed mining and material handling operations. The proposed amendments are necessary to improve the syntax of the rule. Otherwise, new (1)(e)(ii) would implement the requirement for a construction project plan that is set forth in 82-4-403(7)(g)(ii), MCA.

The proposed amendments to (1)(f), currently numbered as (1)(d), would restate the provision for regulation of the hours of operation in the event that an operation is proposed in the vicinity of a residential area. The proposed amendments are necessary to improve the syntax of the rule. The proposed last sentence of (1)(f) is necessary so that the department may inspect an operating record outside of a site inspection.

New (1)(g) would combine and restate the requirements currently set forth in ARM 17.24.217(1) and 17.24.218(1)(e)(i) that relate to identification of water resources. New (1)(g) is necessary to improve regulatory clarity by consolidating regulations addressing water resources under a single rule and by distinguishing the requirement that the plan of operation address water resources in and within 1000 feet of the proposed permit area from the requirement to address water quality protection and management proposed in (1)(h). New (1)(g)(v) would move language currently located in (1)(e)(i) to consolidate all provisions concerning water resources to a single location in the rule.

The proposed amendments to (1)(h), currently numbered as (1)(e), would restate the provision for water quality protection and management. The proposed amendments to (1)(h) would include restatement of the requirements currently located at (1)(e)(ii) for the purpose of gathering all provisions specifically relevant to water quality under a single subsection. Also, the requirements of the rule would be restated in terms that follow the Montana water quality laws to avoid confusion and enhance regulatory certainty.

The proposed amendments to (1)(i), currently numbered as (1)(e)(i), would restate requirements for the plan of operation regarding spill prevention and control. The proposed amendment would restate these requirements in a separate subsection to avoid confusion and improve the logic and flow of the rule.

New (1)(j) would gather and restate at one location in the rule prohibitions against mining necessary to ensure reclamation of highwalls and to avoid impairment of other property rights, such as easements and rights of way, and to protect drainages and waterways. New (1)(j) restates these requirements to improve syntax and readability. New (1)(j)(iii) is necessary to simplify and clarify the obligation of an applicant or an operator to notify the county weed board, if any, of the proposed operation.

The proposed amendments to (1)(k), currently numbered (1)(h), are necessary to improve syntax and readability of the rule and correct references to rules as they would be amended by the proposed amendments to this subchapter.

New (2) is necessary to inform applicants and operators that approval of an application under the Act and this subchapter does not relieve the applicant or operator from the requirements of other applicable laws.

17.24.219 PLAN OF OPERATION,--RECLAMATION PLAN,--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) a postmining land uses section, ~~including that includes~~ a description of the type, location, and size of each postmining land use area in the main permit area. Postmining land use types include, but are not limited to, internal roads, material stockpile areas, water source pond, wetland, fish pond, riparian area, grassland, rangeland, shrubland, woodland, special-use pasture, hayland, cropland, wildlife habitat, livestock protection site, recreation site, and residential, commercial, and industrial building sites;

~~(b) a soil and overburden handling section, including:~~

~~(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than two years; and keep all soil on site and accessible until the approved postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and~~

~~(ii) a description of the average thicknesses of overburden and soil to be replaced on mine-level areas. Resoiled surfaces must be seeded to a cover crop, or seeded or planted to the approved vegetative species, at the first seasonal opportunity after resoiling;~~

~~(c) (b) a surface cleanup and grading section, including:~~

~~(i) that includes a statement that the operator will retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in:~~

~~(i) at the conclusion of opencut operations, except as provided in (1)(b)(ii), use or haul away from the permit area all excavated or processed material for backfill as provided in (1)(c);~~

~~(ii) upon the request by the landowner, on the landowner consultation form, segregate specific types, grades, and quantities of material into stockpiles maintained in one location, along with a separate stockpile of the quantity of soil required to reclaim the area where the material is stockpiled, shaped, and seeded and placed within 100 feet of a material stockpile;~~

~~(iii) a stockpile of materials for the landowner as provided by (1)(b)(ii) must be free of excess fines or other waste materials that would render the material~~

unsuitable for commercial use;

(iv) provide a description of the types, grades, and quantities of material proposed to remain stockpiled as provided by (1)(b)(ii) and (iii), and justify the quantities stockpiled for landowner use based on current and expected demand for the materials;

(v) at the conclusion of opencut operations, haul away and properly dispose of all refuse, oiled surfacing, contaminated materials, concrete that is not clean-fill, and unused clean fill from affected lands;

(vi) haul away all asphaltic pavement from the permit area, except on-site-generated asphaltic pavement may be used as mined-area backfill in accordance with (1)(b)(vii) and with the consent of the landowner;

(vii) place on-site-generated asphaltic pavement, coarse clean fill, and other clean fill unsuitable for plant growth under at least three feet of material suitable for sustaining the postmining vegetation;

