STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL MANAGEMENT BUREAU
PO BOX 200901
HELENA, MONTANA 59620-0901
PHONE:(406) 444-2461 FAX:(406)444-1499

EXPLORATION LICENSE

Pursuant to Title 82, Chapter 4, Part 3, MCA; requiring the licensing of persons engaged in mineral exploration and related activities.

LICENSE NO. _____

This license, when executed by the Department of Environmental Quality (DEQ) and the Licensee, shall authorize the Licensee to explore for minerals in the State of Montana, in accordance with and subject to the exploration plan of operations and exploration map submitted with the application for this Exploration License to the extent that the Licensee's exploration activities have been approved by DEQ and with any modifications or conditions agreed upon by DEQ and the Licensee. The Licensee certifies that he shall reclaim any surface area disturbed by mineral exploration activities in accordance with the Montana Metal Mine Reclamation Act and Rules and Regulations pursuant to the Act. The Licensee certifies that he/she is not in default of any reclamation obligations under Title 82, Chapter 4, Part 3, MCA. **As of May 1, 2001, the fee for a new Exploration License is $100 USD; the fee for annual Exploration License renewals is $25 USD.**

Please be advised that any information provided to the Department in conjunction with this Exploration License may be open to public disclosure. Submission of information that you wish to remain confidential must clearly request confidentiality, specifically identify the confidential information, and state why the information qualifies for protection from disclosure.

Subscribed and sworn to me this _____ day of _____, _____. _____Notary Signature _____Residency (City & State or Province) Notary Public for the State/Province of: My Commission expires:	_____ NAME OF LICENSEE _____ ADDRESS _____ CITY, STATE/PROVINCE, ZIP/POSTAL CODE _____ PHONE E-MAIL ADDRESS _____ SIGNATURE: TITLE:_____ DATE: _____
Date Received: _____ Fee Received: _____	License issued by: _____ Hard Rock & Placer Exploration Section, Permitting & Compliance Division Date: _____
This License is Valid from _____ to _____.	

Excerpts from Title 82, Chapter 4, Part 3, MCA:

"Exploration" means all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and all roads made for the purpose of facilitating exploration...

"Mineral" means any ore, rock, or substance (***other than*** oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium) that is taken from below the surface or from the surface of the earth...

A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

...a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit ...[or]...any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit [is subject to] a civil penalty of not less than $100 or more than $1,000 for each of the following violations, an additional civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues, and an injunction from continuing the violation. If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation. In addition, if any provisions of the Montana Water Quality Act, and/or rules and regulations adopted pursuant to the Act, are violated as a result of the exploration operation, the operator is subject to penalties of up to $25,000 for each day of violation.

EXPLORATION LICENSE SUMMARY

Statute: 82-4-331, et seq., MCA Rule: ARM 17.24.101, et seq.

A. Types of Activities Regulated:

1. A person must obtain an Exploration License to conduct mineral exploration activities for ore and rock or rock products on or beneath the surface of land that result in a material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade and economic viability of mineralization in those lands. A bulk sample of up to 10,000 short tons may be taken for metallurgical testing.
2. Following exploration, an Operating Permit must be obtained for production mining.
3. Exploration and mining for oil, gas, bentonite, clay, sand, gravel (water worn), peat, soil, or uranium are regulated under other statutes. (DEQ-IEMB)

B. Application Requirements:

1. To obtain an exploration license, the applicant must propose a specific project to the Montana DEQ. The DEQ has available standard application forms as well as a sample plan of operations that shows the level of information required.
2. The department also accepts copies of USFS operating plans as long as an adequate map (seven and one half minute quad map) is provided.
3. Once the DEQ receives and reviews an exploration plan, an on-site visit is scheduled among the DEQ, the applicant, and usually a representative from the appropriate federal agency, to calculate the amount of reclamation bond required for the project.
4. Joint bonds with the DEQ and the federal agency are accepted to avoid duplicate bonding. The applicant must agree to post the bond, reclaim any damaged land and not be in default of any other reclamation law.
5. An exploration license is a statewide license, and only one is issued per individual or company. Any additional projects are considered amendments to the license, and each must be individually approved and bonded.

C. Permitting Procedure:

1. On approval of the exploration plan by the DEQ and after the bond is submitted, the applicant will receive a hard-rock exploration license.
2. However, the applicant cannot legally begin work on federal lands until they have received approval of their plan of operations from the respective federal agency.
3. The state exploration license is renewable annually by filing an annual report and payment of the renewal fee. (Rule 17.24.103)

D. Fees: The application fee for an exploration license is $100 and the yearly renewal fee is $25. (Statute: 82-4-332, MCA)

Please be advised that any submission of information you wish to remain confidential, must clearly request confidentiality. Specifically identify the confidential information and state why the information qualifies for protection from disclosure. Submissions that do not meet these criteria may be open for public review. Reference: Metal Mine Reclamation Act 2009 (82-4-306 MCA)

The Montana Supreme Court had determined that documents filed by corporate entities with public agencies are presumptively available for access by the public under Montana's constitutional "right- to-know" provisions. The burden rests with the filing entity to establish prima facie proof that the information is a discernible property right entitled to protection.

The Montana Supreme Court has also stated that the corporate entity must support its claim of confidentiality by filing a supporting affidavit making a prima facie showing that the materials constitute property rights which are protected under constitutional due process requirements. The affidavit cannot be conclusory in nature, but rather, must be specific enough for the public agency, any objecting party, and a reviewing court to clearly understand the nature and basis of the corporate entity's claim to the right of confidentiality. The public agency receiving the materials has the affirmative duty to review the materials and the affidavit and make an independent determination whether the records are in fact property rights which warrant due process protection under applicable state and federal law.

If an operator desires the drill site locations to be treated as confidential, it needs to provide a detailed affidavit as discussed above. If DEQ determines that the drill site locations should not be treated as confidential, DEQ will not disclose that information until the operator has an opportunity to request a court to review DEQ's confidentiality determination.

Ed Hayes (DEQ-EMB Program Attorney on 12/28/10)

WHY SIGNATURES ARE NOTARIZED

"Notarizations are performed to protect against document fraud."

Four facts notaries certify to prevent forgeries:

1. The document signer personally appeared before the notary. It is impossible to notarize a signature unless the signer personally appears before the notary. No exceptions. No loopholes. **Thus the dates should match**.

2. The signature was made by the person who personally appeared before the notary.

3. The identity of the signer was positively verified by the notary.

4. The signature was made willingly and freely.

Note: The leading cause of notarial liability is the performance of a false notarization at the direction or insistence of an employer or supervisor. Employers can be liable for wrongful notarizations and for demanding they be made.

APPENDIX A: Exploration Plan Example
LAST CHANCE EXPLORATION COMPANY
Post Office Box 13
Buzzard Breath, Nevada 89501

July 4, 1872

Environmental Management Bureau
Department of Environmental Quality
PO Box 200901
Helena, Montana 59620

RE: Application for Exploration License

Dear Sir or Madam:

Enclosed is Last Chance Exploration Company's (LCEC) application for an exploration license. The application package includes:

1. **Application form** **{These two items ONLY if New**
2. **$100.00 filing fee**[10] **License}**
3. Narrative describing the project activities and how they will be reclaimed.
4. The legal description and county where the proposed disturbances would take place.
5. A map showing the location of project activities and land ownership status (private, USFS, BLM, state-owned).

The following activities would occur in Sections 6, 7 & 8, T15N, R6W, Lewis & Clark County:

Roads

Four thousand (4,000) feet of new access road will be constructed on the ridge separating Ready Cash Gulch and Profit Creek. This temporary road will be constructed pursuant to the standards of **ARM 17.24.104**[11]. Two hundred (200) feet of existing road will be reconditioned and a culvert will be installed in Profit Creek to provide access to Adit No. A-2.

Trenching

Two trenches will be located on the ridge separating Ready Cash Gulch and Profit Creek. These trenches will be approximately 150 feet long, 3 feet wide, and 12 feet deep, and will be

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[10] The 2001 Montana State Legislature increased the Exploration License **initial filing fee to $100**, and the **annual renewal fee for existing licenses to $25**, effective 1 May 2001.

[11] **Administrative Rules of Montana §17.24.104 et seq**. specifies road **construction** standards & guidelines in some detail; **ARM 17.24.107(3)** addresses road **reclamation** standards and requirements.

excavated using a rubber-tired backhoe. If competent bedrock is encountered, the trenches may not reach the full 12-foot depth. Topsoil will be piled to one side of the trench and the remainder of the overburden material will be piled on the opposite side of the trench.

Drilling

Drill pads will be prepared at locations DS-1, DS-2, and DS-3. The pads will be about 35 feet long and 20 feet wide (700 square feet). All topsoil will be saved to one side prior to site leveling. Pits will be dug on the sites to contain drilling mud and excess cuttings. Initially, holes will be drilled with an RVC drill rig; later, these holes may be deepened with a core drill (Longyear 44 or equivalent).

Adits

Adit Nos. A-1 and A-2 will be located as indicated on the map. Topsoil will be stripped ahead of the portal establishment and waste-dumping at A-1. A safety door will be placed on the portal to prevent unauthorized entry.

Adit No. A-2 exists but was last used in 1938 and has since caved. The portal will be excavated to competent rock, at which point it will be timbered and a safety door attached. A small seep of water (-5 gpm) presently flows from the caved material in the adit. An increased flow rate is expected when the caved material is removed; because of this, a percolation/settling pond will be constructed immediately adjacent to the portal. A surface water discharge (MPDES) permit will be obtained from the Montana DEQ prior to reopening the adit if there is the possibility of a discharge to Profit Creek.

Reclamation

The following procedures will be used in the reclamation of the above-described activities:

1. All available soil and soil materials will be salvaged and stockpiled ahead of construction or expansion of existing disturbances.

2. Drill fluids (EZ mud, etc.) and cuttings will be retained on site.

3. After drilling is complete, drill fluids and cuttings will be removed, disposed of down the drill hole, or buried.

4. Collar casing will be removed or cut off below ground level.

5. After removal of casing or collar pipe, all drill holes will be plugged at the surface (5-10 feet) with cement or bentonite. If two aquifers are intercepted or if one aquifer is intercepted and a beneficial use is nearby (i.e. domestic or livestock water supply), the hole will be plugged at depth with cement or bentonite.[12]

[12] **ARM 17.24.106** outlines DEQ's Drill Hole Plugging Policy in some detail. Please see **Appendix C** of this manual. Also refer to **Appendix D** for diagrams illustrating proper drill hole plugging techniques.

6. If an artesian aquifer is intercepted, the Montana DEQ - Environmental Management Bureau will be notified within 24 hours - 406-444-4953 and the hole will be plugged at depth prior to removal of the drill rig[13].

7. Drill sites will be graded to the original contour.

8. The first 25 feet of the adits will be backfilled with inert waste rock or riprap which in itself will not contribute to the degradation of any discharge water.

9. Compacted surfaces will be ripped or otherwise loosened and waste piles will be recontoured to allow for successful vegetation establishment.

10. All access and drill roads built by the company will be pulled back to the original contour as much as possible. Where this is not possible (as determined by DEQ), compacted surfaces will be ripped or otherwise loosened, drainage structures will be installed in accordance with **ARM 17.24.104**, and the road will be closed to access. All previously existing roads that were reconditioned by the company will be stabilized with vegetation and erosion-control structures.

11. Trenches will be backfilled with excavated material.

12. All refuse, buildings, track and other facilities associated with exploration activities will be collected, removed, and disposed of in proper disposal sites.

13. Salvaged topsoil will be applied over disturbed areas.

14. Disturbed areas will be revegetated with a seed mixture that is approved by the Department[14].

15. The requirements of the **Montana DEQ's Water Protection Bureau** will be fulfilled if a discharge occurs.

16. Any other reclamation requirements of the **U.S. Forest Service** or the **U.S. Bureau of Land Management** will be fulfilled if the project is on federal lands, and any other reclamation requirements of the **Montana Department of Natural Resources & Conservation (DNRC)** will be fulfilled if the project is on state-owned "School-Trust" lands**.**

The Montana DEQ will be contacted and a mutually agreeable time will be arranged for an on-site inspection and the establishment of a reclamation bond amount.

Sincerely,
Findmore N. Faster, ALCEC District Geologist

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[13] Please see **ARM 17.24.106(4)** in **Appendix C** of this manual.
[14] Please see **Appendix B: Generic Seed Mixes for Hard Rock Program**

Prepared by:
The Montana Department of Environmental Quality
Permitting & Compliance Division - Hard Rock Program
Post Office Box 200901
Helena, Montana 59620-0901

MONTANA HARD ROCK & PLACER MINING REQUIREMENTS

Telephone: (406) 444-4953 Fax: (406) 444-1374

[*revised* July 1999]

The Law: Montana Metal Mine Reclamation Act
Title 82, Chapter 4, Part 3, *et seq*., Montana Codes Annotated (MCA)
[Enacted in 1971 & subsequently amended]

The Rules: Rules & Regulations Governing the Metal Mine Reclamation Act
Administrative Rules of Montana (ARM)
Title 17, Chapter 24, Subchapter 1 *et seq.*

Authority: The Metal Mine Reclamation Act applies to all lands within Montana: federal, state, and private (except for Indian lands).

Where federal lands are involved, the applicant must also obtain approval from the appropriate federal agency before activities can begin (U.S. Forest Service or U.S. Bureau of Land Management). Check with the applicable federal office closest to the project area.

For state-owned (school trust) lands, the applicant must obtain a state mineral lease & approval from the Montana Department of Natural Resources & Conservation, Trust Land Management Division, Minerals Management Bureau - Telephone: (406) 444-2074.

The Department of Environmental Quality s Hard Rock Program, issues four types of permits under the *Metal Mine Reclamation Act* (MMRA):

I. Small Miner Exclusion Statement (SMES)

This is not actually a permit or license per se, but an "exclusion" from obtaining an operating (full-scale mining) permit as the name implies. It consists of a signed and notarized affidavit stating that an operator will stay within the requirements or conditions of the exclusion. An SMES basically excludes small operators from the stricter requirements of the MMRA if they meet several conditions. Those conditions are:

A. The operator will conduct an operation resulting in not more than 5 acres of surface disturbance (including roads, except that access roads may be bonded for reclamation at the operators option, and thereby not counted against the 5 acres), or two operations which disturb and leave unreclaimed less than 5 acres per

operation if the respective mining properties are:

1. the only operations engaged in by the person or company;

2. at least one mile apart at their closest point;

B. The operator cannot pollute or contaminate any stream.

C. The operator provides appropriate protection for human and animal life at underground mine sites through the installation of bulkheads placed over safety collars, and the installation of doors on portals.

D. The operator provides DEQ with an appropriate map of his/her operation, and files a renewal annually that describes what has been done in the past year, and what is proposed for the coming year.

E. The operator must comply with the Noxious Weed Management Act. For more information about this Act, please contact the Montana DEQ's Hard Rock Program or your county Weed District office.

F. For Small Miner Exclusion Statements obtained after September 30, 1985, a small miner may not obtain or continue an exclusion unless he/she annually certifies in writing that:

a) the small miner is a person or legal entity that:

(I) no business association or partnership of which he/she is a member or partner has a small miner exclusion;
-AND-
(ii) no corporation of which he/she is an officer, director, or owner of record of 25% or more of any class of voting stock has a small miner exclusion;

-OR-

b) if the small miner is a partnership or business association, that:

(I) none of the associates or partners holds a small miner exclusion;
-AND-

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small miner exclusion;

-OR-

c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(I) holds a small miner exclusion;
-OR-
(ii) is a member or partner in a business association or partnership that holds a small miner exclusion;

-OR-

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small miner exclusion.

Placer Mining and the SMES: A reclamation bond, not to exceed $10,000.00, is required for all small *placer* mining operations. Note that this bonding authority is only extended to small placer operations which began after July 1, 1989, and does not apply to small hard rock operations (e.g., open pit, underground, etc.). The MMRA also allows DEQ to recover costs over and above the $10,000.00 limit by filing for the additional amount in district court.

The Department will hold such a bond on private, state or some federal lands controlled by the Bureau of Land Management (since the BLM has limited bonding authority). On National Forest lands, the Forest Service would generally hold an adequate bond to cover all disturbances, regardless of the amount. If the placer operation occurred on both National Forest and private land, DEQ would bond the private land portion. Under this authority, reclamation of placer operations would have to commence within 6 months of cessation of mining. This does not include seasonal closures.

Cyanide or other metal leaching solvent use and the SMES: A small miner who intends to use cyanide or other metal leaching solvent as an ore-processing reagent shall obtain an operating permit for that part of the small miner's operation in which the cyanide or other metal leaching solvent ore-processing reagent will be used or disposed of. Please refer to section IV of this document (below) for additional information.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

Exploration and the SMES: An SMES is for small-scale *mining* only, and *cannot be used for exploration*. In the MMRA, "mining" is defined as the extraction of ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing. "Exploration" is defined as all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization of those lands.

Obtaining an SMES: An SMES can be obtained by writing, stopping by, or calling the Hard Rock Program at DEQ's Main Office in Helena:

Montana DEQ - Hard Rock Program
1520 East 6th Avenue
PO Box 200901
Helena, Montana 59620-0901

Telephone: (406) 444-4953
Fax: (406) 444-1374

II. Exploration License (Hard Rock & Placer)

A State *Exploration License* is required for activities that fit the definition of *exploration* as follows:

> *"Exploration means all activities that are conducted on or beneath the surface of lands that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for*

> *production and economic exploitation; and all roads made for the purpose of facilitating exploration...*" (82-4-303(7) MCA)

An Exploration License is a statewide license, and only one is issued per individual or legal entity. However, an unlimited number of individual exploration projects can be permitted under a license. *Each* project proposed for coverage under an Exploration License must be individually approved and bonded by DEQ. To initially obtain an Exploration License, a specific project must be proposed. Any additional projects are considered amendments to the license. (For example, some of the larger companies may have several dozen projects statewide, all under one license. DEQ has permitted and bonded each individual project, keeps separate files on them, and keeps a general file that holds the license itself and tracks the bond for each project.) Hand sampling with a pick and shovel for geochemical purposes, geophysical surveys, or mapping does not require State licensing or approval. A good rule of thumb is, if the exploration is mechanized (drilling, dozing, backhoe, adit/shaft excavation, etc.), a license and bond are required.

DEQ does not have any standard "fill in the blanks" form for filing an exploration plan of operations as some federal agencies do, but basically requires (usually in letter form) the same level of information as is found in a U.S. Forest Service Plan of Operations. DEQ accepts photocopies of Forest Service operating plans, as long as adequate maps are provided. DEQ distributes a free document entitled: ***Montana Hard Rock & Placer Exploration License Program Manual***. This manual, among other things, discusses the level of detail required in a plan of operations and provides an "example" of a typical exploration plan. The exploration manual is available upon request from DEQ's Helena office. (Please see "Obtaining an Exploration License" below.)

<u>The Process</u>: When an exploration plan is submitted to DEQ, it is first checked to see if the level of information provided is adequate. If it is not, the applicant is notified of additional information required. If the proposed project is wholly or partially on federal land, the applicant is advised to also notify the appropriate U.S. Forest Service (USFS) Ranger District or U.S. Bureau of Land Management (BLM) office. If the project is wholly or partially on state-owned (school trust) land, the applicant is advised to also notify the appropriate Montana Department of Natural Resources & Conservation (DNRC) office. A site visit is then scheduled with the applicant, and a representative of the USFS, BLM or DNRC (if applicable public lands are involved). Bond is usually calculated during the site visit. Once the bond is submitted, DEQ approval can be granted. (For those portions of operations proposed for public lands, the operator cannot legally begin until the appropriate state or federal land-management agency also grants approval.)

<u>Bonding & Bond Release</u>: DEQ is required *by law* to hold bond on all exploration projects. The amount of bond required is determined by calculating the amount of money it would take for DEQ to implement the operator's reclamation plan, using standard reclamation and construction techniques and rates. Bond release is generally (but not always) done in two stages. Once the operator has recontoured and seeded all of the disturbances, a partial bond-release inspection can be scheduled with applicable agency personnel. If the "dirt work" (recontouring) looks good and appears stable and well-seeded, a partial release would be granted (usually 50-65%). The remaining bond is then held to ensure adequate weed-free vegetative growth and erosion-control, and is usually released after 1 or 2 growing seasons.

The USFS and some BLM offices also have bonding authority. On National Forest lands, DEQ and the USFS calculate a bond that is acceptable to both agencies. The bond is made out to both agencies and can be submitted to either agency. The bond cannot be released until both DEQ and the USFS approve of the reclamation. Bond release inspections are generally made jointly by DEQ/USFS personnel for projects on National Forest lands.

For projects on public lands administered by the BLM, a bond that is acceptable to both DEQ and BLM is calculated

and DEQ usually holds the bond for both agencies. (BLM has limited bonding authority.) The bond cannot be released until both DEQ and the BLM approve of the reclamation. Bond release inspections are generally made jointly by DEQ/BLM personnel for projects on public lands administered by the BLM.

For state-owned (school trust) lands, the bonding procedure and conditions listed for the BLM (above) apply to the Montana DNRC, as that agency also has limited bonding authority.

Obtaining an Exploration License: An Exploration License can be obtained by writing, stopping by, or calling the Hard Rock Program at DEQ's Main Office in Helena:

Montana DEQ - Hard Rock Program
1520 East 6th Avenue
PO Box 200901
Helena, Montana 59620-0901

Telephone: (406) 444-4953
Fax: (406) 444-1374

III. Operating Permits (full-scale mining permits)

An individual or company is required to obtain an Operating Permit for mining if the conditions of an SMES cannot be met. The time required to obtain an Operating Permit can be quite variable, and depends upon many factors (i.e. the size and nature of the proposed project, the proposed project location, the number of agencies with jurisdiction, etc.). In general, relatively small projects with a low environmental impact potential can take 3 to 6 months; medium-sized, moderate-impact projects can take 6 to 12 months; large, high-impact potential projects can take 1 to 3+ years. Regardless of the size or impact potential of a proposed project, however, a potentially time-consuming unknown always exists: the public's perception of, or reaction to, a specific proposal. Generally, as public controversy surrounding a proposed project increases, so does the amount of time it takes to complete the required environmental analysis process.

For mines starting operations after November 3, 1998, open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

An application for an Operating Permit consists of three major parts:

1) Environmental Baseline information (hydrology, soils, vegetation, wildlife, cultural, etc. -- i.e., what is there now); For some disciplines (such as hydrology and wildlife), *at least one full year of baseline data is required*. It is *strongly recommended* that potential applicants meet informally with DEQ's Hard Rock Program staff to discuss site-specific informational needs prior to initiating baseline studies.

2) Operating Plan (type of mining/milling operation, reagents used, equipment used, tons/day, types of liners and installation procedures, location of all facilities, etc.);

3) Reclamation Plan (states reclamation objectives and how they would be implemented).

The Process: Once a plan is submitted, DEQ has 60 days to either call it complete (which doesn't mean the plan is approved, just that there is enough information to begin preparation of the appropriate environmental analysis document and make an informed permit decision), or incomplete. If the application is deemed incomplete (which is usually the case the first time around) a certified (or registered) "completeness review" (or "deficiency") letter is mailed on or before the 60th day. The letter "stops the clock", and contains additional informational requirements and questions to which the applicant must respond.

If the proposed project involves federal lands, the permitting and environmental analysis process become a joint state/federal action (i.e., both DEQ and the USFS and/or BLM must permit the mining operation), and a joint completeness review letter is sent within that 60-day time period. The letter contains compiled questions and comments from both DEQ/USFS (and/or BLM) technical staff, and is signed by both the appropriate DEQ and federal officials. If the proposed project involves state-owned (school trust) lands, DEQ interacts similarly (as discussed above for the federal agencies) with the Montana DNRC.

The company can take as much time as it wants preparing a response. Once they respond, the clock starts again; this time, however, DEQ has only 30 days to review the resubmitted permit application. (DEQ has signed agreements with most of the other state and federal agencies that have some degree of permitting authority, that compels those agencies to meet DEQ's statutory time frames for reviewing Operating Permit applications.) Following this 30-day review period, the application can either be called complete, or a second completeness review letter is issued. This process continues until the application is deemed complete by the agencies. Once again, "complete" does *not* mean the company gets a permit - it means that enough information (technical and otherwise) has been supplied by the applicant for the agencies to carry out the environmental analysis process (write an Environmental Assessment [EA] or Environmental Impact Statement [EIS]) and make an informed permit decision.

Once the EA or EIS is complete, the permit is either:

1) Approved as submitted;

2) Denied*;

3) Approved with conditional mitigations or stipulations.

If approved, a bond is then calculated based upon the applicant's reclamation plan which is approved by the agencies. Once the bond is submitted and approved, the permit is signed and activities can begin.

*A NOTE on Permit Denial: Under the *Metal Mine Reclamation Act*, a permit can *only* be denied for one or more of the following four reasons:

1) The proposed plan of operations would violate the Montana Water Quality Act; -OR-
2) the plan would violate the Montana Air Quality Act; -OR-
3) the reclamation plan is inadequate to meet standards; -OR-
4) the applicant is presently in violation of the MMRA, or any Montana or federal law or rule pertaining to mined land reclamation, water quality or air quality and is *not* working towards correcting the violation.

If a permit is denied, the applicant may reapply with a new plan. (Please see: 82-4-351, 82-4-335 (8) & (9), 82-4-352 MCA)

IV. Small Miner (SMES) Leaching Permits

Small miners who use cyanide or other metal leaching solvents must obtain an Operating Permit for only that portion of their operation where cyanide or other metal leaching solvents are used. Section 82-4-305(7) MCA reads:

> *"A small miner who intends to use a cyanide or other metal leaching solvent ore-processing reagent [for vat or heap leaching] shall obtain an Operating Permit [mining permit] for that part of the small miner's operation in which the cyanide or other metal leaching solvent ore-processing reagent will be used or disposed of".*

To obtain an Operating Permit (in this case, an SMES Leaching Permit), the applicant must submit an application that contains adequately-detailed information regarding environmental baseline, operating plans, and a reclamation plan. The legislature intended this new SMES Leaching Permit to be somewhat less cumbersome to apply for than a full-scale Operating Permit application, in recognition of the limited resources available to most small miners. The legislature has provided some funding for an additional Hard Rock Program employee to spend part of the time assisting small miners with these applications.

That portion of the small miner's permit area where cyanide or other metal leaching solvent is used (i.e., the leach pads, ponds, Merrill-Crowe or carbon plant, leaching vats, LAD areas, detoxification system/circuit, etc.) will be bonded for full reclamation/water treatment costs by DEQ. The mining area (pit, adits, waste rock dumps) and associated roads, etc. will still fall under the SMES and its requirements and are not bonded by DEQ. The 5-acre limitation does not apply to those cyanide or other metal leaching solvent facilities that are fully permitted and bonded under the SMES Leaching Permit.

V. Other Important Rules: Hard Rock/Placer Mining & Ore Processing

A. Custom Mill/Reprocessing Rules: Adopted on May 21, 1990, these rules gave DEQ the authority to permit and bond custom hard rock and placer milling/processing operations and the remining and reprocessing of old waste rock and tailings. Prior to this date, DEQ only permitted and bonded ore-processing mills when they were associated with a particular mine (that was also being permitted and bonded), and had no authority over the remining of waste rock or tailings. Therefore, custom mill and remining operations that began prior to the effective date were excluded (grandfathered) from the new rules, and remain excluded until the operator proposes major changes. Cyanide mills *are not* grandfathered, and must be permitted and bonded regardless of when they began operations.

B. Blasting Rules: Adopted on September 30, 1990, these rules require DEQ to investigate formal complaints regarding safety and/or property damage as the result of the use of explosives by a mining operation. The rules outline a specific complaint procedure that must be followed. If the preponderance of evidence gathered by the Department indicates that a company or individual's blasting has damaged property and/or created a safety hazard off-site, DEQ will issue an appropriate order to mitigate the situation. If the order is ignored, DEQ must then implement noncompliance procedures. *The rules do not give DEQ the authority to require compensation for any damage that has occurred. The Department's findings can, however, be used by the complainant to sue the operator for property damages.*

C. SMES Placer and Dredge Mining Rules: Adopted on February 18, 1991, these rules give DEQ a $5,000 maximum bonding authority for placer mines first operated on July 1, 1989 or later. The maximum bond is

$10,000 for those mines first operated on July 1, 1997 or later. The rules also outline best management practices that are minimally necessary to avoid water quality degradation. These rules also describe standards for bond release and outline the procedure for bond forfeiture and SMES revocation.

D. SMES Leaching Permit Rules: Adopted on February 18, 1991, these rules require that a small miner intending to operate a cyanide or other metal leaching solvent ore-processing facility obtain an Operating Permit and post an adequate reclamation bond for that part of the operation where cyanide or other metal leaching solvent is used (ponds, leach pads, leaching vats, Merrill-Crowe or carbon plant, LAD areas, detoxification facilities/circuits, etc.). The rules outline the types of information required in baseline study plans, operating plans, and reclamation plans. Bonding is required, and the amount of bond must cover the actual cost of reclamation if it had to be performed by DEQ.

NOTE: Copies of the *Montana Metal Mine Reclamation Act*, the *Rules & Regulations Governing the Metal Mine Reclamation Act*, and other pertinent informational material and forms are available free of charge by contacting the Department at:

Montana DEQ - Permitting & Compliance Division
Hard Rock Program
1520 East 6th Avenue
PO Box 200901
Helena, Montana 59620-0901

(406) 444-4953 Telephone (406) 444-1374 Fax

VI. Other Permits/Certificates That May Be Required

A. Surface Water Discharge Permit (MPDES): This permit -- called a Montana Pollutant Discharge Elimination System permit, or MPDES permit -- is issued by the Montana DEQ's Permitting & Compliance Division, and is required for all point-source discharges to State surface waters, regardless of any permits that are issued by other programs or agencies. Substantial application and maintenance fees are required for an MPDES permit. For those proposed discharges that are directly related to a hard rock or placer mining or exploration project, Hard Rock Program hydrologists will assist the applicant in obtaining an MPDES from DEQ.

Obtaining an MPDES permit generally takes about 60-180 days, due to the required public comment periods. Requirements of the permit usually include pre-operational, operational, and post-operational water quality monitoring for specific parameters, depending on the specific site and proposed activity. For more information about surface water discharge permits, please contact the Montana DEQ at the address and phone/fax numbers found throughout this document.

B. Groundwater Discharge Permit (MGWPCS): This permit -- called a Montana Groundwater Pollution Control System permit or MGWPCS - is issued by the Montana DEQ's Permitting & Compliance Division, and is for discharges directly to groundwater, such as through a percolation pond or land application

discharge (LAD) system. It is also required when the possibility exists of a discharge to groundwater by a "sealed" impoundment, such as a tailing pond or a heap leach pad/pond system. Substantial application and maintenance fees are required for a MGWPCS permit.

An MGWPCS, or groundwater discharge permit, is required ***only*** if a hard rock or placer operator is proposing a discharge to groundwater ***and is operating entirely under a Small Miner Exclusion Statement (SMES).*** This separate permit is *NOT* required if the operator holds an Operating Permit (including an SMES Cyanide Permit) or an Exploration License. An Operating Permit or Exploration License supersedes the requirement for a groundwater discharge permit, because groundwater discharges permitted under an Operating Permit or Exploration License would be subject to the same level of review and monitoring as those permitted under a separate groundwater permit. Since an SMES is not actually a permit, but an exclusion from one, all SMES operations with actual or potential discharges to groundwater must have a groundwater permit. For more information on groundwater discharge permits, please contact the Montana DEQ at the address and phone/fax numbers found throughout this document.

C. Montana Streambed Preservation Act - 310 Permit: A *310 Permit* is issued by the County Conservation Districts, in cooperation with the Montana Department of Fish, Wildlife & Parks. It is only required for certain perennial streams, and is necessary when an applicant intends to ford a stream, install a culvert, or install a bridge. It is also required for stream alteration or diversion. For more information, please contact the Conservation District in the county where the operation is proposed.

D. Dredge/Fill - Federal Clean Water Act - Section 404 Permit: A federal *Section 404 Permit* is issued by the U.S. Army Corps of Engineers. This permit is required whenever an operator proposes to remove material from (dredge), or place material in (fill), waters of the United States. This is defined on land as the area between the ordinary high water marks. This law also applies to wetlands. Some of the requirements of Section 404 permitting are redundant with the requirements of the 310 Permit (described in Subsection C, above). For more information, please contact the U.S. Army Corps of Engineers Montana Office in Helena at (406) 441-1375.

E. Air Quality Permit: An Air Quality Permit is issued by the Montana DEQs Permitting & Compliance Division under the authority of *Montana Air Quality Act*. It is required when emissions from a project are expected to exceed certain threshold values for various parameters. Generally, if emissions of any pollutant, including fugitive dust, exceed 25 tons/year, an Air Quality Permit is required. An annual fee, based upon a facilities total emissions, is required. In most cases, an Air Quality Permit is only needed for larger developments (e.g., large open-pit mines, or mines with a sizeable tailings impoundment or onsite, large-scale ore refinement plants, etc.). They are rarely required for exploration operations. By virtue of their relatively small maximum allowable size and tonnage, small mines operating under an SMES are excluded. For more information, please contact the Montana DEQs Permitting & Compliance Division at the address and phone/fax numbers found throughout this document.

F. Water Rights: Operators always need to secure the necessary water rights/permits when using water in their processing or operation. One-shot-only users, such as drillers who may need a limited amount of water in a water truck or pipe diversion, can generally take the water as long as consideration is given to downstream water users and streambanks are not altered or a sedimentation problem created. It is strongly recommended that an operator contact a local landowner and inquire about water sources. For more information on specific requirements for water rights and usage, please contact the Montana Department of Natural Resources & Conservation (DNRC) - Water Resources Regional Office nearest to your project area:

Billings (406) 657-2105
Bozeman (406) 586-3136
Glasgow (406) 228-2561
Havre (406) 265-5516
Helena (406) 449-0944
Kalispell (406) 752-2288
Lewistown (406) 538-7459
Missoula (406) 721-4284

G. Montana Major Facility Siting Act: Although the *Montana Major Facility Siting Act* covers such things as power plants and pipelines, it's primary application to the mining industry usually involves new power transmission lines for larger operations. ***It ONLY applies to new power transmission lines that exceed 69 kilovolts.*** Some of the larger mines require this power capacity, and along with the local power company, must obtain a Facility Siting Permit from the Montana DEQ. ***A change in this law now exempts construction of a power line between 69 and 115 kilovolts from this Act if the applicant has the support of at least 75% of the landowners involved.*** For more information, please contact the Montana DEQ's Permitting & Compliance Division at the address and phone/fax numbers found throughout this document.

H. Hard Rock Mining Impact Act: According to sections *82-4-335 (5) & (6) [MCA]* of the ***Metal Mine Reclamation Act (MMRA)***, prior to issuing an Operating Permit, DEQ must first certify that an applicant is in compliance with the various requirements of the ***Montana Hard Rock Impact Act (HRIA) (§90-6-301 et seq. MCA).*** The *Hard Rock Impact Act (HRIA)* only applies to large-scale hard rock and placer mineral developers that would employ over 75 employees. It does *NOT* apply to exploration programs.

Basically, if an Operating Permit applicant is proposing an operation that would employ over 75 people, the applicant must enter into negotiations with a local committee (near the proposed mine area) made up of local officials and individuals. The negotiations center on the HRIA's requirements for the pre-payment of taxes by the applicant to mitigate socio-economic impacts to the local area caused by an influx of people to work at the mine. Socio-economic concerns usually include local school capacity, water & sewage infrastructure, road maintenance, and other related issues. This process is overseen by the ***Hard Rock Mining Impact Board***, which is attached to the ***Montana Department of Commerce***. For more information regarding the *Hard Rock Mining Impact Act*, please contact:

Montana Department of Commerce
Local Government Assistance Division
Hard Rock Mining Impact Board
1424 Ninth Avenue
PO Box 200523
Helena, Montana 59620-0523
Telephone: (406) 444-4478

VII. Mining Claims and Assessment Work on Federal Lands

(406) 444-2684 Fax

MONTANA HARD ROCK & PLACER EXPLORATION LICENSE PROGRAM MANUAL

REQUIREMENTS, POLICIES, PROCEDURES
AND
GENERAL INFORMATION

Third Edition

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL MANAGEMENT BUREAU
P.O. BOX 200901
HELENA, MONTANA 59620-0901
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MONTANA HARD ROCK & PLACER EXPLORATION LICENSE MANUAL

REQUIREMENTS, POLICIES, PROCEDURES AND GENERAL INFORMATION

I. Introduction

A. Authority and Purpose

The **Montana Metal Mine Reclamation Act** (Title 82, Chapter 4, Part 3 et seq. MCA) - passed by the Montana Legislature in 1971 and amended on several occasions since that time - charges the State Board of Environmental Review to regulate hard rock and placer exploration and mining activities in Montana. The Board, in turn, has delegated this authority to the Montana Department of Environmental Quality (DEQ). The Environmental Management Bureau (EMB), one of six bureaus within DEQ's Permitting & Compliance Division, is responsible for implementing the Metal Mine Reclamation Act (MMRA), sometimes referred to as the "Hard Rock Act." The MMRA provides that a person or company may not engage in exploration (as defined in Section I.B. of this manual) in Montana without first obtaining an Exploration License from DEQ. The MMRA applies to the exploration and extraction of all minerals and other materials except for oil, gas, bentonite & other clays, sand, gravel, soil, peat, coal and uranium. These minerals and materials are covered under separate statutes administered by other DEQ bureaus and/or applicable state and federal agencies. The MMRA applies to all lands within the State of Montana (federal, state & private) with the sole exception of Indian lands.