(viii) place on-site generated asphaltic pavement in an unsaturated condition at least 25 feet above the seasonal high water table; and

(ix) for the purposes of (1)(b)(ii) and (iii), the operator remains responsible for reclamation of the areas occupied and affected by material and soil stockpiles until the department has approved phase II reclamation for the areas where the stockpiles are located or assignment of the permit to the landowner or another party;

(c) a backfill and grading section that includes a statement that the operator will:

(i) use only overburden and materials from the permit area, or otherwise only clean fill from any source, to reclaim affected land to a stable condition and with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces appropriate to the designated postmine land use;

(ii) reclaim premine drainage systems to blend into the surrounding topography and drainages;

(iii) leave them graded to drain off-site or concentrate water in low areas identified in the permit;

(iv) backfill and grade to leave them at least three feet above the ordinary seasonal high water table level for dryland reclamation and at approved depths below the ordinary seasonal low water table level for pond reclamation; and blend them into the surrounding topography and drainageways.

(v) record the average thickness of overburden replaced and never cover soil with overburden;

(vi) replace all soil, and overburden if sufficient soil is unavailable, to a minimum depth of 24 inches or to another depth approved in writing by the department and record the average thicknesses of soil replaced;

(vii) The applicant may propose the establishment of ~~for the purposes of (1)(c)(i) and (ii), the department may consider steeper slopes for certain postmining land uses and the construction of seasonal ponds. The department may require water table level~~ based on a design or a slope stability analysis prepared by a professional engineer licensed in accordance with Title 37, chapter 67, part 3, MCA, or a geologist with five years of post-graduate academic or professional work experience in the field of soil or rock mechanics;

(viii) if required by the department, conduct postmining monitoring of ground water levels to ensure that appropriate reclaimed surface elevations are established; and

(ii) (d) a description of the locations and designs for any special reclamation features such as ~~drainageways~~, ponds, waterways with defined channels, and building sites. Reclaimed ~~drainageways~~ waterways with defined channels must be located in their approximate premine locations and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. Reclaimed ~~drainageways~~ waterways with defined channels must connect to undisturbed ~~drainageways~~ waterways in a stable manner that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas;

(e) an access road reclamation section describing:

(i) reclamation of access, haulage, or other roads included on affected land with the landowner's consent; and

(ii) for private roads to remain open at the request of the landowner, reclamation of the road to a width appropriate to the landowner's anticipated use or as may otherwise be required by applicable land use regulations;

(f) a section that explains how the operator will reclaim water diversion, retention, discharge, and outflow structures constructed for opencut operations;

(d) (g) an overburden and soil ~~reconditioning~~ conditioning section, including that includes a statement that the operator will:

(i) ~~alleviate overburden and soil compaction by deep tilling~~ till replaced overburden, graded surfaces, and other compacted surfaces;

(A) to a depth of at least 12 inches, ~~before resoiling, and by deep tilling~~ or to another depth required by the department prior to replacing soil, except that:

(I) tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, or bedrock; and

(II) tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil;

(B) on the contour and when the overburden and soil are dry enough to shatter; and

(C) in a manner that protects tilled areas from recompaction;

(ii) record the thicknesses of soil replaced on the permit areas as required by the permit;

(iii) ~~till through the replaced soil and into the surface of the underlying material after resoiling. Deep tillage must be done on the contour and when the overburden and soil are dry enough to shatter. Deep tilled areas must be protected from recompaction. Deep tillage is not required for relatively non-compactible materials such as sands, materials with a rock fragment content of 35% or more by volume, and bedrock. Tilling deeper than the soil thickness is not required when cobbly material or bedrock underlies the soil~~ backfill prior to seeding or planting unless otherwise required by the department; and

(iv) the soil surface must be free of rocks that are not characteristic of the soil prior to disturbance;

(e) (h) a revegetation section, including that:

(i) describes the types and rates of fertilizer and other soil amendment applications, methods of seedbed preparation, and methods, species, and rates of seeding or planting; and

(ii) includes a statement that the operator will:

(i) (A) a statement that the operator will establish vegetation to protect the soils from erosion and that is capable of sustaining the designated postmining land uses;

(B) seed all affected land for vegetation species that are consistent with the premining species composition, cover, production, density, and diversity, or otherwise as appropriate for the designated postmining land use;

(C) ensure that areas seeded or planted to perennial species will be appropriately are adequately protected and managed from the time of seeding or planting through two consecutive growing seasons or until the vegetation is established, whichever is longer;

(D) use seed that is as weed free as is reasonably possible; and comply with the noxious weed control plan approved by the respective weed district for the open-cut operation. Revegetation success on

(E) ensure that seedbed preparation and drill seeding is done on the contour;

(F) apply drill seeding at the rate of no less than ten pounds per acre or at another rate approved by the department;

(G) apply broadcast seeding at a rate that is at least 100 percent higher than drill seeding rates and drag or press the surface to cover the seed unless otherwise required by the department;

(H) provide seeding rates as pounds of pure live seed per acre;

(I) seed during the late fall or early spring seeding seasons;

(J) apply cover crop seeding and mulch as needed to help stabilize an area or establish vegetation;

(K) achieve revegetation of a non-cropland area is achieved when by establishing vegetation capable of sustaining the designated postmining land use has established.;

(L) Revegetation success on achieve revegetation of a cropland area is achieved when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions.; and

(M) A copy of the approved noxious weed control plan must be submitted with the plan of operation; and agree that reclamation for cropland areas will be considered complete upon inspection by the department or notification by the landowner to the department in writing that the crop yield on the reclaimed land is acceptable.