This policies and procedures manual has been prepared to assist the exploration operator in complying with the various applicable provisions of the Montana Metal Mine Reclamation Act[1] (Specifically, sections 82-4-302, 82-4-303(7), 82-4-331,82-4-332, 82-4-338, 82-4-355, and 82-4-360 MCA) as well as the Rules & Regulations Adopted Pursuant to the Act[1] (ARM 17.24, Sub-Chapter 1 et seq.; specifically, ARM 17.24.102 through 17.24.108, 17.24.132 through 17.24.134, 17.24.136, 17.24.137, 17.24.140 through 17.24.146, 17.24.150, 17.24.153 and 17.24.157 through 17.24.159).

B. Applicability

The following policies and procedures apply to all hard rock and placer exploration projects on all state, federal and private lands located within the State of Montana (with the sole exception being Indian Reservation or Tribal lands). The term "**exploration**", as defined in 82-4-303(7) MCA, means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made

[1] Sections of both the **Montana Metal Mine Reclamation Act** and the **Rules & Regulations Adopted Pursuant to the Act** that are relevant to exploration can be found in **Appendix C** of this manual.

for the purpose of facilitating exploration.

NOTE TO SMALL MINERS: Most exploration activities are not allowed under a **Small Miner Exclusion Statement (SMES).** An SMES is intended for small-scale mining operations. If you are conducting activities that would fall under the exploration definition given above, you must first obtain an Exploration License from DEQ. If in doubt, please contact **DEQ at (406) 444-4953**.

C. Exploration Operations on Federal, State-Owned, and Private Lands

Regulation of exploration activities varies according to land ownership. The following is a brief summary of land ownership correlated to applicable state and federal jurisdiction over exploration activities. The requirements of each applicable statute must be met. No exemptions exist between statutes.

1. **Federal Lands** - Obtaining a Montana Exploration License and subsequent project approval from DEQ for operations on federal lands administered by the U.S. Forest Service, U.S. Bureau of Land Management, or other federal agency does **not** exempt the operator from his/her responsibility to obtain all necessary federal permits and approvals from those agencies that are required under federal law. For operations proposed on federal lands, the operator is required to contact the nearest office of the appropriate federal agency to determine what is required by that agency under federal law.

   To the extent possible, DEQ works closely with the applicable federal agency to eliminate any unnecessary duplication on the part of the operator and the agencies, and to prevent double bonding of exploration operations. To ensure a close working relationship between DEQ and the U.S. Forest Service (USFS) and between DEQ and the U.S. Bureau of Land Management (BLM) the Montana Department of Environmental Quality has signed memorandums of understanding (MOUs) with those federal agencies. Copies of these MOUs are available upon request from DEQ at the **Helena office: (406) 444-4953**;

2. **State-Owned Lands** - Similarly, for exploration operations on state owned (School Trust) lands, the issuance of an Exploration License and subsequent project approval by DEQ does not supersede the requirement to obtain any necessary leases or special-use permits from the Montana Department of Natural Resources & Conservation (DNRC). The DNRC manages state-owned lands. In that role, they are charged by the 1972 Montana Constitution and the 1889 Montana Enabling Act to manage these lands so that a fair investment return is generated for the School Trust Fund.

   Other state laws dictate how state-owned lands can be used and the procedure necessary to acquire their use. The DNRC implements these surface and mineral management laws and procedures. For hard rock and placer exploration projects, DEQ works closely with DNRC to eliminate any unnecessary duplication within state government (to the extent allowed by law) or on the part of the operator, and to prevent double bonding, much as it would with

federal agencies for activities on federal land. For further information regarding exploration and/or mining activities on state-owned lands, please contact DNRC's Trust Land Management Division, Minerals Management Bureau in Helena at (406) 444-2074.

3. **Private Lands -** For exploration projects on private land, the operator has to obtain approval from DEQ. However, DEQ has no authority to allow operators to trespass on private land; therefore, the operator must obtain any necessary approval or leases from the private landowner prior to implementing any exploration activity approved by DEQ.

II. Montana Exploration License Requirements

A. General Information

An Exploration License is a statewide license, and only one can be issued per individual or company (subsidiaries of companies are considered separate companies for licensing purposes). However, each license may cover as many projects as desired by the license holder, and each project under the license must be individually reviewed, approved and bonded (i.e., separate Plans of Operation and maps are required for each project under the license). For example, some of the larger companies have had several dozen projects statewide, all under one license. In these situations, DEQ permits and bonds each individual project, keeps separate files on them, and keeps a general file that holds the license itself and tracks the bond for each project under that license. To initially obtain an Exploration License, a specific project must be proposed. Any additional projects are considered amendments to the license.

Hand sampling with a pick and shovel for geochemical purposes, geophysical surveys, or mapping do not require State licensing or approval. If the exploration is mechanized (drilling, dozing, backhoe, etc.), a license and bond are required by DEQ.

DEQ does not have any standard forms for filing an Exploration Plan of Operations, but basically requires (usually in letter form) the same level of information as is found in a U.S. Forest Service Plan of Operations form. DEQ accepts photocopies of operating plans that have been submitted to the Forest Service as long as a good map is provided. DEQ does, however, distribute an exploration Plan of Operations "example" that shows the level of information required. This example can be found in **Appendix A** at the back of this manual; separate copies are also available upon request from the **DEQ's Helena office: (406) 444-4953**.

After DEQ receives an exploration plan, it is checked to ensure that all the necessary information has been included. If the proposed project is on federal or state-owned land, the applicant is advised to notify the appropriate U.S. Forest Service (USFS) office, U.S. Bureau of Land Management (BLM) office, or DNRC office. A site visit is then scheduled with the applicant, and includes representatives of the appropriate federal agency or DNRC (if federal or state-

owned land is involved). Bond is usually calculated during the site visit. After the bond is submitted and DEQ has completed an environmental review, state approval can be granted under the MMRA. For activities on federal or state-owned lands, the applicant must also obtain approval from the appropriate land management agency prior to commencement of any site disturbances.

B. Obtaining a New Exploration License

1. **Required Paperwork -** Applications for new licenses will be considered incomplete unless they include the following:

   a) Completed, signed and notarized license application form, available from **DEQ's Helena office: (406) 444-4953**

   b) $100.00 filing fee[2];

   c) Narrative describing the proposed exploration project's operating and reclamation plan,

   d) The legal description and county where proposed activity would occur; and

   e) Map(s) showing the location of the project area and all proposed disturbances (i.e., drill sites, trench sites, adits, etc.). It is imperative that usable maps with an appropriate scale are submitted so that all proposed and pre-existing disturbance areas can be located on the ground during field inspections.

   In most cases, two (2) maps of different scales are appropriate and should be submitted with the application: one large-scale map showing the general project area and access routes from local highways or county roads, and one small-scale map of sufficient detail showing all proposed disturbances and pre-existing disturbances. If an exploration project becomes large over time, DEQ may require a large, detailed map showing all cumulative disturbances to date. New amendments can then be added to the larger map along with any concurrent reclamation to keep the project and the bonding levels current.

2. **Field Inspection -** Once an application is complete, a field inspection will be scheduled with the operator. If federal or state lands are involved, representatives from the appropriate federal or state land management agencies may also be present during the site inspection. Among other things, the purpose of the inspection is to determine if alternatives to the proposed disturbances are necessary or feasible (e.g., relocation of proposed roads to mitigate potential impacts to streams, wildlife, archaeological sites, etc.), and to observe the physical characteristics of the site for bond-calculation purposes. Field

[2] The 2001 Montana State Legislature increased the Exploration License **initial filing fee to $100**, and the **annual renewal fee for existing licenses to $25**, effective 1 May 2001.

inspections also help to establish pre-existing conditions like presence of noxious weeds.

3. **Reclamation Bonds**

a) **General Bonding Requirements and Acceptable Bonds**

The MMRA requires that the exploration operator submit a reclamation performance bond to DEQ in sufficient amount to cover the state's costs of performing the reclamation, should the operator default on this obligation for any reason. DEQ accepts four (4) types of bonds:

i) **Cash - including checks** made out to the "Montana Department of Environmental Quality" or "State of Montana" (US$ only)

ii) **Certificates of Deposit (CDs) –**

1) Bond must be accompanied by the appropriate assignment forms, available from the **DEQ's Helena office (406-444-2461 or 406-444-4953)**.

2) The bond must be obtained from an American Bank (or American subsidiary of foreign bank), which is licensed to do business in the state of Montana, and is FDIC insured.

3) The licensee's name and "Montana Department of Environmental Quality" (or "State of Montana") must be printed on the CD itself.

4) The CD must be "automatically renewable" or notice must be given by the issuer to the Montana Department of Environmental Quality's Environmental Management Bureau 60 days prior to cancellation.

5) Due to FDIC restrictions, the dollar amount cannot exceed $100,000 per banking institution. Any amount over $100,000 must be through an entirely different bank, not just a different branch of the same bank.

6) The "Margin of Value" (early withdraw penalty) must be added to the total bond calculation to arrive at the actual amount needed for a CD.

EXAMPLE:

$10,000.00	DEQ's bond requirement
$ 100.00	Bank's maximum early withdraw penalty
$10,100.00	Face amount of actual CD

7) The original CD and original assignment form are held by DEQ.

iii) **Surety Bonds –**

1) The bonding company must use DEQ surety bond forms available from the **DEQ's Helena office (406-444-2461 or 406-444-4953)**, must be licensed to do business in Montana, and must be listed with the Montana's State Auditor's office.

2) The licensee's name on the surey bond must be the same as the name on the Exploration License. The licensee's name and "Montana Department of Environmental Quality" (or "State of Montana") must both be printed on the Surety.

3) The surety must be "automatically renewable" or notice must be given by the issuer to Montana Department of Environmental Quality's Environmental Management Bureau 60 days prior to cancellation.

4) The surety amount cannot exceed 10% of the surety's capital-surplus, as evidenced by a copy of surety's most recent balance sheet.

iv) **Irrevocable Letters of Credit (LOC) –**

1) Bonds must be on DEQ forms, available from the **DEQ's Helena office: (406-444-2461 or 406-4953).**

2) The bond must be obtained from an American Bank (or American subsidiary of foreign bank), which is licensed to do business in the state of Montana, and is FDIC insured.

3) The LOC must be "automatically renewable" or notice must be given by the issuer to Montana Department of Environmental Quality's Environmental Management Bureau 60 days prior to cancellation.

4) The LOC must be payable to "Montana Department of Environmental Quality" (or "State of Montana").

5) The LOC amount cannot exceed 10% of the bank's capital-surplus, as evidenced by a copy of the bank's most recent balance sheet.

b) **Bonding on Federal Lands -** The U.S. Forest Service (USFS) and Bureau of Land Management (BLM) also have bonding authority, and are generally required to hold bonds on exploration and mining related activities that occur on National Forest or BLM Lands. To avoid double bonding of exploration or mining activities, DEQ has signed Memorandums of Understanding (MOUs) with both of these federal agencies. Among other things, the MOUs state that, for operations on federal lands, a mutually-agreeable bond amount will be calculated by DEQ and the USFS/BLM, and DEQ will usually physically hold the bond with the agreement that bond release will not occur until both

agencies approve of the reclamation. In some instances, the USFS or BLM will hold the bond, with the same agreement regarding bond release. In either case, both agencies will accept the bonding instrument.

c) **Bonding on State-Owned "School Trust" Lands** - For projects on state owned (School Trust) lands, DEQ will hold the reclamation bond. In this situation, DEQ will not release the bond until both DEQ and the Montana Department of Natural Resources & Conservation (DNRC) approve of the reclamation.

d) **Bonding on Private Lands** - DEQ is the sole entity that determines bond amounts and grants bond release for activities on private lands. However, out of courtesy to the landowner, DEQ usually requests a letter from the owner stating that he/she is satisfied with the reclamation and has no problems with DEQ granting bond release.

e) **Blanket Bonds** - Blanket bonds are bonds that cover more than one exploration project, whereas site-specific bonds cover only one specific project site. It is solely up to the operator whether to obtain a blanket bond or site-specific project bonds.

Blanket bonds are convenient when a licensee has more than one exploration project in Montana. The licensee obtains a bond for a given amount. The amount of the bond is up to the licensee, but must be enough to cover DEQ's set amounts for each of the projects under that license, and should be some what larger to allow for project expansions and amendments that normally occur during the course of a field season or project's life. When blanket bonds are used, DEQ keeps a bond-tracking spreadsheet (ledger) in the licensee's general file which tracks bonding for the licensee's various projects.

Project bonding under a blanket bond consists of moving numbers around on the bond-tracking spreadsheet and keeping track of any remaining (unobligated) bond that is available for future projects or project expansions. When a project is approved and a bond amount is set, DEQ subtracts that amount from the unobligated column and places it in a column corresponding to the specific project. Each column on the spreadsheet shows the obligated bond amount for specific projects under the license. When bond is released, the released amount is simply removed from the project column and returned to the unobligated balance column. That amount is then free to be used on future projects, or may be returned to the operator upon request.

<u>NOTE</u>: Regardless of the circumstances, DEQ cannot allow the blanket bond balance to be less than zero. When the unobligated balance approaches zero, DEQ will notify the operator so that the total blanket bond amount can be increased if the operator is contemplating additional projects or project expansions.

The primary benefit of a blanket bond, as opposed to site-specific bonds, is timing. If a blanket bond is already in place and that bond contains an adequate unobligated balance, approval of new projects or amendments to existing projects can be granted much sooner than would be possible if a site-specific bond was to be obtained and submitted, thus giving a licensee's field staff more flexibility with the exploration projects, considering the dynamic nature of exploration work.

C. New Projects or Amendments Under an Existing Exploration License

Adding a new project or amending a current project under an existing Exploration License is not much different than obtaining a new Exploration License in terms of both requirements and timing. Basically all of the items discussed in **Sections II.A. and II.B**. of this manual apply, with the following exceptions:

The Exploration License form **(Section II.B.I.a.)** is not required, since a license is already in place. This, of course, is providing the existing license is current (i.e., has been renewed annually - see **Section II.E**. of this manual).

The filing fee **(Section II.B.I.b.)** is not required for new projects or amendments to current projects under an existing Exploration License. This fee is only required when applying for a new license (see **Section II.B**. of this manual) or submitting the annual renewal form for an existing license (see **Section II.E**. of this manual).

D. Timing

Under the MMRA, there is no statutory time limit for issuing Exploration Licenses or approving exploration projects, and there are several requirements placed on DEQ by various state laws that must be met before approval can be granted. Because most exploration projects entail only minor or limited surface disturbances, DEQ project approval can usually be granted within a couple of weeks following the submittal of a Plan of Operations to DEQ. For these smaller, more common types of exploration projects, DEQ uses a short-form Checklist Environmental Assessment to analyze impacts of the proposed action to the environment prior to project approval. However, the amount of time can vary from a couple of days to over a year. The specific amount of time required before approval can be granted is dictated by many factors, some of which are:

Adequacy of Plan of Operations - If a deficient Plan of Operations is submitted that requires one or more resubmittals on the part of the operator as a result of its inadequacy, more time is necessary to allow for multiple reviews by DEQ. As is mentioned in **Sections II.A. and II.B**. of this manual, an initial field inspection will not be scheduled until an application is deemed complete and acceptable by DEQ.

Project Location - Some areas are inherently more sensitive than others for many reasons, such as their proximity to wilderness areas or national parks, the presence of threatened, endangered or otherwise protected wildlife species, the proximity to

pristine streams and lakes, etc. Approval of such projects often requires a somewhat lengthy environmental analysis and public involvement process.

Type and Size of Project - Large exploration projects (such as those involving many miles of roads, dozens to hundreds of drill sites, construction of new exploration adits and associated facilities, construction of a pilot test plant that may require the use of chemicals such as cyanide or mercury, etc.) would require a longer permitting process due to the increased level of environmental review and public involvement.

The applicant should take these factors into account when planning an exploration program, and should attempt to submit the plans at the earliest possible time. To obtain an estimate of the amount of time likely required to process and approve a specific exploration plan, please contact the **DEQ in Helena at (406) 444-4953.**

E. License Maintenance & Renewal Requirements

1. **License Maintenance -** An Exploration License is renewable annually, and must be renewed as long as a reclamation bond is being held by DEQ for any projects covered by the license, even if all exploration work is completed (i.e. projects where bond is still being held pending final reclamation and a subsequent bond-release inspection).

   The $25 annual renewal fee is reasonable, and the simple annual report form provides a yearly confirmation of a valid address, phone number, and contact person for the license. A surprising amount of bond money is abandoned to the State of Montana every year by licensees who neglect this simple and inexpensive administrative procedure. If all project bond obligations have been released by DEQ, the licensee may then allow his/her license to expire.

2. **Renewal Procedure & Requirements –** Approximately the middle of the month before a license's anniversary date (i.e. the date on which the original license was signed by the DEQ Section Supervisor or Bureau Chief), the licensee automatically receives a one-page renewal/annual report form by mail from DEQ. The renewal form is sent to the address on the license. To renew the license, the licensee must:

   a) adequately* complete the renewal/annual report form;

   b) sign the form, and have his/her signature notarized; and

   c) attach the $25.00 filing fee[3].

   <u>*NOTE ON SUBSECTION "a" (above)</u>: In 1996, DEQ instituted a new policy concerning annual reports from licensees. Due to the unpredictable

[3] The 2001 Montana State Legislature increased the **annual renewal fee for existing licenses to $25** and the **initial Exploration License filing fee to $100**, effective 1 May 2001.

nature of mineral exploration (and exploration budgets), individuals and companies often permit and bond far more holes, trenches, feet of road construction, etc., than are actually carried out in any given year. Drill holes are frequently given different numbers as drilled than shown on original Operating Plans submitted to DEQ. These practices can lead to confusion and inefficient use of an inspector's time during unaccompanied field visits, particularly on large properties, and often during requested bond release inspections. We therefore ask that you submit specific location information (include GPS coordinates if available) for all actual exploration disturbances that occurred during the previous year along with your annual report form. This information could take the form of a diagram, a sketch, a revised map, a hand-marked copy of the original map submitted with your Operating Plan, or even a spreadsheet.

F. Exploration In and Around Active Mine Sites operating under a DEQ Operating Permit

Exploration operations in and around active mine sites may or may not need to be approved under an Exploration License. The need for approval under a license is solely dependent upon the exact location of the proposed exploration disturbances in relation to existing or planned mining disturbances currently permitted and bonded under a DEQ Operating Permit.

For example, if a mining company proposes to drill in its mine (Operating Permit) area, and that drilling is to be located either in an area that is presently disturbed and bonded for reclamation under the Operating Permit, or in an area that is presently undisturbed, but permitted and bonded for future disturbance under the Operating Permit, approval under an Exploration License is unnecessary. This is because reclamation of such areas is already covered under the Operating Permit reclamation plan and associated reclamation performance bond.

Conversely, if a mining company proposes to drill in its mine (Operating Permit) area, and that drilling is to be located in an area that is not presently permitted and bonded for mining disturbances under an Operating Permit, approval of that drilling under an Exploration License is required. The reason for this is simple: all exploration disturbances must be accounted for in a reclamation plan and reclamation performance bond. In this particular example, the drilling area wasn't proposed for disturbance or bonded under the Operating Permit; therefore, it must be covered under an Exploration License.

Although rare, there are exceptions to the above examples. If a mining company proposes to drill exploration or condemnation holes within a mine (Operating Permit) area, and the specific area is already approved and bonded for disturbances such as a tailings impoundment, leach pad, process ponds or a mill/plant facility, the drill holes would also have to be bonded for full hole plugging under an Exploration License. The reason for this is simple: the holes must be completely plugged to prevent direct conduits to groundwater under such facilities in case of liner or facility failure.

G. Conduct of Exploration Operations

1. **General** - Often all that is required to conduct an acceptable exploration operation that is in compliance with the various state and federal statutes is some experience and common sense. In general, operations should be conducted with the following items in mind:

   a) Under almost all circumstances (except those situations mentioned in **Section III.E**. of this manual), all exploration disturbances must be fully reclaimed; therefore, exploration disturbances (roads, drill pads, etc.) should be built in such a manner as to facilitate the reclamation that is required upon project termination. This type of planning almost always saves the operator money during the project reclamation phase.

   b) Best Management Practices (BMPs), such as those found in the Montana Sediment and Erosion-Control Manual (available from DEQ's Storm Water Permit Program upon request: 406-444-3080), must be incorporated into the construction, operating, and reclamation phases of all exploration projects. This is required to prevent or reduce off-site impacts to adjacent natural resources.

2. **Specific Construction Requirements - Exploration (Temporary) Roads, Drill Pads, Trench/Sample Pit Sites, Portal Pads, and Other Exploration Disturbances**

   a) All available soil and **soil materials** must be salvaged and stockpiled ahead of construction or expansion of existing disturbances. Soil should be stockpiled up-slope from the disturbance areas where possible to make respreading easier after recontouring during final reclamation.

   b) **Trees and vegetation may be cleared** for only the essential width necessary to maintain soil stability while allowing for safety, traffic and construction needs. Trees must be felled prior to road construction**;** they should not be pushed over with a dozer or other equipment, as this creates a safety hazard and substantially increases reclamation costs[4].

      When side slopes are -15% (8.5°) or less, trees and other vegetative debris from clearing operations must be removed from the path of the dozer or backhoe and stockpiled at specified areas. When side slopes are steeper than -15% (8.5°), trees and vegetative debris must be piled neatly below, and parallel to, the toe of the fill (preferably anchored by existing, standing trees) to prevent loss of the fill material down slope; in essence, the cut and placed trees and vegetative debris act as a sediment/fill dam.

[4] Experience has shown that, in most instances, this poor road-building practice increases reclamation costs by 100% or more, since the dozed-over trees are mixed with the fill material, and must be tediously separated during road reclamation using a thumb on an excavator.

c) Insofar as possible, all roads must be located on benches, ridge tops and gradual **slopes** to minimize disturbance and enhance stability. Where this is not possible, roads must follow slope contours to the extent that maximum sustained grades do not exceed 8% (4.6°), except for short pitches to take advantage of topography. Pitch maximum may not exceed 12% (6.8°) and may not be over 300 feet in length.

d) **Road widths** (running surfaces) may not exceed 14 feet. Turn-outs/drill pads may be constructed according to the licensee's needs, but the turn-out area may not exceed 30 feet in total (running surface) width.

e) Roads may not be constructed in, or so close to **stream channels** that material is likely to spill into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked, if no damage is done to the stream or adjoining landowners, and if potential impacts to water quality and stream biology are considered minimal by the appropriate state and/or federal agencies. In addition, for any stream alterations, bridge construction, fords, or similar activities, the applicant must check with the local county **Conservation District** office to determine if a **310 Permit** is necessary. Similarly, the applicant should check with the **U.S. Army Corps of Engineers** district office in **Helena (406-441-1375)** if the proposal calls for placing excavated materials in (or removing dredged materials from) "waters of the United States", or if wetlands are, or may be, located in the proposed project disturbance area, as a federal **404 Permit** may be required.

f) Insofar as possible, the licensee should keep **road cuts** reasonably steep to minimize surface disturbances. However, cut slopes may not be steeper than 1:1 (45°) in soil, sand, gravel, or colluvium; ¼:1 (76°) in lake silts, or more than 0:1 (90°) in rock. Where necessary to prevent significant sloughing or slumping, the top of the road cuts must be rounded back to a more gradual slope.

g) Roads must be out sloped whenever possible. A **ditch** must be provided on both sides of a throughcut and, with the exception of out sloping roads, on the inside shoulder of a cut-and-fill section, with ditch relief cross drains (water bars) being spaced according to grade (see **subsection h** below). Water must be intercepted before reaching a switchback or large fill, and be routed and released below the fill or switchback, not over it.

h) Adequate diagonal drainage barriers (i.e. **water bars)** must be placed at the following specified intervals:

Grade (%)	Maximum Spacing (feet)
0-2	200
3-8	150
9-12	80

i) **Culverts** must be installed at prominent drainage ways, small creeks and springs. Upon abandonment of the road, culverts must be removed and the drainage way reopened. Such culverts must be sufficient to handle runoff expected from a statistical five-year storm and, where necessary, the area adjoining the culvert must be protected from erosion by adequate, inert rock riprap. Culverts sized for a larger statistical storm event (e.g., 25-year, 100-year, etc.) may be required on a case-by-case basis for large and/or long-term exploration projects.

j) **Drainage facilities** (such as culverts and water bars) must be installed as road construction progresses.

k) If roads are to be used during the **winter (snow) season**, in sloping with proper drainage consideration is acceptable for vehicle safety reasons. Snow plowing must be done in such a manner that runoff water will not be trapped between the snow berms and flow down the road.

l) **Materials which slough or slump** onto the road bed or into the roadside drainage ditch before the licensee completes the exploration project must be disposed of on the roadbed or on the fill material in a manner that will not obstruct any of the drainage facilities previously described.

m) All **cut-and-fill slopes**, with the exception of rock faces and talus or scree slopes, must be seeded with an approved, rapidly-growing seed mixture[5] during the first appropriate season following construction of the road. This requirement may be waived under specific circumstances as determined by DEQ or applicable state or federal land-management agency.

n) **Streams** must be crossed at or near right angles unless contouring down to the stream bed will result in less potential stream bank erosion. Structure or ford entrances and exits must be constructed to prevent water from flowing down the roadway.

o) Drill sites, trenches, discovery pits and other excavations may not be constructed in perennial, intermittent or ephemeral **stream channels**.

p) Spoil from pits, trenches, shafts, adits, or other excavations may not be located in **drainage ways**. The lower edge of the spoil bank must be at least 50 linear feet from any perennial or intermittent stream channel.

3. **Specific Operational Requirements**

a) **Drilling mud,** cuttings, water and other fluids from drilling operations must be confined to the drill site by the use of storage tanks or sumps.

[5] Please refer to Appendix B: Generic Seed Mixes for the Hard Rock Program at the back of this manual.

b) Oil, grease, hydraulic fluid and other **petroleum products** must not be released on the exploration site or down the drill hole. If an accidental spill occurs, the contaminated material must be removed immediately and disposed of at a proper disposal site. Licensees (or their contractors) must keep absorbent material on hand in case a spill occurs.

c) If an **artesian aquifer** is intercepted during a drilling operation, the drill hole must be plugged at depth (top to bottom) prior to removal of the drill rig. If the artesian hole is flowing, the licensee must notify DEQ within 24 hours at 406-444-4953.

d) **Exploration adits, shafts, and other potentially dangerous excavations** must be secured from unauthorized entry throughout the life of the operation to ensure public, wildlife and livestock safety.

e) **Pilot ore processing plants** or sites and associated laboratory facilities permitted under an Exploration License are subject to all applicable quality assurance and quality control practices required of full-scale mineral processing operations.

f) The requirements of the **Montana Water Quality Act** must be fulfilled if a discharge occurs, or is likely to occur, as a result of the exploration activity.

g) All **garbage and other refuse** must be removed from the exploration site daily (and disposed of properly) to avoid wildlife conflicts.

h) Exploration operators must observe all federal, state and local **fire regulations**.

i) If an exploration project is in an advanced stage and has a **reasonable chance of further development into a mining project,** or if the licensee has applied or intends to apply for an Operating Permit or a Small Miner Exclusion to mine the area covered under the Exploration License, representative samples of ore and waste material obtained from drill cuttings, drill core, channel cuts, road cuts, adits, shafts, or other excavations must be saved and subsequently analyzed for acid-production potential. Information obtained from these samples must then be submitted as part of the permit application.

4. **Noxious Weed Control -** During the on-site visit conducted by DEQ inspectors, any noxious weeds found in the project area as well as the degree of infestation will be noted. If the area presently contains noxious weeds, the licensee must not aggravate the situation. To the degree that the licensee has either introduced noxious weeds to a formerly weed-free area or aggravated an existing weed infestation, DEQ would hold the licensee responsible for eradication before considering bond release.

   Equipment originating from counties with known noxious weed infestations (such as Missoula, Ravalli, Mineral, Flathead, Lincoln, Lake, Beaverhead, Granite,

Glacier, Teton, Pondera, Powell, Silver Bow, Lewis & Clark, Cascade and Madison Counties) must be washed completely (especially the underside) prior to mobilization to the exploration site.

5. **Compliance Inspections & Complaints -** The DEQ investigates all complaints regarding exploration projects. Written complaints are preferred, but verbal complaints will also be investigated. Regardless of whether a complaint has been received, DEQ makes every attempt to visit active exploration sites in order to ensure compliance with the MMRA, all applicable Rules & Regulations, and the conditions of the license.

III. Montana State Reclamation Requirements for Exploration Projects

A. General Requirements

1. Upon completion of a drilling operation, **drill cuttings or core** must be removed from the site, disposed of down the hole, or buried**.** Drilling mud and other non-toxic lubricants must be removed from the site or allowed to percolate into the ground prior to backfilling the sump.

2. All casing and/or collar pipe must be removed or cut off at least 18 inches below the surface. For drill holes located on cropland, all casing and/or collar pipe must be either be removed or cut off at least 24 inches below the surface, and the surface cement drill hole plug must not extend into the top 24-inch zone.

3. After removal of the collar pipe or casing, all drill holes shall be **plugged as described in Section III.B**. of this manual.

4. **All drill sites constructed by the licensee must be pulled back to the original contour**. Where this is not possible, (as determined by DEQ), compacted surfaces must be ripped or otherwise loosened; and appropriate drainage must be provided.

5. **All access roads constructed by the licensee to accommodate the exploration project must be pulled back to the original contour.** Where this is not possible (as determined by DEQ), compacted surfaces must be ripped or otherwise loosened, drainage structures must be installed as discussed in **Section II.G**. of this manual, and the roads must be closed to access by use of locked gates, Kelly humps/dips, tank traps, or other effective methods. Exceptions may be made in accordance with the provisions of **ARM 17.24.103(3)**, which are discussed below in **Section III.E**.

6. All trenches, bulk sample or discovery pits, and other **excavations must be backfilled** with the excavated spoil material.

7. **The first ~25 feet of all adits must be backfilled with inert waste rock or riprap** which, in itself, will not contribute to the degradation of any meteoric or

discharge water. Shafts must also be backfilled or otherwise securely sealed upon project termination. Under certain circumstances, DEQ will allow adits and shafts to remain accessible if they are adequately safeguarded from public entry (see **Section III.E.** of this manual).

8. All **refuse**, buildings, track, and other facilities associated with the exploration project must be removed and disposed of in proper disposal sites. Exceptions may be made if the licensee desires to mine the area and is in compliance with **§82-4-332(4) MCA**. (See also **Section III.E**. of this manual.)

9. All **compacted surfaces** associated with exploration adits, shafts, pits and associated facilities as well as waste rock dump tops must be ripped or otherwise loosened prior to soil replacement.

10. **Waste rock dumps** associated with new adits excavated for the purposes of underground exploration must be contoured to allow for soil replacement and successful vegetation establishment. When existing, caved (sloughed) adits are reopened for the purposes of exploration and the caved material can be confined to the existing portal pad or waste dump without requiring expansion, contouring is not required. However, the licensee must provide for appropriate drainage in the portal area, and the portal pad and waste dump must be stabilized with vegetation or by employing other stabilization methods determined acceptable by DEQ.

11. **Salvaged soil** or soil material must be reapplied over all disturbance areas.

12. **All disturbed areas must be revegetated** with a seed mixture[6] that is approved by DEQ or the appropriate land-management agency. Appropriate revegetation must be accomplished as soon after necessary grading and soil replacement as possible. The seed mixture should be raked into the replaced soil. (This practice significantly reduces seed loss from wind, runoff, desiccation, and birds; therefore, shortens the time period necessary for final bond release.)

13. State regulations (specifically, **ARM 17.24.153**)[7] require that all exploration operators be in compliance with all other applicable state and federal laws. Therefore, any other reclamation requirements of the **U.S. Forest Service** or **U.S. Bureau of Land Management** must be fulfilled (if the project is on federal lands). Likewise, any other reclamation requirements of the **DNRC** must be fulfilled (if the project is on state-owned lands).

[6] Please refer to **Appendix B: Generic Seed Mixes for the Hard Rock Program** at the back of this manual.

[7] Please refer to **Appendix C** at the back of this manual for details.

B. Drill Hole Plugging Policy

1. **General Policy — all exploration drill holes must be plugged at the surface five (5) to ten (10) feet with cement**. If the surface is uncultivated, the cement plug can go to the surface with an identifying brass cap or aluminum plug installed, if desired. If the surface is cultivated (farmed), the cement plug (and any brass cap or aluminum plug) should end at least 2 feet from the surface. (Please see the drill hole plugging diagrams in **Appendix D** at the end of this manual.)

   Exploration drill holes must be plugged with bentonite or a similar compound from the bottom of the hole to within five (5) to ten (10) of the surface, and with cement from the top of the bentonite to the surface if one or more of the following conditions apply:

   a) two aquifers are intercepted;

   b) one aquifer is intercepted and an existing or potential beneficial use (domestic, agricultural or fish/wildlife water supply) exists;

   c) one or more artesian aquifers are intercepted causing either surface flow or significant water rise in the hole;

   d) the potential exists for downward water loss from an aquifer (cascade effect) as determined by DEQ or other appropriate regulatory agency; or

   e) the area will likely be mined and/or the drill holes are in an area potentially suitable for location of a tailing impoundment, process ponds, leach pads or a mill/plant facility.

   Please refer to the drill hole plugging diagrams located in **Appendix D** at the end of this manual.

2. **Exceptions -** Exceptions may be granted by DEQ and/or other appropriate regulatory agencies for certain circumstances. For example, if an operator drills holes in a pioneered exploration road that will be fully reclaimed (pulled back to contour) as soon as drilling is completed, and all of the holes are presently dry and would likely remain dry year-round based on the known hydrogeology of the area (as determined by the appropriate state and/or federal agency), hole plugging may be waived by the agencies. Another example may involve placer drill holes. Generally, if shallow placer holes are drilled using a churn or percussion drill or similar equipment in alluvium adjacent to a live stream, the holes will almost always be obliterated as the drill stem is withdrawn, leaving no evidence of the hole. Other exceptions may be made by the appropriate regulatory authority as dictated by site-specific hydrogeological and topographic situations.

3. **Artesian Drill Holes**

a) **General -- All flowing drill holes must be plugged prior to removing the drill rig from a hole**. If an operator intercepts an artesian aquifer, but does not attempt to seal it off before pulling out of the hole, plugging will be extremely expensive (~$2,000 - $10,000+/site) as the hole may have to be reentered (an operation that is not always possible). If the drill rig is left set up in the hole, the operator can then pump the necessary grout/sealant material into the hole through the drill stem as the stem is withdrawn.

If the flow cannot be completely stopped after all known methods have been employed, there may be other permissible alternatives, such as developing the flowing hole into a spring or well. Whether or not such a post-drilling use is acceptable would depend upon several site-specific factors, including water rights, land ownership, water quality, amount of flow, the final disposition of flowing water, and compliance with all applicable local, state and federal laws.

Because of the difficulties and expense associated with plugging artesian holes, it is important for exploration operators to have some idea of the artesian potential of an area so that they are prepared for this potential complication. In addition, it is equally important that regulators of exploration activities are aware of areas with a high artesian potential, to ensure that the drill sites in such areas are adequately bonded. It is important to point out to the company representative that he/she must relay all pertinent information to the on-site geologist or driller regarding what is required if any of the above circumstances are encountered during a drilling operation.

b) **Information & Reporting Requirements** - In order to enhance awareness of potential artesian areas for future exploration projects and to be prepared in case the artesian hole plug fails sometime in the future, DEQ requires all licensees to supply all pertinent information from an artesian hole**.** The type of information required includes estimated flow, depth of hole, angle, bearing, diameter, and plugging method. This information must be submitted to DEQ's Environmental Management Bureau as soon as it becomes available for all artesian holes.