~~(ii) a description of the types and rates of fertilizer and other soil amendment applications; methods of seedbed preparation; and methods, species, and rates of seeding or planting. When the postmining land use is hayland or cropland, the soil surface must be left free of rocks that could impede agricultural equipment. Seedbed preparation and drill seeding must be done on the contour. Broadcast seeding must be done at rates at least 100% higher than drill seeding rates and the surface dragged or pressed to cover the seed. Seeding rates must be given as pounds of pure live seed per acre. Seeding must occur during the late fall or early~~

~~spring seeding seasons. Cover crop seeding and mulch application may be needed to help stabilize an area or establish vegetation;~~

~~(f) (i) a reclamation timeframes schedule section, including that includes:~~

~~(i) a statement that the operator will complete all phase I and phase II reclamation work on an area no longer needed for opencut operations, or on areas that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may propose an alternate reclamation ~~deadline~~ schedule for that area; and~~

~~(ii) a reasonable estimate of the month and year by which final phase II reclamation will be completed considering the estimated ~~mine~~ demand for material demand, expected rate of production, and accessible ~~mine~~ material reserves, and the time required to complete revegetation as required by (1)(g) and (h). Final reclamation must be completed by the date given.~~

~~(2) remains the same.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.219 would implement amendments to the Opencut Mining Act enacted by Sec. 13, Ch. 385, Laws of 2007. In addition, language in ARM 17.24.218, the provision for an operating plan, which more appropriately applies to reclamation plans, would be moved to ARM 17.24.219 in order to improve regulatory clarity and the logic and flow of the rules. For the same reason, language in ARM 17.24.219 that would have a stronger nexus to a plan of operation is proposed to be deleted and restated in ARM 17.24.218.

The proposed amendments to (1)(a) are necessary to improve the syntax and readability of the rule. The terms "internal roads" and "material stockpile areas," which are proposed to be added to the second sentence of (1)(a), are necessary to incorporate postmining land-use concepts that are addressed elsewhere in the rule and would be relevant to a narrative statement explaining proposed postmining land uses. The proposed amendments would also substitute "rangeland" in favor of "livestock protection site" because the common meaning of the former term clarifies the rule for applicants.

ARM 17.24.219(1)(b) would be stricken and moved to ARM 17.24.218(1)(d) to improve the logic and flow of the rule.

The proposed amendments to (1)(b), currently (1)(c), would separate "surface cleanup" from "backfilling and grading," which is a distinct subject matter that has been restated at (1)(c). The new language at (1)(b)(ii), (iii), and (iv) would be restated from ARM 17.24.218(1)(f)(ii) and provides for the operator to leave stockpiled materials for the landowner's use. The restated provision for landowner stockpiles adds language to ensure that the material left for the landowner is useable and free of fines and provides for stockpiling of a sufficient amount of soil to provide for reclamation of the stockpiled area after the stockpile is removed. The new language would ensure that the practice of leaving material for use of the landowner is not used as a means of avoiding reclamation requirements. New

(1)(b)(v), (vi), and (vii) would restate the provision currently found at ARM 17.24.218(1)(g)(i) that provides for backfill using on-site generated asphalt and coarse clean fill. The new language at (1)(b)(ix) is a restatement of ARM 17.24.218(1)(f)(i), which provides for reclamation of areas where stockpiles are maintained.

Proposed amendments to (1)(c) would incorporate and restate the backfill and grading requirements currently found at ARM 17.24.218(1)(g) and 17.24.219(1)(c) in one location in the rule. New language at (1)(c)(i) would ensure that maximum allowable slopes for reclamation backfill are commensurate with the postmine land use. Proposed amendments to (1)(c)(iv) would substitute "seasonal high water table" and "seasonal low water table" for the term "ordinary water table" which is imprecise. New (1)(c)(v) would require an operator to record the average thickness of overburden replaced and is necessary to allow the department to ensure that backfill and grading reasonably follow the reclamation plan.

In the event that soil cannot be replaced to the 24-inch depth that is generally considered to be the amount necessary to achieve revegetative success, new (1)(c)(vi) would require an operator to obtain written approval from the department for replacement of soil at another depth. The general provision for replacement of soil to a depth of 24 inches for all affected lands is a necessary improvement to the current rule, which specifies different depths of soil for "facility level areas" and "mine-level areas" -- those terms being obsolete regulatory concepts that would be deleted from the rule.

Proposed amendments to (1)(c)(vii) would provide for postmine reclamation to slopes steeper than the requirements set forth in (1)(c)(i) as may be appropriate for site conditions. To ensure stability and safety, a proposal for reclamation to a steeper slope would have to be supported by a slope stability analysis prepared by a professional engineer or qualified geologist.

The proposed amendments to (1)(c)(viii) are necessary to improve the syntax and readability of the rule because the term "water table level monitoring" is not a term that is commonly used in the groundwater hydrology field.

The proposed amendments to (1)(d) are necessary to improve the syntax and readability of the rule by substituting the term "waterways with defined channels" for "drainageways," which provides more precision. The new language at the end of (1)(d) would improve regulatory certainty by explaining that "in a stable manner" means "that avoids disruption or accelerated erosion of the reclaimed waterway or adjoining areas."

The proposed amendments to (1)(e) would restate the requirements set forth in ARM 17.24.218(1)(b)(i) and revise the requirement to implement the changes enacted by Sec. 2, Ch. 198, Laws of 2013, which release operators from the requirement to reclaim access roads on affected land if the landowner consents to the road remaining unreclaimed.

The proposed new language at (1)(f) would require an operator to explain how water diversion or storage structures constructed for opencut operations will be reclaimed. The proposed new language ensures that reclamation of or incorporation of such structures into the postmine land use is explained in the permit application and approved by the department.

The proposed amendments to (1)(g), currently (1)(d), would improve the

syntax and readability of the rule. The proposed amendment to (1)(g)(i) would substitute the commonly understood term "till" for the rather nebulous term "alleviate soil and overburden." The language proposed at the end of (1)(g) would allow for approval of tillage to a depth other than the 12-inch optimum tillage depth to accommodate specific site conditions.

New language proposed at (1)(g)(ii) would require the operator to record the thickness of soil replaced and is necessary to ensure that the postmine land use is achieved.

The proposed amendments at (1)(g)(iv), currently part of ARM 17.24.219(1)(d), would improve syntax and readability of the rule. The proposed amendments would strike the term "deep tillage," which is undefined, for "tilling," which would be defined in the proposed amendments to ARM 17.24.202(15).

The proposed amendments at (1)(h)(i), currently part of ARM 17.24.219(1)(e)(ii), would improve syntax and readability of the rule. New (1)(h)(ii)(A) through (D) restate some of the provisions of current ARM 17.24.219(1)(e)(i) and would improve syntax and readability of the rule. The proposed new language at (1)(h)(ii)(E) through (I) would also incorporate language currently located at ARM 17.24.219(1)(e)(ii) to improve syntax and readability of the rule. The requirement to provide seed cover and mulch that is proposed in new (1)(h)(ii)(J) is a best management practice designed to achieve stabilization of a resoiled and revegetated area. Proposed new (1)(h)(ii)(K) and (L) are part of current (1)(e)(i), and the language has been amended to improve syntax and clarity for the process of verifying whether reseeded operations comply with the requirements for phase II bond release. Proposed new (1)(h)(ii)(M) would facilitate the department's determination of revegetative success by allowing the department to rely on a written statement from the landowner that crop yields on reclaimed land are acceptable.

The proposed amendments to (1)(i), currently numbered ARM 17.24.219(1)(f), would improve the syntax and readability of the rule. The proposed reference to "phase I and phase II" reclamation in (1)(i)(i) would improve clarity because the reclamation schedule section of the reclamation plan would use the same terminology as the proposed amendments to ARM 17.24.203(4).

#### 17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department. The bond amount must be based on a reasonable estimate of what it would the cost for the department to procure the services of a third-party contractor to reclaim, in accordance with this subchapter and the plan of operation, the anticipated maximum disturbance during the life of the bonded open-cut operation, including equipment mobilization, contractor profit, and administrative overhead costs. The department shall review the proposed bond calculation and make a final determination.

(2) The estimate of the reclamation costs must address the following considerations:

(a) the requirements for reclamation provided in ARM 17.24.219 and 82-4-434, MCA;

(b) replacement of all soil (and overburden if sufficient soil is unavailable) to a minimum depth of 24 inches or to another depth approved in writing by the

department:

(c) the plan of operation and the permit application; and

(d) postmining site conditions and any other site-specific considerations.

(3) An application for a permit under this subchapter is deficient if the proposed amount of the reclamation bond is insufficient to cover the estimated costs of reclamation required by this rule.

~~(2)~~ (4) Federal agencies, the state of Montana, counties, cities, and towns are exempt from bond requirements not required to post a bond or other security.