In all circumstances, the licensee must notify the DEQ's Environmental Management Bureau (406-444-4953) within 24 hours of the interception of an artesian aquifer if a surface flow occurs.

C. Post-Operational Erosion Control

Initial reclamation attempts are often unsuccessful because the operator did not incorporate erosion-control measures in his/her reclamation activities. In most cases, adequate erosion-control measures are relatively inexpensive and easy to implement providing they are planned for in advance. When compared to the earthmoving and native seed share of the overall cost of reclamation, erosion-control measures

constitute cheap insurance that significantly increases the chance for initial reclamation success and, therefore, shortens the time period required for final bond release.

One of the most widely used erosion-control methods that significantly increases the chance of initial reclamation success is the use of existing slash and other vegetative debris that was previously cut and removed during the construction phase of the project.

On a statewide basis, the largest disturbances (in terms of total acreage) at exploration sites are almost always the temporary access roads and associated drill pads. As is discussed in **Section II.G.2.b** of this manual, DEQ requires that trees and other debris be cut in advance of road construction, and either stored at a specific location on the property if the road's side-slopes are relatively gradual, or placed below and parallel to the toe of the fill anchored against the standing trees if the side-slopes are steep. In addition to the benefit of reducing the loss of fill material down-slope, these slash barriers or windrows are in a good position to be easily scattered about the reclaimed site following recontouring, soil replacement and seeding.

Most exploration roads are pulled back to contour using an excavator or backhoe that often has a "thumb" attached to its bucket. After the excavator operator pulls the fill material back to contour and spreads the salvaged soil, the slash material can then be easily grabbed with the thumb and bucket and scattered about over the reclaimed surface. This scattered slash and vegetative debris physically prevents excessive erosion from runoff by acting as a break that slows or stops surface flows of water long enough to enhance infiltration into the ground. Slash and debris also cushion the impact from falling rain, further protecting the seeds and young seedlings. In addition, due to their shading effect, they help preserve soil moisture and protect vulnerable emerging seedlings from desiccation by the sun.

Leaving a roughened surface is also quite effective in reducing erosion. The principle behind this technique is similar to that of the slash in that the shade provided by the roughened "furrows" helps preserve soil moisture and protects seedlings from desiccation by the sun. In addition, the roughened surface discourages runoff and erosion, and promotes infiltration into the ground.

Straw bales, anchored into the ground, are handy for preventing gully erosion in reestablished draws and in areas of abrupt changes in slope (e.g., nick points). They also work well to prevent an existing gully from deepening.

In rare instances, more elaborate techniques are required. These techniques are usually needed on extremely steep slopes or when dealing with highly-erosive material or otherwise fragile sites. Included among these techniques are anchored jute netting, geotextile materials, crimped straw mulch and hydromulch.

D. Reclamation Time Limit

The **MMRA** dictates that any land actually affected by exploration activities under an Exploration License and not covered by an Operating Permit reclamation plan shall be **fully reclaimed within two (2) years after the completion of exploration or abandonment of the site** in a manner acceptable by DEQ. (Please refer to **§82-4-332(4) MCA** in **Appendix C** of this manual.) Failure to do so could result in the issuance of a **Notice of Violation & Administrative Order** and the assessment of civil penalties (fines), and may eventually lead to license revocation and bond forfeiture.

E. Reclamation Exemptions

Recognizing the inherent difficulties in establishing regulations having statewide applicability, both the Montana Legislature and the State Board of Environmental Review allowed for some limited, site-specific deviations from reclamation requirements in regard to exploration projects**.**

ARM 17.24.103(3) allows some exploration disturbances (such as roads) to be left in place following project termination if the licensee can provide DEQ with written consent from the landowner or land-management agency. This rule specifically states that such a consent letter be sufficient to convince DEQ that **"the public interest and the intent of the Act (MMRA) are best served by allowing such variance."** DEQ, therefore, will consider allowing disturbances such as roads to be left in place to be used for purposes other than those related to mineral exploration or mining. In general, the alternate use of the disturbance must be appropriate for the area, and the disturbance must be required to conduct the use. (i.e., DEQ cannot allow a road system on a 100-foot grid to be left for a ranching operation or timber sale.)

For example, if an exploration project takes place on private land, and the owner would like some of the exploration roads to be left in place so he/she can use them for his/her ranching operation, DEQ could exempt the licensee from the reclamation requirements regarding these roads providing the rancher made his/her request in writing and documented the post-exploration need. Similarly, if an exploration project occurs on National Forest lands, and the U.S. Forest Service identifies some of the exploration roads as useful to a planned timber sale or campground construction, etc., DEQ would exempt the licensee from the reclamation requirements regarding these roads providing the Forest Service documented its request in writing.

Under circumstances such as these, DEQ requires that the roads be built to higher engineering standards than temporary, primitive exploration roads that would be reclaimed upon project termination. In addition, the cut-and-fill slopes of these roads (and sometimes the running surface) must be revegetated with an approved, permanent seed mixture[8], and more-permanent water-control structures (water bars, adequately sized culverts, gravel, etc.) would be required. The above items would be necessary to prevent offsite impacts from occurring due to sedimentation from poorly

[8] Please refer to Appendix B: Generic Seed Mixes for the Hard Rock Program at the back of this manual.

designed roads. DEQ does hold bond on such roads, but at a much-reduced rate since the roads would not be pulled back to contour under these conditions. The bond is to ensure that the roads have been constructed to adequate standards, and that any additional requirements such as those mentioned above are completed.

In addition to the exemptions mentioned above, **§82-4-332(4) MCA** allows for the postponement of exploration disturbance reclamation (i.e. the 2-year requirement is waived**)** if the licensee desires to mine the area and has submitted an application for an Operating Permit to DEQ that includes all of the exploration disturbance areas in its reclamation plan.

In regard to exploration adits and/or shafts, DEQ could allow such portals to remain accessible beyond the 2-year reclamation time limit if, following a site investigation and discussions with the licensee and landowner or land manager, DEQ confirms that the access request is valid and reasonable.

DEQ would consider such a request based on such things as the probability of future exploration or development at the site, as well as the potential environmental and safety consequences. It should be noted, however, that while the adits and/or shafts would remain accessible to the licensee (i.e. they would not be backfilled), these portals must be secured with a steel bulkhead or other equally effective method to prevent unauthorized entry and ensure public, wildlife and livestock safety. Also, such bulkheads would have to provide for bat entry, especially if the portal is on public land. Depending upon the site-specific situation (e.g. newly-constructed adits and/or shafts vs. reopened, existing ones), bond may still be held until these structures are permanently sealed.

IV. Bond Release Requirements and Procedures

The **MMRA** and associated **Rules & Regulations** require that all exploration disturbances be reclaimed to comparable stability and utility of adjacent or nearby, undisturbed lands[9]. To guarantee that this occurs, DEQ must hold a reclamation performance bond for all exploration disturbances in an amount sufficient to cover the Department's reclamation costs, should the licensee default on his/her reclamation obligations.

Specific reclamation requirements are discussed in detail in **Section III**. of this manual. Once the exploration operator has completed the required reclamation, written notification must be sent to DEQ stating so and requesting a bond-release inspection. While it is not necessary in most instances, it is sometimes helpful if a representative of the licensee accompanies the DEQ inspector on the site visit. If federal or state-owned lands are involved, representatives from the appropriate federal or state land management agencies are also usually present during bond release inspections. Regardless of whether a bond release request has been submitted by the licensee, a DEQ inspector would visit the site if it appears from a review of the files that activity has not occurred in two (2) or

[9] Please refer to ARM 17.24.102(20) in Appendix C at the back of this manual.

more years. If the site visit confirms that an exploration project has been completed or abandoned and is past the 2-year statutory deadline, a certified or registered letter is sent to the licensee requiring that reclamation be completed during the next appropriate field season. If there is no response to the certified/registered letter, the DEQ would initiate an enforcement action that may include daily fines, license revocation and bond forfeiture**.**

In general, there are two (2) stages of exploration bond release. During the first stage (referred to as a partial bond release), about 50-70% of the bond amount is released if the recontouring and other earthwork is adequately completed. The specific amount of the partial release depends upon such things as erosion potential, local precipitation zone, potential for noxious weed infestation, and other factors. The final release (of the remaining 30-50%) generally occurs from a few months to several years later, when field inspectors are able to determine that an adequate vegetative cover has been reestablished, and that weed infestation will not be a problem. The percentages released may vary if a federal land-management agency is involved.

V. Reasons for Denial of an Exploration License or Project

A. The Department of Environmental Quality <u>must deny</u> an Exploration License application and/or specific exploration Plan of Operations if one or more of the following circumstances apply:

1. the applicant is not in compliance with the **MMRA** or **Rules & Regulations** adopted pursuant to the Act (please refer to **§82-4-331(3) MCA** in **Appendix C** of this manual); and/or

2. the operation, as proposed, would violate the **Montana Water Quality Act** (Title 75, Chapters 5 et sea. MCA), the **Montana Public Water Supply Act** (Title 75, Chapter 6 et seq. MCA), the **Montana Air Quality Act** (Title 75, Chapter 2 et seq. MCA), or the **Rules & Regulations** adopted pursuant to these Acts; and/or

3. the applicant's reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by the **MMRA,** or the reclamation plan is likely to fail (see **§82-4-351(1)(b) MCA** and **ARM 17.24.153** in **Appendix C** of this manual); and/or

4. the applicant previously had a bond forfeited under the MMRA and has not met the settlement requirements of **§82-4-360(2)(a) through (c) MCA** (please see **Appendix C** of this manual). Note that, if the applicant is a company, corporation, joint venture, or other legal entity, this condition applies if principal individuals or controlling members of the legal entity previously had a bond forfeited under the MMRA and have not met the settlement requirements of §82-4-360(2)(a) through (c) MCA**.** Please refer to **Section VII.C.2.** of this manual for specific details.

B. If an Exploration License and/or specific exploration Plan of Operations is denied for any of the reasons listed in **Section V.A.** of this manual, the applicant may reapply

with a new plan if the original reason(s) for denial has (have) been adequately resolved (as determined by DEQ)**.**

VI. Real and Potential Damages to Water Supplies Resulting From Exploration Activities

A. Administrative Remedy

The **MMRA** provides an administrative remedy for property owners who obtain all or part of their water supply from underground sources other than subterranean streams **(see §82-4-355(2) MCA** in **Appendix C** of this manual). Specifically, the owner may file a complaint with DEQ detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, DEQ:

1. shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration (or mining) site;

2. may require the operator, if necessary, to install monitoring wells or perform other procedures that may be needed to determine the cause of the water loss in terms of quantity and/or quality (if, in fact, there is a loss);

3. shall issue a written finding specifying the cause of the water loss in terms of quantity and/or quality (if, in fact, there is a loss); and

4. shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration (or mining) operation, order the operator to provide the needed water immediately on a temporary basis and, within a reasonable amount of time, replace the water source with a new source of comparable quality, quantity and duration. If the water is not replaced, DEQ would order the suspension of the operator's Exploration License (or Operating Permit) until such time as the operator provides an adequate substitute water source. Please note, however, that DEQ cannot require the operator to replace a junior water right if the operator's withdrawal is not in excess of his/her senior water right.

B. Court Action

The owner of the water source is required under **§82-4-355(1) MCA** to exhaust the administrative remedy specified under **Section VI.A**. above prior to filing a lawsuit against the operator.

C. Monitoring Requirements

If DEQ determines that there is a reasonable potential that surface or sub-surface water quality and/or quantity may be adversely affected by an exploration (or mining) operation, the operator would be required to initiate a water quality and/or water

quantity monitoring program that must be approved by DEQ prior to commencement of exploration (or mining) activities.

VII. Enforcement Actions

A. Violation Letter, Notice of Violation & Order of Abatement

If a licensee, or employee or contractor of a licensee violates any of the provisions of the **MMRA** or **Rules & Regulations Adopted Pursuant to the MMRA**, DEQ would issue the licensee a **Violation Letter (VL),** which may be followed by a **Notice of Violation & Administrative Order (NOV & AO).** DEQ issues the VL and NOV&AO to the licensee - the ultimate responsible party under the MMRA for all activities that occur under the license even though the violation may have been committed by a driller or other subcontractor. Usually in these instances, the subcontractor is unfamiliar with the licensee's approved Plan of Operations on file at DEQ, and perhaps Montana requirements in general. It is not only a good practice, but a responsibility of the licensee to ensure that his/her employees and subcontractors are familiar with the plan of operations and all applicable requirements.

1. **Violation Letter -** A Violation Letter is a document that is sent via certified or registered mail (or hand-delivered by the appropriate authority) to the individual or company listed on the Exploration License. The VL informs the licensee that the DEQ has documented a violation and provides citation of the permit, rule, or section of the law that was violated. The VL may stipulate required corrective action. The licensee may file a written response within 15 days of receipt of the VL and provide facts to be considered in determining whether a violation occurred and in assessing a penalty.

2. **Notice of Violation and Administrative Order** – The DEQ may issue a NOV&AO for a violation identified in a Violation Letter. An NOV&AO is a document identified by a Docket Number that is served via certified or registered mail (or hand-delivered by the appropriate authority) to the individual or company listed on the Exploration License. It contains the section(s) of the MMRA, the Rules & Regulations, and/or the condition(s) of the approved plan that was (were) violated; a section describing the potential civil penalties (see **SectionVII.A.3.** below); and required corrective action.

   The licensee may respond in writing within 30 days of service of the NOV&AO and may request an informal conference, a contested case hearing before the Board of Environmental Review (BER), or both, on the issues of whether the violation occurred and whether the corrective action ordered by the DEQ is reasonable, and whether the penalty assessed is proper. If a contested case hearing is not requested within 30 days of the date of service, the NOV&AO becomes final. If a contested case hearing is requested, the BER shall hold a hearing, make findings of fact, issue a decision, and if a violation is found,, order payment of any penalty as provided in 82-4-361, MCA.

3. **Civil Penalties (Fines)**

   a) **Amount & Recovery of Civil Penalties - §82-4-361 MCA (Appendix C)** provides that any person or company [licensee] that violates any of the provisions of:

      » the **MMRA,**
      » the **Rules & Regulations** governing the **MMRA**, or
      » conditions of an approved exploration Plan of Operations**,**

      shall pay a civil penalty of not less than $100.00 or more than $1,000.00 for the violation and an additional civil penalty of not less than $100.00 or more than $1,000.00 for each day that a violation continues. If the violation created an imminent danger to the health or safety of the public, or caused significant environmental harm, the maximum penalty is increased to $5,000.00 for each day of violation.

      The actual penalty assessed for a specific **NOV** depends on several factors, including: the nature, extent, and gravity of the violation, violation history of licensee, economic benefit or savings, if any, to the violator resulting from the violator's action, the amounts voluntarily expended by the violator to address the violation, and other matters that justice may require.

   b) **Waiver of Civil Penalties -** The civil penalties may be waived for a minor violation if DEQ determines that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of the MMRA.

B. Suspension of Exploration License

If any of the time limits for compliance set by DEQ under the authority of the **MMRA** have not been met (see **Sections VI.A.4**. and **VII.A.2**. of this manual), DEQ could issue an **Order of Suspension** of the **Exploration License.** Under a suspension order, all projects under the Exploration License must cease until the violation has been sufficiently abated, the civil penalties (fines) have been paid, and the licensee is again in full compliance with the **MMRA**, as determined by DEQ. **Orders of Suspension** include a time limit under which the licensee must comply, or face **license revocation** and **bond forfeiture** (see **Section VII.C**. below).

C. Exploration License Revocation & Bond Forfeiture

1. **General Procedure -** If the licensee has not complied with the requirements set forth in the **Notice of Violation & Administrative Order** or the **Order of Suspension** within the given time frames (see **Sections VII.A.2. and VII.B**. above), DEQ would revoke the Exploration License and forfeit the reclamation performance bond. Under this scenario, the licensee would receive a **Notice of License Revocation & Bond Forfeiture** delivered via certified or registered

mail, or by an appropriate courier. The licensee is entitled to a hearing before DEQ on the revocation of a license and forfeiture of a reclamation bond, providing such a hearing is requested within thirty (30) days of the date on which the notice was received or served. If the licensee requests a hearing within the 30-day time frame, DEQ would not make a final decision regarding license revocation and bond forfeiture until after the hearing.

2. **Activities Prohibited If Bond Forfeited**

a) **General Provision -** Except as noted in **subsection b** below, the **MMRA** provides that an individual may not conduct exploration or mining activities within the State of Montana if the individual has previously had a bond forfeited in Montana. Similarly, a company, corporation, joint venture, or other legal entity may not conduct exploration or mining activities within the State of Montana if a principal or controlling member of that legal entity previously had a bond forfeited in Montana**,** and has not satisfied the requirements listed in **subsection b** below**.**

b) **Exception -** A company or individual described in **subsection a** above may apply for an Exploration License or Operating Permit**,** or file a Small Miner Exclusion Statement (SMES) if that company or individual first pays to DEQ:

i) the full amount of the necessary expenses incurred by DEQ for reclamation of the area for which the bond was forfeited (if the bond was insufficient);

ii) the full amount of any penalties assessed under the MMRA **(**see **Section VII.A.3.** of this manual**); AND**

iii) interest on these amounts and penalties incurred at the rate of 6% per year**.**

VIII. Confidentiality of Application Information

A. General

As a result of a 1992 ruling by the **Helena District Court** (MEIC v. DSL, | Case No. CDV-92-020), the confidentiality provision in the MMRA (S82-4-306 MCA) was partially struck down as unconstitutional**.** This statute required DEQ to keep all Exploration License & Small Miner Exclusion Statement (SMES) files confidential under penalty of a $1,000 fine.

However, the court also ruled that proprietary geological information could still be protected from disclosure. In addition, Montana's Uniform Trade Secrets Act (§§30-14-401 et seq. MCA) requires DEQ to hold trade secret information confidential**.**

DEQ would consider such items as ore target information, geological maps made by the licensee, assay information, drill hole log information, and, in some instances,

drill hole location maps as "proprietary geological information", thereby holding such information as confidential. Items such as abstracts of title, title opinions, and information on new and unique ore processing techniques could also be kept confidential by DEQ under the Uniform Trade Secrets Act.

B. Identifying Confidential Information in Exploration Operating Plans

Applicants submitting plans of operation to DEQ should clearly mark those items in their submittal that they consider to be confidential based on the examples given above. DEQ staff would review the items marked as "confidential" in an applicant's submittal to determine if they can, in fact, be classified as either proprietary geological information or trade secrets**.** If DEQ disagrees with the applicant regarding this issue, the applicant would immediately be notified and the applicant's plan could either be modified to eliminate any confidential information, or withdrawn.