AUTH: 82-4-422, MCA

IMP: 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.220 would implement changes to the Act enacted by Sec. 12, Ch. 385, Laws of 2007, authorizing the department to determine the amount of the reclamation bond based on the cost of reclamation in all cases. The proposed amendments to (1) would require the applicant to submit the estimate of the reclamation bond amount on a form supplied by the department. Addition of "procure the services of a third-party contractor" would establish, as the basis for the estimate, the costs that the department would incur to procure a third-party contractor to reclaim the site in accordance with the permit, including mobilization, general overhead, and profit. Addition of the word "bonded" to (1) would avoid confusion arising from the distinction between "bonded" and "non-bonded" permit areas that are articulated throughout the proposed amendments to the subchapter. The proposed amendments to (1) would improve the clarity of the rule by substituting "contractor profit and overhead" costs for the more nebulous term "administrative" cost.

New (2) is necessary to notify the applicant of specific provisions of the subchapter that are relevant to calculation of reclamation costs for the purpose of bonding.

New (3) is necessary to notify the applicant of the department's authority to deny an application for a permit if the amount of the reclamation bond or other security is insufficient to cover the estimated costs of reclamation pursuant to 82-4-433(1), MCA.

New (4) would restate the provision, currently in (2), exempting government operators from the requirement to obtain a bond or other security for reclamation. The section has been amended to improve syntax and readability.

17.24.221 PLAN OF OPERATION--MAPS (1) A An application must include a site map, area map, reclamation map, location map, and other maps necessary to describe the proposed opencut operation. Except as provided in (6), maps submitted to the department in accordance with this subchapter must be legible, at a scale of 400 feet to one inch or larger and on a topographic map or an air-photo base, must be submitted as part of the plan of operation and in a scale sufficient to clearly describe the subject matter. An application supported by a map submitted in an electronic format that is incompatible with the department's systems, that cannot be reviewed, or that is otherwise illegible is not acceptable. A map submitted in other than electronic format must fill an 8 1/2- by 11- or 11- by 17-inch sheet leaving

margins of approximately 1/2 inch. A smaller scale area map drawn on a topographic map or air photo base may also be submitted as part of the plan.

(2) The following existing and proposed main permit area features items must be shown and labeled on the site each map submitted to the department:

- (a) main permit area boundary operator name;
- (b) staging, processing facility, and mining areas site name;
- (c) soil, overburden, and mine material stockpile areas legal description of the proposed permit area;
- (d) mined area backfill and excess overburden and fines disposal sites bar scale;

- (e) soil and overburden test hole locations date of drafting; and
- (f) water system and control structure locations north arrow; and
- (g) sight and sound barrier locations.

(3) The locations of existing and proposed access roads must be shown and labeled on the site or an area map Site maps must show and identify the following existing and proposed features as applicable-:

(a) permitted access roads, including the location, width, waterway crossings, and surfacing;

- (b) permit boundaries;
- (c) bonded area boundary;
- (d) non-bonded area boundary;
- (e) excess overburden and fines disposal sites;
- (f) sedimentation ponds and other water quality control structures;
- (g) staging areas;
- (h) heavy equipment parking areas;
- (i) fuel storage areas;
- (j) sight and sound barriers and berms;
- (k) soil stockpile areas;
- (l) overburden and excess overburden stockpile areas;
- (m) material stockpile areas;
- (n) processing facilities, including approximate locations of:
  - (i) crusher;
  - (ii) asphalt plant;
  - (iii) wash plants; and
  - (iv) concrete plant;
  - (o) detention ponds;
  - (p) concrete and asphalt recycling stockpile area;
  - (q) soil and overburden test hole and observation point locations;
  - (r) existing and proposed monitoring well locations;
  - (s) water system and structures, including:
    - (i) supply wells;
    - (ii) water recycling and settling ponds;
    - (iii) surface water extraction points;
    - (iv) discharge points for water used in opencut operations; and
    - (v) all surface waters including, but not limited to, ponds, lakes, wetlands,

and defined and/or eroded channels of waterways including, but not limited to, rivers, creeks, intermittent streams, drainages, ditches, and other waterways;

(t) above and below ground utilities and easements;  
(u) roads crossing areas where opencut activities are prohibited by ARM 17.24.218(1)(j) at a 90-degree angle or as close to a 90-degree angle as site conditions allow;

(v) erosion controls;  
(w) historic disturbances within or adjacent to permit area boundary;  
(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table; and  
(y) any other pertinent features that are necessary to ensure compliance with the Act and rules.

~~(4) The following existing features in and within 500 feet of access roads and 1,000 feet of the main permit area must be shown and labeled on the site or an area map:~~

~~(a) premine land uses including, but not limited to:~~

~~(i) water source pond;~~

~~(ii) wetland;~~

~~(iii) fish pond;~~

~~(iv) riparian area;~~

~~(v) grassland;~~

~~(vi) shrubland;~~

~~(vii) woodland;~~

~~(viii) special use pasture;~~

~~(ix) hayland;~~

~~(x) cropland;~~

~~(xi) wildlife habitat;~~

~~(xii) livestock protection site;~~

~~(xiii) recreation site; and~~

~~(xiv) residential, commercial, and industrial sites;~~

~~(b) reclaimed and unreclaimed surface disturbances;~~

~~(c) surface water features, as described in ARM 17.24.217(1)(a);~~

~~(d) vegetative types including, but not limited to:~~

~~(i) wetland;~~

~~(ii) riparian;~~

~~(iii) grassland;~~

~~(iv) shrubland;~~

~~(v) woodland;~~

~~(vi) special use pasture;~~

~~(vii) hayland; and~~

~~(viii) cropland;~~

~~(e) fish and wildlife habitats of special concern, including, but not limited to:~~

~~(i) lakes;~~

~~(ii) ponds;~~

~~(iii) streams;~~

~~(iv) wetlands;~~

~~(v) riparian areas;~~

~~(vi) unique cover areas;~~

~~(vii) travel lanes;~~

- ~~(viii) migration routes;~~
- ~~(ix) raptor cliff and nest areas; and~~
- ~~(x) reproductive, nursery, and wintering areas;~~
- ~~(f) residential areas and structures that could be impacted by opencut operations, as described in ARM 17.24.217(1)(e); and~~
- ~~(g) non-access roads, fences, utilities, and buffer zones.~~
- (4) Area maps must show and identify the following features within 1,000 feet outside of the permit boundary:
  - (a) roads leading to the site;
  - (b) access roads from the public road turnoff to the permit area (if roads go beyond the area map, show the full extent on the location map) including the location, width, waterway crossings, and surfacing;
  - (c) water wells;
  - (d) natural and man-made drainage features including, but not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments in and within 500 feet of access roads and show the defined and/or eroded channel of any such feature and any setback areas, along with a description of the use of any man-made feature;
  - (e) other opencut operations;
  - (f) above and below ground utilities;
  - (g) significant geographical features;
  - (h) residential areas and structures that could be impacted by opencut operations, such as inhabitable dwellings and commercial and industrial facilities; and
  - (i) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
- ~~(5) The locations of existing and proposed water wells in and within 1,000 feet of the main permit area must be shown and labeled on the site or an area map. Reclamation maps must show and identify all the following existing and proposed features in accordance with the plan of operation:~~
  - (a) all postmining land uses;
  - (b) mined area backfill sites;
  - (c) landowner material stockpile areas to remain;
  - (d) all roads or portions of roads proposed to remain open, at the request of the landowner, at the conclusion of opencut operations, including road locations, intended use, final width, and surfacing;
  - (e) long and short axis cross-sections of any pond or depression in which water is expected to collect;
  - (f) arrows depicting the anticipated direction of water flow across the reclaimed site; and
  - (g) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.
- ~~(6) The operator name, site name, legal description, scale, date of drafting, and north arrow must be shown on all plan of operation maps. Location map may be on an aerial or topo base and must show the site's location in relation to the nearest town, city, or major intersection and be sufficient to allow the public to locate the proposed site.~~

(7) Complete and accurate maps must be submitted. The department may require that part or all of the area in and within 500 feet of permitted access roads and 1,000 feet of the ~~main~~ permit area be surveyed to provide sufficient map detail and accuracy.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.221 would generally update the requirements for submittal of maps and reconcile the rule with the other proposed amendments to the subchapter. The proposed amendments would clarify what is required to be displayed on a map. Otherwise, the proposed amendments improve the syntax and readability of the rule.

The proposed amendments to (1) specify the types of maps addressed in the rule. In addition to the site and area maps called for in the current rule, the proposed amendments to (1) require submittal of two new maps, a reclamation map and a location map, as explained below. Proposed amendments to (1) also provide formatting standards for maps submitted in electronic and non-electronic formats. Imposition of the standards is necessary to ensure that submittals are legible and in a format that is compatible with the department's hard copy and electronic records retention systems. Finally, definitions are being proposed for each type of map for clarity.

The proposed amendments to (2) would restate the general requirements for all maps that are currently set forth in (6). The proposed amendments would improve clarity by avoiding unnecessary repetition. The required information would ensure that the maps are usable and retrievable in the department's record management systems.

Proposed new (3) generally restates the requirements currently found in existing (4) and identifies them as requirements for "site maps" that primarily describe the area proposed for permitting under the Act. The required items are consistent with, and would pictorially explain, regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws. Proposed new (3)(h) and (i) would require depiction of features generally included as "staging areas" under the current rule.

Proposed new (3)(j) would require depiction of "sight and sound barriers and berms" to assist the department in determining the sufficiency of measures to mitigate impacts to residential areas and dwellings.

Proposed new (4) generally restates the requirements currently found in (4) and (5) and identifies them as requirements for "area maps" that depict areas outside the proposed permit area. The items identified as requirements for area maps are necessary to depict conditions outside the permit area that may be adversely impacted by the proposed operation. The required items are consistent with and would pictorially explain regulatory terms and concepts set forth in the proposed amendments to the subchapter and other relevant environmental laws.