APPENDIX A: Exploration Plan Example
LAST CHANCE EXPLORATION COMPANY
Post Office Box 13
Buzzard Breath, Nevada 89501

July 4, 1872

Environmental Management Bureau
Department of Environmental Quality
PO Box 200901
Helena, Montana 59620

RE: Application for Exploration License

Dear Sir or Madam:

Enclosed is Last Chance Exploration Company's (LCEC) application for an exploration license. The application package includes:

1. **Application form** **{These two items ONLY if New**
2. **$100.00 filing fee**[10] **License}**
3. Narrative describing the project activities and how they will be reclaimed.
4. The legal description and county where the proposed disturbances would take place.
5. A map showing the location of project activities and land ownership status (private, USFS, BLM, state-owned).

The following activities would occur in Sections 6, 7 & 8, T15N, R6W, Lewis & Clark County:

Roads

Four thousand (4,000) feet of new access road will be constructed on the ridge separating Ready Cash Gulch and Profit Creek. This temporary road will be constructed pursuant to the standards of **ARM 17.24.104**[11]. Two hundred (200) feet of existing road will be reconditioned and a culvert will be installed in Profit Creek to provide access to Adit No. A-2.

Trenching

Two trenches will be located on the ridge separating Ready Cash Gulch and Profit Creek. These trenches will be approximately 150 feet long, 3 feet wide, and 12 feet deep, and will be excavated using a rubber-tired backhoe. If competent bedrock is encountered, the trenches may not reach the full 12-foot depth. Topsoil will be piled to one side of the trench and the

[10] The 2001 Montana State Legislature increased the Exploration License **initial filing fee to $100**, and the **annual renewal fee for existing licenses to $25**, effective 1 May 2001.

[11] **Administrative Rules of Montana §17.24.104 et seq**. specifies road **construction** standards & guidelines in some detail; **ARM 17.24.107(3)** addresses road **reclamation** standards and requirements.

remainder of the overburden material will be piled on the opposite side of the trench.

Drilling

Drill pads will be prepared at locations DS-1, DS-2, and DS-3. The pads will be about 35 feet long and 20 feet wide (700 square feet). All topsoil will be saved to one side prior to site leveling. Pits will be dug on the sites to contain drilling mud and excess cuttings. Initially, holes will be drilled with an RVC drill rig; later, these holes may be deepened with a core drill (Longyear 44 or equivalent).

Adits

Adit Nos. A-1 and A-2 will be located as indicated on the map. Topsoil will be stripped ahead of the portal establishment and waste-dumping at A-1. A safety door will be placed on the portal to prevent unauthorized entry.

Adit No. A-2 exists but was last used in 1938 and has since caved. The portal will be excavated to competent rock, at which point it will be timbered and a safety door attached. A small seep of water (-5 gpm) presently flows from the caved material in the adit. An increased flow rate is expected when the caved material is removed; because of this, a percolation/settling pond will be constructed immediately adjacent to the portal. A surface water discharge (MPDES) permit will be obtained from the Montana DEQ prior to reopening the adit if there is the possibility of a discharge to Profit Creek.

Reclamation

The following procedures will be used in the reclamation of the above-described activities:

1. All available soil and soil materials will be salvaged and stockpiled ahead of construction or expansion of existing disturbances.

2. Drill fluids (EZ mud, etc.) and cuttings will be retained on site.

3. After drilling is complete, drill fluids and cuttings will be removed, disposed of down the drill hole, or buried.

4. Collar casing will be removed or cut off below ground level.

5. After removal of casing or collar pipe, all drill holes will be plugged at the surface (5-10 feet) with cement or bentonite. If two aquifers are intercepted or if one aquifer is intercepted and a beneficial use is nearby (i.e. domestic or livestock water supply), the hole will be plugged at depth with cement or bentonite.[12]

6. If an artesian aquifer is intercepted, the Montana DEQ - Environmental Management Bureau will be notified within 24 hours - 406-444-4953

[12] **ARM 17.24.106** outlines DEQ's Drill Hole Plugging Policy in some detail. Please see **Appendix C** of this manual. Also refer to **Appendix D** for diagrams illustrating proper drill hole plugging techniques.

and the hole will be plugged at depth prior to removal of the drill rig[13].

7. Drill sites will be graded to the original contour.

8. The first 25 feet of the adits will be backfilled with inert waste rock or riprap which in itself will not contribute to the degradation of any discharge water.

9. Compacted surfaces will be ripped or otherwise loosened and waste piles will be recontoured to allow for successful vegetation establishment.

10. All access and drill roads built by the company will be pulled back to the original contour as much as possible. Where this is not possible (as determined by DEQ), compacted surfaces will be ripped or otherwise loosened, drainage structures will be installed in accordance with **ARM 17.24.104**, and the road will be closed to access. All previously existing roads that were reconditioned by the company will be stabilized with vegetation and erosion-control structures.

11. Trenches will be backfilled with excavated material.

12. All refuse, buildings, track and other facilities associated with exploration activities will be collected, removed, and disposed of in proper disposal sites.

13. Salvaged topsoil will be applied over disturbed areas.

14. Disturbed areas will be revegetated with a seed mixture that is approved by the Department[14].

15. The requirements of the **Montana DEQ's Water Protection Bureau** will be fulfilled if a discharge occurs.

16. Any other reclamation requirements of the **U.S. Forest Service** or the **U.S. Bureau of Land Management** will be fulfilled if the project is on federal lands, and any other reclamation requirements of the **Montana Department of Natural Resources & Conservation (DNRC)** will be fulfilled if the project is on state-owned "School-Trust" lands**.**

The Montana DEQ will be contacted and a mutually agreeable time will be arranged for an on-site inspection and the establishment of a reclamation bond amount.

Sincerely,

Findmore N. Faster
ALCEC District Geologist

[13] Please see **ARM 17.24.106(4)** in **Appendix C** of this manual.
[14] Please see **Appendix B: Generic Seed Mixes for Hard Rock Program**

APPENDIX B: GENERIC SEED MIXES FOR HARD ROCK PROGRAM

Seed/ft2			Pounds/Acre (pls)
Meadow-riparian, native-introduced species:			
30	Bromus biebersteinii	'Regar'brome	16.3
20	Poa pratensis	Kentucky bluegrass	0.4
10	Agrostis alba	redtop	0.1
10	Dechampsia caespitosa	tufted hairgrass	0.2
10	Trifolium repens	white Dutch clover	0.5
TOTAL			**17.5pls**
Meadow-riparian, native species:			
40	Dechampsia caespitosa	'Nortran'tufted hairgrass	0.7
30	Beckmania syzigachne	'Egan'American sloughgrass	1.1
20	Carex rostrata	beaked sedge	2.0
	(Carex nebraskensis)	(Nebraska sedge)	(1.6)
10	Glyceria grandis	American mannagrass	0.3
	(Glyceria striata)	(fowl mannagrass)	(2.4)
TOTAL			**4.1 pls**
Wetland:			
30	Glyceria grandis	American mannagrass	1.0
	(Glyceria striata)	(fowl mannagrass)	(7.3)
30	Phalaris arundinacea	reed canarygrass	2.5
20	Carex aquatilis	water sedge	1.8
	(Carex rostrata)	(beaked sedge)	(2.0)
20	Scirpus acutus	hardstem bullrush	2.4
	(Scirpus americanus)	(American threesquare bullrush)	(4.8)
TOTAL			**7.7 pls**
Acidic substrate:			
40	Festuca longifolia	'Serra' hard fescue	3.1
20	Agrostis alba	redtop	0.2
20	Dechampsia ceaspitosa	'Nortran'tufted hairgrass	0.3
10	Poa compressa	'Reubens'Canada bluegrass	0.2
10	Lotus corniculatus	'Viking, Empire'birdsfoot trefoil	1.0
TOTAL			**4.8 pls**
Alpine:			
30	Dechampsia caespitosa	'Nortran'tufted hairgrass	0.5
30	Festuca ovina	'Covar, Durar'sheep fescue	1.9
10	Lolium multiflorum	annual ryegrass	1.9
10	Phleum alpinum	alpine timothy	0.3
10	Poa alpina	alpine bluegrass	0.4
10	Trifolium repens	white Dutch clover	0.5
TOTAL			**5.5 pls**

Seed/ft2 **Pounds/Acre (pls)**

Fescue grassland:

50	Festuca idahoensis	'Joseph'Idaho fescue	4.8
	(Festuca ovina)	('Durar, Covar'sheep fescue)	(3.2)
20	Poa ampla	'Sherman'big bluegrass	1.0
10	Agropyron trachycaulum	'Pryor, Revenue'slender wheatgrass	2.7
10	Lolium multiflorum	annual ryegrass	1.9
10	Stipa Columbiana	Columbia needlegrass	2.9
10	Trifolium fragiferum	'Palestine'strawberry clover	1.5
TOTAL			**14.8 pls**

Big sagebrush/grass, low elevation:

30	Agropyron dasystachyum	'Critana'thickspike wheatgrass	8.5
	(Agropyron riparium)	('Sodar'streambank wheatgrass)	(8.4)
30	Agropyron spicatum	'Secar'bluebunch wheatgrass	9.3
20	Agropyron trachycaulum	'Pryor, Revenue'slender wheatgrass	5.5
10	Lolium multiflorum	annual ryegrass	1.9
10	Poa ampla	'Sherman'big bluegrass	0.5
10	Onobrychis viciaefolia	'Eski'sanfoin	14.5
TOTAL			**40.2 pls**

Disturbed, no soil, dry, S. or D. Knapweed, low elevation:

40	Agropyron cristatum	crested/standard crested wheatgrass	8.7
30	Agropyron riparium	'Sodar'streambank wheatgrass	8.4
20	Lolium multiflorum	annual ryegrass	3.8
10	Melilotus officinalis	yellow sweetclover	1.7
TOTAL			**22.6 psl**

Disturbed, no soil, S. or D. Knapweed, high elevation:

40	Festuca ovina	'Durar, Covar' sheep fescue	2.6
30	Bromus inermis	'Manchar'smooth brome	10.5
20	Lolium multiflorum	annual ryegrass	3.8
10	Melilotus officinalis	yellow sweetclover	1.7
TOTAL			**18.6 psl**

Seed/ft2			Pounds/Acre (pls)
Steep slope, unstable:			
30	Agropyron trichophorum	'Mandan'pubescent wheatgrass	13.1
30	Bromus inermis	'Manchar'smooth brome	10.5
20	Lolium multiflorum	annual ryegrass	3.8
10	Agropyron riparium	'Sodar'streambank wheatgrass	2.8
10	Trifolium fragiferum	'Palestine'strawberry clover	1.5
TOTAL			**31.7 psl**
Open canopy Ponderosa pine/Douglas fir/grass;			
30	Agropyron spicatum	'Goldar'bluebunch wheatgrass	9.3
30	Festuca idahoensis	'Joseph'Idaho fescue	2.9
	(Festuca ovina)	('Durar, Covar'sheep fescue)	(1.9)
10	Agropyron trachycaulum	'Pryor, Revenue'slender wheatgrass	2.7
10	Poa ampla	'Sherman'big bluegrass	0.5
10	Lolium multiflorum	annual ryegrass	1.9
10	Medicago sativa	'Ladak or similar'alfalfa	2.1
TOTAL			**19.4 psl**
Closed canopy Lodgepole pine, Douglas fir, or spruce:			
20	Agrostis alba	redtop	0.2
20	Dechapsia ceaspitosa	'Nortran'tufted hairgrass	0.3
20	Festuca idahoensis	'Joseph'Idaho fescue	1.9
	(Festuca ovina)	('Durar, Covar'sheep fescue)	(1.3)
20	Poa pratensis	Kentucky bluegrass	0.4
10	Lolium multiflorum	annual ryegrass	1.9
20	Trifolium repens	white Dutch clover	1.0
TOTAL			**5.7 psl**
Cleared forest, mid to high elevation:			
40	Festuca idahoensis	'Joseph'Idaho fescue	3.9
	(Festuca ovina)	('Durar,Covar'sheep fescue)	(2.6)
20	Bromus marginatus	mountain brome	9.7
20	Poa ampla	'Sherman'big bluegrass	1.0
10	Lolium multiflorum	annual ryegrass	1.9
10	Stipa columbiana	Columbia needlegrass	2.9
10	Trifolium repens	white Dutch clover	0.5
TOTAL			**19.9 psl**

(Indicates an alternate species)
'Indicates variety'
All values are expressed as Pure Live Seed.
All legumes must be inoculated with the appropriate bacteria.
Nomenclature is not revised, except for Festuca longifolia/ F.ovina.

Revised November 2000

APPENDIX C: **Excerpts[15] from the Montana Metal Mine Reclamation Act and Rules & Regulations Adopted Pursuant to the Act that are Relevant to Hard Rock & Placer Exploration Projects Conducted on All Lands[16] Within the State of Montana**

Metal Mine Reclamation Act
(Title 82, Chapter 4, Part 3 et seq. MCA[17])

82-4-302. Purpose. (1) The purposes of this part are to:

(a) fulfill the responsibilities and exercise the powers delegated by Article IX, section 1(3) and 2(1) of the Montana constitution;

(b) allow mining as an activity beneficial to the economy of Montana;

(c) allow the production of minerals to meet the needs of society and the economic demands of the marketplace;

(d) provide for reclamation that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands;

(e) provide for reclamation that affords some utility to humans or the environment;

(f) prevent foreclosure of future access to mineral resources not fully developed by current mining operations;

(g) mitigate or prevent undesirable offsite environmental impacts; and

(h) provide authority for cooperation between private and governmental entities in carrying this part into effect.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:
(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in

(8) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

2-4-331. Exploration license required -- employees included -- limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from the date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a $25 renewal fee. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

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[15] The excerpts provided here are only the parts that apply to exploration projects and their reclamation. Copies of the complete Montana **Metal Mine Reclamation Act** and **Rules & Regulations Adopted Pursuant to the Act** are available upon request to the **DEQ's Environmental Management Bureau: 406-444-4953**

[16] The Act applies to federal, state & private lands, with the sole exception being Indian Tribal lands.

[17] **MCA** = **M**ontana **C**odes **A**nnotated

(3) A person may not be issued an exploration license if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of the abatement.

82-4-332. Exploration license. (1) An exploration license must be issued to any applicant who:

(a) pays a fee of $100 to the department;

(b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The board shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

82-4-334. Exception -- geological phenomena. Upon proper application by the holder of an exploration license, the department may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable

diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably forseeable result of any activity conducted by the applicant.

(7) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(8) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (8) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (8)(a), the department may forfeit additional amounts under the procedure provided in subsection (8)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (8)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(9) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department.

82-4-341. Compliance -- reclamation by department. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (8). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-

336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation.

82-4-349. Limitations of actions -- venue. (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision

is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permitholder or applicant must include the party to whom the license or permit was issued unless otherwise agreed to by the license or permitholder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

82-4-350. Award of costs and attorney fees. When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

82-4-351. Reasons for denial of permit. (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the department a new plan for reclamation.

82-4-355. Action for damages to water supply -- replacement. (1) An owner of an interest in real property who obtains all or part of his supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint, using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until such time as the operator provides substitute water, except that nothing in this section preempts Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of his

senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program, water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

82-4-356. Action in response to complaints related to use of explosives. (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

82-4-357. Abatement of environmental emergencies. (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in 75-1-1101 to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to 82-4-338. Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

82-4-360.When activity prohibited -- exception. (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the person's surety completed reclamation on the person's behalf.

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under 82-4-305 if:

(a) that person pays to the department:

(i) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;

(ii) the full amount of any penalties assessed under this part; and

(iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and

(b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist.

82-4-361.Violation -- penalties -- waiver. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or

permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative penalty of not less than $100 or more than $1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is $5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 for a violation listed in subsection (2)(a) and a penalty of not more than $5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial district, Lewis and Clark County.

82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on the licensee or permittee by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of violation or order of suspension within the time limits set in the notice or order, the license or permit may be revoked by order of the department and the performance bond forfeited to the department. The notice of violation or order of suspension must state when those measures may be undertaken and must give notice of the opportunity for a hearing before the board. A hearing may be requested by submitting a written request stating the reason for the request to the board within 30 days

after receipt of the notice or order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond may not be forfeited until a final decision is made by the board.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance.

Rules & Regulations Adopted Pursuant to the Act
(ARM[19] Title 17, Chapter 24, Sub-Chapter 1 et seq.)

§17.24.102 DEFINITIONS

(10) "Exploration" means all activities conducted on or beneath the surface resulting in material disturbance of the surface, for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, except as noted in 82-4-310, MCA. Included in this definition are roads constructed for the purpose of facilitating exploration and pilot ore processing plants or sites and associated facilities constructed for the sole purpose of metallurgical or physical testing of ore materials, not to exceed 10,000 short tons, to aid in determining the development potential of an ore body.

(20) "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved post mining land use which has stability and utility comparable to that of the pre-mining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "reclamation" does not mean restoring the landscape to its pre-mining condition. Reclamation, where appropriate, may include but is not limited to neutralizing cyanide or other processing chemicals; closure activities for heaps, waste rock dumps, and tailing impoundments; closure activities for surface openings; grading, soiling and revegetating disturbed lands; salvage of buildings; other steps necessary to assure long-term compliance with Title 75, chapters 2 and 5, MCA; and other steps necessary to protect public health and safety at closure.

§17.24.103 EXPLORATION LICENSE-APPLICATION AND CONDITIONS

(1) To secure an exploration license a person shall:

(a) pay a filing fee of $100 to the department;
(b) submit an application for an exploration license, complete with a notarized signature, in duplicate to the department upon forms prepared and furnished by it;
(c) submit an exploration plan of operations and a map or sketch in sufficient detail to locate the area to be explored as well as the actual proposed disturbances, and to allow the department to adequately determine whether significant environmental problems would be encountered. The applicant shall state in the plan of operations what type of exploration techniques would be employed in disturbing the land. The application shall also include a reclamation plan in sufficient detail to allow the department to determine whether the specific reclamation and performance requirements of ARM 17.24.104 through 17.24.107 would be satisfied;
(d) agree to reclaim any surface area disturbed by the applicant during exploration operations, all as may be reasonably required by the department, unless the applicant shall have applied for and been issued an operating permit for the lands so disturbed;
(e) submit a reclamation performance bond with the department in a form and amount determined adequate by the department in accordance with 82-4-338, MCA; and
(f) not be in default of any other reclamation obligation mandated by the Act or rules and implementing the Act

(2) On approval by the department, the applicant will be issued an exploration license renewable annually on application and payment of the renewal fee. The license must not be renewed if the applicant is held by the department to be in any violation of the Act or rules and regulations promulgated by the board.