New (5) would require applicants to prepare a reclamation map that is necessary to facilitate application review. The list of items required for the reclamation maps are regulatory terms and concepts set forth in the proposed

amendments to this subchapter. The requirement to provide cross-sections is typical of as-built maps commonly used in the construction and mining industries.

The proposed amendments to (6) would revise the provision to direct applicants to provide a location map that shows the location of the proposed operation in relation to the principal means of access. The map is necessary to enable program staff to find their way to a proposed mine site for site inspections. The deleted language in (6) would be restated in (2).

The proposed amendments to (7) would conform the language of the rule to the other amendments proposed to this subchapter.

17.24.222 PLAN OF OPERATION--ADDITIONAL INFORMATION AND CERTIFICATION (1) The department may require that an operator provide additional ~~plan of operation~~ information, ~~including~~ for the plan of operation that includes, but is not limited to:

(a) through (2) remain the same.

(3) The plan of operation must ~~conclude with~~ include a statement signed and dated by the operator certifying that ~~the statements, descriptions, and information provided apply to the proposed permit area, applicable adjacent areas, and proposed opencut operations, and that the requirements of the plan of operation will be followed unless officially amended through the department.;~~

(a) the operator has read and understands the application, the information contained in the application, and all documents submitted in support of the application;

(b) under penalty of 45-7-203, MCA, all the statements, descriptions, information, and documents provided to the department for the application are true and accurate to the best of the operator's knowledge and belief based upon the exercise of due diligence; and

(c) the operator will follow and adhere to the plan of operation and all other requirements of the operator described in the application and the permit and as the permit may be amended by the department in accordance with the Act and this subchapter.

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA

REASON: The proposed amendments to ARM 17.24.222(1) would improve the syntax and readability of the rule. The proposed amendments to (3) would explain, with greater specificity, the certifications that the department requires of applicants. The certifications would ensure that the applicant, rather than a consultant, has read, understands, and will comply with the statements in the application.

17.24.223 ZONING COMPLIANCE FOR SAND OR GRAVEL MINING (1) ~~In order to ensure that a proposed sand or gravel operation will be in compliance with local zoning regulations, permit~~ Permit applications for sand or gravel opencut operations, including and amendment applications for sand or gravel operations that

add acreage or change the postmining land use or add an asphalt or concrete plant, must include a statement from the appropriate local governing body certifying, on a form provided by the department, that the proposed mine site and plan of operation comply with local zoning regulations. ~~No application for a permit or such amendment to mine sand or gravel may be approved by the department unless accompanied by such a statement submitted on a form provided by the department.~~

AUTH: 82-4-422, MCA

IMP: 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.223 would revise the rule to more closely follow the language of the Act and to improve syntax and clarity. The proposed amendments would require certification of compliance with zoning requirements when an operator adds an asphalt plant to ensure that the scope of zoning compliance matches the acknowledgements required of a consulting landowner in ARM 17.24.206. The provision for certifying compliance of the proposed project with local zoning regulations is proposed to be deleted because the provision duplicates the requirements for a complete application set forth in ARM 17.24.212 and 82-4-432(2)(b), MCA.

17.24.224 ASSIGNMENT OF PERMITS (1) A person may assume a permit from an operator by submitting an assignment application to the department. Upon receipt of an assignment application, the department shall inspect the permitted site, if necessary, and evaluate the application and existing permit to determine if the requirements of the Act and this subchapter ~~will be~~ are satisfied.

(2) The department shall approve an ~~assignment~~ application ~~if it determines that for assignment of a permit that meets the following requirements:~~

(a) ~~the application contains~~ includes a completed copies copy of the application for assignment ~~and assignment forms on a form~~ provided by the department, and, if required by the department, necessary revisions to an application to amend the permit;

(b) The the application for assignment form shall include a statement includes an acknowledgment that:

(i) the assignee has reviewed and understands the terms of the permit that is effective at the time of the assignment;

(ii) the assignee agrees to assume all the obligations set forth in the permit, including the plan of operation, the Act, and this subchapter; and

(iii) the applicant assignee assumes responsibility for outstanding permit and site issues to reclaim the site in accordance with the terms of the permit, the Act, and this subchapter and for any violations or issues of noncompliance in existence at the time of the assignment;

(b) (c) the assignment application materials, any necessary permit amendment application, and any necessary revisions to the permit satisfy the requirements of the Act and this subchapter; and

(e) (d) the application includes a reclamation ~~adequate bond has been submitted. To be adequate, the bond must meet the requirements of ARM 17.24.220 and must include the cost to the department of reclaiming all previously~~

~~disturbed lands within the permit area or other security that meets the requirements of 82-4-433, MCA, this subchapter, and the plan of operation.~~