[19] **ARM** = **A**dministrative **R**ules of **M**ontana

(3) An exploration licensee is subject to and must agree to the provisions of ARM 17.24.104 through 17.24.107 for reclamation of surface areas disturbed by exploration operations. Because of the inherent difficulties of promulgating regulations of state-wide applicability, the department will allow variance from the following provisions of this rule, if a written request submitted prior to commencement of the subject disturbance is accompanied by the landowner's or land administrator's written consent to the variance and is sufficient to convince the department that the public interest and the intent of the Act are best served by allowing such variance.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, the licensee may not depart from an approved plan without previously obtaining from the department verbal or written approval of the proposed change.

§17.24.104 EXPLORATION (TEMPORARY) ROADS

(1) Insofar as possible, all roads must be located on benches, ridge tops and flatter slopes to minimize disturbance and enhance stability.

(2) Road widths may not exceed a 14 foot single lane standard. Turnouts may be constructed according to the licensee's needs, but the turnout area may not exceed 30 feet in total width.

(3) No road may be constructed up a stream channel proper or so close that material will spill into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked and if no damage is done to the stream or adjoining landowners. No alteration which affects more than 100 linear feet of the channel of a flowing stream may be approved by the department without advice from the department of fish, wildlife and parks. The department of environmental quality must also be consulted regarding stream channel alterations to ensure compliance with the Montana Water Quality Act (Title 75, chapter 5, MCA) as amended.

(4) Road gradients must be kept low except for short pitches to take advantage of topography. Maximum sustained grades may not exceed 8%. Pitch maximum may not exceed 12% and may not be over 300 feet in length.

(5) Insofar as possible, the licensee must keep road cuts reasonably steep to minimize surface disturbances. Cut slopes may not be steeper than 1:1 in soil, sand, gravel, or colluvium; ¼:1 in lake silts, or more than 0:1 in rock. Where necessary to prevent significant sloughing or slumping, the top of road cuts must be rounded back to a more gentle slope. In selecting a slope angle, to prevent slope failure the licensee should consider at least the following factors: the nature of the material, compaction, slope height and moisture conditions.

(6) A ditch must be provided on both sides of a throughout and, with the exception of out-sloping roads, on the inside shoulder of a cut-fill section, with ditch relief cross drains (water bars) being spaced according to grade. Water must be intercepted before reaching a switchback or large fill, and be routed and released below the fill or switchback, not over it.

(7) Streams must be crossed at or near right angles unless contouring down to the streambed will result in less potential stream bank erosion. Structure or ford entrances and exits must be constructed to prevent water from flowing down the roadway.

(8) Culverts must be installed at prominent drainage ways, small creeks and springs. Upon abandonment of the road, culverts must be removed and the drainage way reopened. Such culverts must be sufficient to handle runoff expected from a statistical 5-year storm and, where necessary, the area adjoining the culvert must be protected from erosion by adequate, inert rock riprap.

(9) Trees and vegetation may be cleared for only the essential width necessary to maintain soil stability and to serve traffic needs. Trees must be felled prior to road construction. When side-slopes are 15% (8.5°) or less, trees and other

vegetative debris from clearing operations must be completely disposed of, stockpiled at specified areas, or used as a sediment filter below the road cut. When side-slopes are steeper than 15% (8.5°), trees and vegetative debris shall be piled neatly below and parallel to the toe of the fill.

(10) Drainage facilities (such as culverts and water bars) must be installed as road construction progresses.

(11) Adequate diagonal drainage barriers (i.e., water bars, drain dips or similarly effective features) must be placed at the following specified intervals:

Grade (%)	Maximum Spacing (feet)
0-2	200
3-8	150
9-12	80

(12) When side-slopes are 15% or less, vegetative debris from clearing operations must be completely disposed of or stockpiled at specific areas. On side-slopes steeper than 15% such vegetative debris must be piled neatly parallel to and below the toe of the fill.

(13) Roads must be out-sloped whenever possible. If roads are to be used during snow season, in sloping with proper drainage consideration is acceptable for vehicle safety reasons.

(14) Snowplowing must be done in such a manner that runoff water will not be trapped between the snow berms and flow down the road.

(15) Materials which slough or slump onto the road bed or into the roadside drainage ditch before the licensee completes the exploration project must be disposed of on the road bed or on the fill material in a manner that will not obstruct any of the drainage facilities previously described.

(16) All fill and cut slopes, with the exception of rock faces, must be seeded or planted or both during the first appropriate season following construction of the road.

(17) The department may waive any of the criteria in this section if the applicant proposes methods or technologies that achieve the same or better environmental protection than that expected under the given criteria.

§17.24.105 CONDUCT OF EXPLORATION OPERATIONS

(1) All suitable practically salvaged soil and soil material must be salvaged prior to any other site disturbance, and either stockpiled or used for immediate reclamation.

(2) Except for samples, drilling mud, water and other fluids as well as waste cuttings from drilling operations must be confined to the drill site by the use of storage tanks or sumps or must be disposed of in accordance with a plan approved by the department.

(3) Drill sites must not be constructed in natural flowing streams.

(4) Areas disturbed by removal of vegetation or grading must be kept to the minimum size necessary to accommodate the exploration operation.

(5) Insofar as possible, trenches, discovery pits and other excavations must be located out of natural flowing streams.

(6) Spoil from pits, trenches, shafts, adits, or other excavations must not be located in drainage ways. The lower edge of the spoil bank must be at least 5 vertical feet above high flow level. Exceptions may be made when it is not physically practical to place spoil at least 5 vertical feet above the high flow level.

(7) If an artesian aquifer is intercepted during a drilling operation, the drill hole must be plugged at depth (top to bottom) prior to removal of the drill rig.

(8) Oil, grease, hydraulic fluid and other petroleum products must not be released on the exploration site. If a release occurs, the contaminated material must be removed immediately and disposed of at a proper disposal site.

(9) Exploration adits, shafts, and other excavations must be secured from unauthorized entry throughout the life of the operation to ensure public safety.

(10) Pilot ore processing plants or sites, as defined in ARM 17.24.102, and permitted under an exploration license, are subject to all applicable requirements of 82-4-335 through 82-4-337, MCA.

(11) The department may require interim revegetation for the purposes of erosion control on all exploration disturbance areas.

§17.24.106 EXPLORATION DRILL HOLE PLUGGING

(1) Except as provided in (3) of this rule, all exploration drill holes must be plugged at the surface 5 to 10 feet with cement

(2) Except as provided in (3) of this rule, exploration drill holes must be plugged with bentonite or a similar compound from the bottom of the hole to within 5 to 10 feet of the surface, and with cement from the top of the bentonite to the surface if 1 or more of the following conditions apply:

(a) two aquifers are intercepted;
(b) one aquifer is intercepted and an existing or potential beneficial use (domestic, agricultural or fish/ wildlife water supply) exists;
(c) one or more artesian aquifers are intercepted causing either surface flow or significant water rise in the hole; or
(d) the potential exists for downward water loss from an aquifer (cascade effect) as determined by the department.

(3) Exceptions to (1) and (2) of this rule may be granted by the department if:

(a) shallow placer holes are drilled using churn or percussion drill or similar equipment in alluvium in which the holes will be obliterated as the drill stem is withdrawn, leaving no evidence of the hole;
(b) the drill hole contained no water, is not geologically likely to contain water and the hole is to be destroyed during mining or mining related disturbances;
(c) the drill hole is developed into a water well, monitoring well, or piezometer with the written agreement of the land owner and to the specifications of the appropriate state agency; or
(d) other site-specific hydro geological and topographic situations necessitate exceptions.

(4) All flowing or artesian drill holes must be plugged prior to removing the drill rig from a hole unless removing the drill rig is necessary to the hole plugging operation. If the flow is not completely stopped, after exhaustion of all methods, the operator must:

(a) obtain a discharge permit from the department of environmental quality; or
(b) develop a water well in compliance with the requirements of other applicable local, state and federal statutes, including water rights. In addition, the landowner must concur, the amount and use of flow must be compatible with the approved post mining land use, and the water quality must meet standards set under the Water Quality Act

(5) In areas and geological formations of known artesian well potential, bonding for drill sites must be adequate to ensure artesian hole plugging.

§17.24.107 RECLAMATION REQUIREMENTS-EXPLORATION

(1) Upon completion of the drilling operation, drill cuttings or core must be removed from the site, disposed of down the hole, or buried. Drilling mud and other non-toxic lubricants must be removed from the site or allowed to percolate into the ground prior to backfilling the sump.

(2) Unless the hole is completed under ARM 17.24.106 (3)(c), collar pipe or casing must be removed or cut off below ground level.

(3) Access roads constructed by the licensee to accommodate the exploration project must be returned to a stable slope that approximates the original contour to the extent possible. Where this is not possible (as determined by the department), compacted surfaces must be ripped or otherwise loosened, drainage structures must be installed in accordance with ARM 17.24.104(11), and the roads must be closed to access by use of locked gates, kelly humps/dips, or other effective method. Exceptions may be made in accordance with the provisions of ARM 17.24.103(2). This requirement may be waived by the department if the landowner requests
in writing that the access road be left in place for an identified, alternative, feasible and practicable purpose.

(4) Drill sites constructed by the licensee must be returned to a stable configuration that approximates the original contour to the extent possible. Where the department determines that this is not possible, compacted surfaces must be ripped or otherwise loosened and appropriate drainage must be provided. This requirement may be waived by the department if the landowner requests in writing that the drill site be left in place for an identified, feasible and practicable purpose.

(5) When such actions will not obscure significant evidence relating to the possible presence of an ore deposit or physically hinder further development of the claim, all trenches, bulk sample or discovery pits, and other excavations must be backfilled with the excavated spoil material. If, following a site investigation and discussions with the licensee, the department confirms the necessity for the excavation to remain open, backfilling requirements may be postponed providing the licensee remains in compliance with 82-4-331, and 82-4-332, MCA, and ARM 17.24.103,17.24.105,17.24.151, and 17.24.153.

(6) Upon termination of the exploration project, the first 25 feet of all adits must be backfilled with waste rock or riprap, which will not contribute to the degradation of any discharge water. Shafts must also be backfilled or otherwise securely sealed upon project termination. If, following a site investigation and discussions with the licensee, the department confirms the necessity for an adit or shaft to remain accessible for possible future exploration or development, the adit or shaft must be secured with a steel bulkhead or other equally effective method to prevent unauthorized entry and ensure public safety.

(7) All refuse, buildings, railroad track, and other facilities associated with the exploration project must be removed and disposed of in proper disposal sites. Exceptions may be made by the department if the licensee desires to mine the area and is in compliance with 82-4-332(4), MCA. This requirement may also be waived by the department if the landowner requests in writing that specific facilities be left in place for an identified, alternative, feasible and practicable purpose.

(8) All compacted surfaces associated with exploration adits, shafts, pits and associated facilities shall be ripped or otherwise loosened prior to soil replacement.

(9) Unless other reclamation practices are approved by the department, waste dumps associated with new adits excavated for the purposes of underground exploration must be contoured to allow for soil replacement and successful vegetation establishment. When existing, caved (sloughed) adits are reopened for the purposes of exploration and the caved material can be confined to the existing portal pad or waste dump without requiring expansion, contouring is not required. However, the licensee shall provide for appropriate drainage in the portal area, and the portal pad and waste dump must be stabilized with vegetation or by employing other stabilization methods determined acceptable by the department

(10) Where feasible, soil and soil materials salvaged during construction must be reapplied over all disturbance areas.

(11) Where feasible, all disturbed areas must be revegetated with a seed mixture that is approved by the department

(12) Appropriate revegetation must be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.

(13) In the event that any of the above revegetation efforts are unsuccessful, the licensee must seek the advice of the department and make a second attempt, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation.

§17.24.108 EXPLORATION RECLAMATION DEFERRED

(1) The department may defer the reclamation requirements of acreage disturbed under an exploration license if that acreage is proposed for incorporation into a complete plan of operation that is being prepared or has already been submitted as part of an application for an operating permit.

(2) The licensee shall comply with the following conditions of a reclamation deferral:

(a) a current exploration license shall be maintained;
(b) current and adequate bond shall be maintained;
(c) the licensee shall be actively pursuing an operating permit; and
(d) the licensee shall observe any interim monitoring or reclamation requirements as may be reasonably required by the department.

(3) The department shall cancel the deferral and issue an order to reclaim if the license fails to meet any of the conditions outlined in (2) of this rule, listed above.

§17.24.115 RECLAMATION PLANS

(1) The definition of reclamation plan (82-4-303(14)(a), MCA) lists 9 considerations which "to the extent practical at the time of application" must be included in the plan. Using the same letter headings as in the above-referenced definition, the following are the board's standards for each of the required provisions that must be included in the plan:

(a) land disturbed by development or mining activities must be reclaimed for 1 or more specified uses, including, but not limited to: forest, pasture, orchard, cropland, residence, recreation, wilderness, industry, habitat (including food, cover or water) for wildlife or other uses. Proposed reclamation need not reclaim subject disturbed areas to a better condition or different use than that which existed prior to development or mining. The applicant must describe:

(i) current uses(s) of area to be disturbed;
(ii) current and proposed uses of nearby land that by its proximity may influence or guide the choice of a reclaimed use of the disturbed area;
(iii) pertinent climatic, topographical, soil, water and wildlife data that govern choice of proposed use of the reclaimed land.

(b) With the use of cross-sections, topographic maps or detailed prose, the proposed topography of the reclaimed land must be adequately described. As specific situations warrant, proper grading must provide for adequately designed contour trenches, benches and rock-lined channel ways on disturbed areas. The applicant must submit evidence to assure the board that upon partial or complete saturation with water, graded fill, tailings or spoil slopes will be stable. The proposed grading methods must be described. Where practicable, soil materials from all disturbed areas must be stockpiled and utilized.

(c) To the extent reasonable and practicable, the permittee must establish vegetative cover commensurate with the proposed land use specified in the reclamation plan. Should an initial revegetation attempt be unsuccessful, the permittee must seek the advice of the board and make another attempt. The second revegetation operation, insofar as possible, shall incorporate new methods necessary to reestablish vegetation.

(d) Where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices shall not interfere with other landowners rights or contribute to water pollution (as defined in the Montana Water Pollution Control Act as amended).

(e) The plan must provide that all water, tailings or spoil impounding structures be equipped with spillways or other devices that will protect against washouts during a 100-year flood.

(f) All applicants must comply with all applicable county, state and federal laws regarding solid waste disposal. All refuse shall be disposed of in a manner that will prevent water pollution or deleterious effects upon the revegetation efforts.

(g) Upon abandonment, water from the development or mining activities shall be diverted or treated in a manner designed to control siltation, erosion or other water pollution damage to streams and natural water courses.

(h) All access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion.

(i) All operations shall be conducted so as to avoid range and forest fires and spontaneous combustion.

(j) Archaeological and historical values in area to be developed shall be given appropriate protection.

(k) Provisions shall be made to avoid accumulation of stagnant water in the development area, which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(l) All final grading shall be made with non-noxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(m) Proper precautions must be taken to assure that exposed cuts and tailings or spoil disposal areas will not be subject to wind erosion to the extent that airborne detritus becomes a public nuisance or detriment to the flora and fauna of the area.

(n) In a reclamation plan accompanying an application for operating permit, the applicant shall provide the board with sufficiently detailed information regarding method(s) of disposal of mining debris, including mill tailings, and the location and size of such areas.

(o) The plan must describe the location of the surface water diversions as well as the methods of diverting surface water around the disturbed areas. Properly protected culverts, conduits or other artificial channels may carry surface water through the disturbed areas providing such procedures prevent pollution of such waters and unnecessary erosion.

(p) Requirements regarding reclamation of stream channels and stream banks must be flexible to fit circumstances of each stream site. Many stream relocations, however, will be permanent and thus will represent the reclaimed condition of stream channels and stream banks. Accordingly, reclamation plans must contain the following provisions should stream channels or banks be permanently relocated:

(i) the relocation channel shall be of a length equal to or greater than the original channel, unless the board after consideration of the local circumstance shall grant a variance;
(ii) the relocation channel shall contain meanders, riffles and pools similar to those in the original channel;
(iii) stream banks shall be rounded to prevent slumping and sloughing and shall be revegetated in keeping with accepted agriculture or reforestation practices the first appropriate season following channel relocation;
(iv) rock riprap shall be used wherever appropriate.

(q) Sections 82-4-332 and 82-4-335, MCA, require that maps of the intended development or mining operation(s) accompany applications for permit. Should a copy of such maps, to scale, contain the following additional information (transparent overlays are acceptable), a separate map need not accompany the reclamation plan:

(i) outline of the area to be disturbed in the first permit year;
(ii) outline of areas where soil materials will be replaced;
(iii) outline of intended revegetation areas showing plant or seed densities and species chosen;
(iv) location of such structures, drainage features, etc., as may be necessary to prevent erosion of bare slopes and subsequent siltation or other pollution of natural flowing streams or other natural water bodies.

(r) Reclamation shall be as concurrent with development or mining operations as feasible and must be completed within a specified reasonable length of time. Revegetation must be accomplished in the first appropriate season after necessary grading, in accordance with accepted agricultural or reforestation practices.

§17.24.129 INSPECTIONS: RESPONSE TO CITIZEN COMPLAINTS

(1) Any person may request an inspection by the department of any operation by furnishing the department with a signed statement, or an oral report followed by a signed statement, giving the department reason to believe that there

exists a violation of the Act, the rules adopted pursuant thereto, or the permit or that there exists a condition or practice that creates an imminent danger to the public or that is causing or can be reasonably expected to cause a significant, imminent environmental harm to land, air, or water resources. The statement must identify the basis for the allegation or provide corroborating evidence. The statement must be placed in the permittee's file and becomes a part of the permanent record. The identity of the person supplying information to the department must remain confidential with the department, if requested by that person.

(2) If the report provides the information required above and the department determines the request to present sufficient evidence to warrant a special inspection, the department shall conduct an inspection to determine whether the condition, practice, or violation exists or existed.

(3) Within 30 days of receipt of the requestor's written statement, the department shall send the requestor and the alleged violator a written response which includes the following:

(a) if an inspection was made, a description of the enforcement action taken, or, if no enforcement action was taken, an explanation of why no enforcement action was taken;
(b) if no inspection was made, an explanation of the reason why.