~~(3) An assignment does not become effective until approved by the department becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the assignment is approved and issued by the department. The assignee must ensure that it has a complete copy of the approved permit and assignment materials. The Upon notification of the department's approval of the assignment, the assignee is becomes responsible for complying with all terms of the permit, including all provisions of the plan of operation all the obligations described in (2)(b).~~

~~(4) An assignment application does not require the payment of an additional fee.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA

REASON: The proposed amendments to ARM 17.24.224 would more closely follow the language of the Act and improve syntax and clarity. The proposed amendment to (2)(a) would improve the rule for syntax and clarity. It would also state that the department may require the applicant to submit "an application to amend the permit" instead of the current language using the phrase "revisions to the permit." This phrase is not used elsewhere in the rule. Amendment of the permit may be necessary if the department determines that deviations from the requirements of the permit or the Act by the assigning operator must be corrected before the permit may be assigned or transferred. The proposed amendments to (2)(b) are necessary to ensure that the applying assignee has reviewed and understands the application and agrees to assume all the obligations set forth in the permit, including correction of any violations of the Act. The proposed amendments to (2)(b) also are necessary to state with more precision the duties and obligations that would be undertaken by the assignee. The proposed amendments to (2)(c), currently (2)(b), would incorporate the permit amendment language stated in (2)(a) for clarity. The proposed amendments to (2)(d), currently (2)(c), are necessary to improve syntax and readability. The proposed amendments to (2)(d) are necessary to clarify the requirements for bonding when a permit is assigned by providing references to the applicable statute and to the subchapter instead of the incomplete list of the requirements for reclamation security currently stated in (2)(c).

The proposed amendments to (3) are necessary to inform the applicant that a permit assignment does not become effective until the department notifies the applicant in writing that the assignment application is approved and issued by the department. The proposed amendments are necessary to establish a clear time when opencut operations may commence pursuant to an assigned permit. Current (4) would be deleted because Sec. 11, Ch. 385, Laws of 2007 repealed the authority of the department to charge a fee for submittal of permit applications.

17.24.225 PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act. ~~The department may issue an~~

~~order requiring abatement of a violation within a reasonable time. The applicant may request an extension of the deadline, giving the reason the extension is necessary, and the department may grant the extension upon finding that good cause for the extension has been shown. The permittee shall comply with the abatement order within the time set in the order or extension.~~

(2) A permittee may allow another person to mine and process mine materials at the permitted operator's site, only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. ~~If the person violates a violation of the provisions of the Act, this subchapter, or the permit, occurs,~~ the permittee is responsible for the violation, and the department may require abatement pursuant to (1) or initiate an enforcement action under the Act.

~~(3) A person who conducts opencut operations at a nonpermitted site and who was obligated to obtain a permit is in violation of 82-4-431, MCA, and the department may issue an order requiring cessation of the operation and may also order abatement of the violation, including reclamation of the site, within a reasonable time. The person may request an extension of the deadline, giving reasons why the extension is necessary, and the department may grant extensions upon a finding that good cause for the extension has been shown. The person shall comply with the abatement order within the time required by the order or extension.~~

AUTH: 82-4-422, MCA

IMP: 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, MCA

REASON: The proposed amendments to ARM 17.24.225 would more closely follow the language of the Act and improve syntax and clarity. The deleted language merely repeats language contained in the Act and does not need to be repeated in the rule.

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) through (4) remain the same.

(5) An operator may not commence a limited opencut operation within 300 feet of a permitted operation until the operator submits a written statement to the department that:

(a) no part of the proposed limited opencut operation is on land affected by the permitted operation;

(b) both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and

(c) the principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

REASON: New ARM 17.24.226(5) is necessary to ensure that an operator considers the implications and constraints of locating a limited opencut operation

within 300 feet of a permitted operation and communicates them to the department. The explanations required by the rule would ensure that reclamation may be achieved according to the different standards that apply to each type of operation. The 300-foot threshold in (5)(b) would follow the distance requirements for processing facilities set forth in 82-4-403(7)(c) and (d), MCA.

4. The rules proposed to be repealed are as follows:

17.24.216 GENERAL APPLICATION CONTENT AND PROCEDURES (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA), located at page 17-1930, Administrative Rules of Montana. The board proposes repeal of this rule for conciseness and regulatory clarity, because it generally restates requirements proposed for ARM 17.24.212 and 17.24.213.

17.24.217 PLAN OF OPERATION--PREMINE INFORMATION (AUTH: 82-4-422, MCA; IMP: 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA), located at page 17-1931, Administrative Rules of Montana. The board proposes deletion of ARM 17.24.217 for conciseness and regulatory clarity because it generally restates requirements proposed for ARM 17.24.218.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., December 18, 2015. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by

completing a request form at any rules hearing held by the board.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

BY: /s/ Joan Miles  
JOAN MILES  
Chairman

Certified to the Secretary of State, November 2, 2015.