§17.24.132 ENFORCEMENT: PROCESSING OF VIOLATIONS AND PENALTIES

(1) Except as provided in (4) of this rule, the department shall issue a notice of violation, if a violation of the Act, this subchapter, or the permit, license, or exclusion is identified as a result of any inspection. The notice shall be served and must state that the alleged violator, may, by filing a written response within 15 days of receipt of the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty.

(2) Within 30 days after issuance of the notice of violation, the department shall serve a statement of proposed penalty.

(3) The person may, within 20 days of service of the statement of proposed penalty, respond in writing to the statement and may request an informal conference, a contested case hearing, or both, on the issues of whether the violation occurred, whether the abatement ordered by the department is reasonable, and whether the penalty proposed to be assessed is proper.

(4) Whenever an authorized representative of the department observes a minor violation that clearly does not represent a potential harm to public health, public safety, or the environment and clearly does not impair administration of the Act or this subchapter, the representative may issue a violation letter to the person. The violation letter must describe the violation and how the violation can be corrected. If, within 10 days, the violation has been corrected, the department shall waive the imposition of penalty. If the violation is not corrected within 10 days, the department shall issue a notice of violation pursuant to (1) of this rule.

(5) If a contested case hearing has not been requested, the department shall make findings of fact, issue a written decision, and order payment of any penalty as provided in 82-4-361, MCA. If a contested case hearing has been requested, the department shall hold a hearing; make the findings of fact, issue the decision, and if a violation is found, order payment of any penalty, as provided in 82-4-361, MCA.

§17.24.133 ENFORCEMENT: ABATEMENT OF VIOLATIONS AND PERMIT SUSPENSION

(1) Except when the violation has already been abated, the department shall issue an abatement order with any notice of violation or suspension order.

(2) The abatement order shall require mitigation of the effects of the activity for which the notice or order was issued.

(3) Each abatement order shall identify a time frame for completion and may be extended only if the violator documents good cause for extension and the department finds in writing that good cause exists.

(4) Within 30 days of notification by a violator that an abatement order has been satisfied, the department shall inspect or review the abatement and determine whether or not the abatement order has been satisfied. The department shall notify the violator of its determination.

(5) The director shall immediately issue an order suspending the license or permit for each violation of the Act, this subchapter, the license, or the permit, that is creating an imminent danger to the health or safety of the persons outside the permit area.

(6) The director may, after opportunity for an informal conference, suspend a permit or license for a violation of the Act, this subchapter, or the license or permit that:

(a) may reasonably be expected to create a danger to the health or safety of persons outside the permit area;
(b) may reasonably be expected to cause significant environmental harm to land, air, or water resources; or
(c) remains unabated subsequent to the deadline for abatement contained in an abatement order.

§17.24.134 ENFORCEMENT: ASSESSMENT AND WAIVER OF PENALTIES

(1) The department shall consider the following factors in determining whether to institute an administrative civil penalty action and in determining the amount of penalty for the violation:

(a) the nature, extent and gravity of the violation. The nature of the violation must be characterized as either actually or potentially resulting in harm to public health or safety, the environment, or as impairing the department's administration of the Act. This penalty must be determined as follows:
(i) If the violation created a situation in which the health or safety of the public or the environment was or could have been harmed, up to $1,000 may be assessed, depending upon the extent and gravity of such harm. If the violation created an imminent danger to the health or safety of the public or caused significant actual environmental harm, as documented by the department, up to $5,000 may be assessed.
(ii) In the case of a violation of an administrative requirement up to $1,000 may be assessed depending on the extent and gravity of the violation. Violation of an administrative requirement does not involve actual or potential harm to public health, safety, or the environment.
(b) the degree of negligence or willful conduct involved, if any. In addition to the amount assessed under (1)(a), a violation involving negligent or willful conduct on the part of the violator may be assessed up to $500 depending on the degree of negligence.
(c) The violator's recent history of prior violations. In addition to the amounts assessed under (1)(a) and (1)(b), $50 may be assessed for each notice of violation issued in the last 3 years; $250 may be assessed for each suspension order issued in the last 3 years. A notice of violation pr suspension order that is not resolved or that has been vacated must not be counted.
(d) The department shall consider any voluntary mitigation by the violator. If the violator takes measures beyond those required by law to address or mitigate the violation or its impacts, up to $200 may be deducted from the total penalty assessed depending on the amount of time, money, or effort voluntarily expended and the degree of success. This includes mitigating the violation before the time set in the abatement order. No amount may be deducted for corrective action conducted by the violator in a merely adequate manner pursuant to a department permit, notice or order.

(2) Notwithstanding the provisions of (1)(a) through (1)(d), the department may not assess a penalty that is less than $100 or more than $1,000 except that for a violation that created an imminent danger to health and safety of the public, the maximum penalty is $5,000.

(3) In addition to the penalty for the violation, the department may assess a penalty for each day on which the practice or condition constituting the violation continues. The penalty for each day must be equal to the penalty for the violation.

(4) Using the best information reasonably available to it at the time of calculating the penalties, the department shall determine any economic benefit or savings that the violator gained as a result of the violation. If the amount of penalties calculated pursuant to (1) through (3) is less that the economic benefit of savings, the department may increase the penalty to compensate for all or a portion of the economic benefit not exceeding the total maximum penalties for the violation and days of violation assessable under (2).

(5) If the violator is unable to immediately pay the full penalty amount, the department may place the violator on a payment schedule with interest on the unpaid balance at the rate assessed by the Montana department of revenue on income tax due. The department may secure the payment schedule with a promissory note, collateral, or both.

(6) The department may waive or modify the penalty if it finds that penalty demonstrably unjust or demonstrably inadequate as a deterrent. The department shall set forth the basis for waiver or modification in writing including the consideration of any other matters that justice may require in addition to those factors described in this rule. The department may not waive or reduce the penalty for the sole reason that a reduction in the penalty could be used to offset the costs of abatement.

§17.24.136 NOTICES AND ORDERS: ISSUANCE AND SERVICE

(1) A notice of violation, statement of proposed penalty, or an abatement, suspension, or revocation order, an order to reclaim, and other orders issued pursuant to the Act must be served upon the person to whom it is directed promptly after issuance by:

(a) delivering a copy of the notice, statement or order in person to the violator; or
(b) sending a copy of the notice, statement or order by certified mail to the violator at the address on the violator's application for a license or permit or exclusion.

(1) Service is complete upon tender of the notice, statement or order in person. Service by mail is complete upon deposit in the U.S. mail, certified, postage prepaid, as set forth above and is not incomplete because of refusal to accept.

§17.24.137 NOTICES AND ORDERS: EFFECT

(1) Reclamation operations and other activities intended to protect public health and safety and the environment must continue during the period of any suspension order unless otherwise provided in the order.

(2) If a suspension order will not completely abate the imminent danger to the health or safety of persons outside the permit or license area in the most expeditious manner physically possible, the director or his authorized representative shall impose affirmative obligations on the person to whom it is issued to abate the condition, practice,

or violation. The order must specify the time by which abatement must be accomplished and may require, among other things, the use of existing or additional personnel and equipment.

(3) A notice or order may not be vacated because of inability to comply.

(4) If a permit or license has been suspended or revoked, the operator or licensee may not conduct any operations or prospecting pursuant to the permit or license and shall:

(a) if the permit or license is revoked, complete reclamation within the time specified in the order;
(b) if the permit or license is suspended, abate all conditions, practices, or violations, as specified in the order.

§17.24.140 BONDING: DETERMINATION OF BOND AMOUNT

(1) The department shall require submission of bond in the amount of the estimated cost to the department if it had to perform the reclamation, contingency procedures and associated monitoring activities required of an operator subject to bonding requirements under the Act, the rules adopted there under, and the permit, license or exclusion. This amount is based on the approved permit, license or any exclusion and shall include:

(a) costs estimated by using current machinery production handbooks and publications or other documented costs acceptable to the department;
(b) the additional estimated costs to the department which may arise from additional design work, applicable public contracting requirements or the need to bring personnel and equipment to the permit area after its abandonment by the permittee; and
(c) an additional amount based on factors of cost changes during the preceding 5 years for the types of activities associated with the reclamation to be performed.

(2) The total bond amount calculated by the department must be in place and accepted by the department prior to issuance of the permit, license, or exclusion unless:

(a) the applicable plan identifies phases or increments of disturbance, which may be individually identified and for which individual, incremental bonds may be calculated. The plan must provide for bonding increments to be submitted with the annual report and must expressly state that the operator, licensee or small miner may not proceed to the next phase or increment until the bond is in place and has been approved in writing by the department; or
(b) mining will proceed through a progression of contiguous pits and the plan provides for concurrent backfill. In this case, the bond must include the amount necessary to backfill the largest volume pit.

(3) An incremental bond proposal must not be accepted if the permittee has received a bonding noncompliance, notice of noncompliance for exceeding the small miner or other acreage limitations, or a notice of noncompliance for conducting activities outside the bonded operating area. This prohibition does not apply if the violation is vacated or if a court feels that a violation did not occur.

(4) A permittee may submit bond higher than the amount required by the department. The extra amount remains unobligated to any disturbance until applied against disturbances, which result from additional activities approved under an operating permit, license, or exclusion.

(5) Bond released from completed activities may not be applied to subsequent activities or increments until the department has inspected the site, provided public notice and opportunity for comment on the release, and approved the request for release in compliance with 82-4-338, MCA.

§17.24.141 BONDING: ADJUSTMENT OF AMOUNT OF BOND

(1) The amount of the performance bond must be reviewed for possible adjustment as the disturbed acreage is revised, methods of mining operation change, standards of reclamation change or when contingency procedures or monitoring change. The amount must also be reviewed at least every 5 years.

(2) If, at the time of an amendment under ARM 17.24.119, a comprehensive bond review is completed, the next comprehensive bond review must occur not more than 5 years after the issuance of the amendment.

(3) The department shall notify the permittee of any proposed bond adjustment and provide the operator, licensee, or small miner an opportunity for an informal conference on the adjustment.

(4) For bond reduction requests by the permittee for release of undisturbed land, the permittee shall submit a map of the area in question, revise the appropriate active permit maps and document that the area has not been disturbed as a result of previously permitted activities. The department shall then conduct an inspection of the proposed area before responding to the request

(5) An operator or an interested party may request an adjustment of the required performance bond amount upon submission of evidence to the department demonstrating that the method of operation or other circumstances will change the estimated cost to the department to complete the reclamation, contingency procedures, or monitoring activities and therefore warrant a change in the bond amount.

§17.24.142 BONDING: REPLACEMENT OF BOND

(1) The department may allow an operator to replace existing surety or collateral bonds with other surety or collateral bonds, if the liability that has accrued against the operator is transferred to such replacement bonds.

(2) The department may not release an existing performance bond until the operator has submitted and the department has approved acceptable replacement performance bond. A replacement of performance bond pursuant to this rule does not constitute a release of bond under 82-4-338, MCA.

§17.24.143 BONDING: FORM OF BOND

(1) The form for the performance bond must be as provided by the department The department shall allow for a surety bond or a collateral bond.
(2) Liability under any bond, including separate bond increments and indemnity agreements applicable to a single operation, must extend to the entire bonded area.

§17.24.144 BONDING: SURETY BONDS

(1) In addition to the requirements of 82-4-338, MCA, surety bonds are subject to the following requirements:

(a) The department may not accept a surety bond in excess of 10% of the surety company's capital surplus account as shown on a balance sheet certified by a certified public accountant.
(b) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, in excess of 3 times the company's maximum single obligation as provided in (a) above.

(c) The department may not accept a surety bond from a surety company for any person, on all permits held by that person, unless that surety is registered with the state auditor and is listed in the United States Department of the Treasury Circular 570 as revised.

(d) A power of attorney must be attached to the surety bond.

(e) The surety bond must provide a mechanism for the surety company to give prompt notice to the department and the operator of:

(i) any action alleging bankruptcy or insolvency of the surety or violation that would result in suspension or revocation of the license of the surety;

(ii) cancellation by the operator; and

(iii) cancellation or pending cancellation by the surety.

(f) Upon incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the operator shall be deemed to be without bond coverage and shall promptly notify the department in the manner described in the bond. The department, upon notification, shall, in writing, notify the operator of a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease mineral extraction and shall comply with the provisions of 82-4-336(1), MCA, and shall immediately commence reclamation in accordance with the Act, this subchapter and the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

(g) Whenever operations are abandoned concurrent with cancellation of the bond, the department must reclaim the site and forfeit the bond within 7 years, consistent with 82-4-341, MCA, for any reclamation obligation incurred in the reclamation of the site.

§17.24.145 BONDING: CERTIFICATES OF DEPOSIT

(1) The department may accept as bond an assignment of a certificate of deposit in a denomination not in excess of $100,000, or the maximum insurable amount as determined by FDIC and FSLIC, whichever is less. The department may not accept a combination of certificates of deposit for one operator on one institution in excess of that limit.

(2) The department may accept only automatically renewable certificates of deposit from a United States bank.

(3) The department shall require the applicant to deposit sufficient amounts of certificates of deposit, to assure that the department will be able to liquidate those certificates prior to maturity, upon forfeiture, for the amount of the bond required pursuant to ARM 17.24.140 and 17.24.141.

(4) The department shall require that each certificate of deposit be made payable to or assigned to the department, both in writing and in the records of the bank issuing the certificate. The department shall require banks issuing these certificates to waive all rights of setoff or liens against these certificates.

§17.24.146 BONDING: LETTERS OF CREDIT

(1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) The letter must be issued by a bank organized or authorized to do business in the United States.

(b) The letter must be irrevocable prior to a release by the department pursuant to 82-4-338, MCA.

(c) The letter must be payable to the department in part or in full upon demand and receipt from the department of a notice of forfeiture issued pursuant to 82-4-341, MCA.

(d) The letter of credit must provide that, upon expiration, if the department has not notified the bank in writing that substitute bond has been provided or is not required, the bank will immediately pay the department the full amount of the letter less any previous drafts.

(e) The letter must not be for an amount in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(f) The department may not accept a letter of credit from a bank for any person, on all permits, licenses, or exemptions held by that person, in excess of 3 times the company's maximum single obligation as provided in (e) above.

(2) If the department determines that the bank has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the permittee and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and shall comply with the provisions of 82-4-341, MCA, and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

§17.24.150 ABANDONMENT OR COMPLETION OF OPERATION

(1) For the purposes of administering the Act the board will presume that an operation is abandoned or completed (and thus subject to the reclamation time schedule outlined in 82-4-336, MCA) as soon as ore ceases to be extracted for future use or processing. Should the permittee wish to rebut said assumption, he must provide evidence satisfactory to the board that his operations have not in fact been abandoned or completed.

(2) Documentation of any of the following situations will be adequate evidence of intent not to abandon operations:

(a) the mine or mill work force is on strike while negotiating a new contract;

(b) the mine or mill is shut down because of some failure of the transportation network in moving ore or processed material;

(c) the mine or mill is shut down because of a natural catastrophe and plans to resume operations are being formulated;

(d) the mine or mill is seasonally shut down due to predictable annual variance in the mined products market or because of inclement weather or seasonal inaccessibility;

(e) the mine or mill is shut down for maintenance or the construction of new facilities;

(f) the mine or mill is forced to temporarily shutdown because of violation of other state or federal laws and efforts are being made to remedy the cause of the violation.

(3) At the discretion of the board, the following evidence and any other relevant evidence may be satisfactory to show intent to resume operations:

(a) exhibition of drill core and accompanying assay reports to show that ore minerals still remain in the mine and that they are present in veins or accumulations of sufficient size, grade and accessibility to warrant continued development-geological, geochemical or geophysical indications of valuable mineralization sufficient to warrant further development or mining will also be considered by the board;

(b) continued employment of a maintenance crew to dewater the mine or replace timbers, etc.;

(c) data recording present and predicted commodity prices, labor and transportation costs, etc., or any other evidence which may show that mining may soon resume on a profitable basis. Board comment It is recognized that "abandonment or completion of mining" under the operating permit (see 82-4-336, MCA) is an action commonly predicated upon complex and changing economic circumstances; that cessation of mining need not mean abandonment or completion; and that short of obtaining an operator's records and examining his mine development drill core, the board may be unable to determine the operator's true intent.

§17.24.153 GENERAL COMPLIANCE

(1) The operator shall comply with all federal and state laws, and such rules and regulations as are promulgated by the board under the Act.

§17.24.157 BLASTING OPERATIONS: COMPLAINT PROCEDURE

(1) Affected parties, who are owners of an interest in real property or individuals who reside within an area subject to property damage or safety hazards related to the use of explosives by an operator may file a signed and dated complaint related to use of explosives associated with hard rock mining or exploration activities as follows:

- (a) Complaints must be filed in writing with the department.
- (b) Complaints must include the following information:
  - (i) name, mailing address, street address and phone number of the person or persons filing complaint;
  - (ii) statement of interest in real property or identification of residence within an area subject to property damage or safety hazards related to use of explosives;
  - (iii) name of person or company using explosives, if known;
  - (iv) detailed location of explosives use;
  - (v) date and time of use;
  - (vi) if property damage is alleged, type of damage including:
    - (A) type of structure;
    - (B) nature of damage;
    - (C) age of structure;
    - (D) rationale for correlating damage to use of explosives; and
  - (vii) if safety hazard is alleged, type of safety hazard.
- (c) The department shall respond to all complaints by notifying each person who files a complaint whether the department considers the complaint to be credible. A credible complaint is a complaint addressing all requirements listed in (b) above in a manner that is not false or without basis on its face.

(2) The department shall promptly investigate a credible complaint by:

- (a) immediately providing the operator with a copy of a credible complaint;
- (b) documenting the alleged damage or safety hazard with photographs and engineering reports and interviews as appropriate;
- (c) requesting and evaluating all available information from the operation allegedly responsible for the problem;
- (d) investigating concurrent activity which may have caused or contributed to the problem identified;
- (e) conducting appropriate tests, which may include, but are not limited to:
  - (i) seismograph and air blast monitoring;
  - (ii) geologic investigation; and
  - (iii) evaluation of the structural integrity of the structure; and
- (f) making written findings, including, if possible, a determination of whether any of the standards in ARM 17.24.159 (6)(a), (11)(a), or (15)(c), were exceeded.

(3) The department shall mail a copy of its written findings to the complainant and the operator.

§17.24.158 BLASTING OPERATIONS: PARTICIPATION AND COOPERATION OF PERSONS USING EXPLOSIVES

(1) Whenever the department notifies the operator that it has received a credible complaint pursuant to ARM 17.24.157 concerning a use of explosives, the operator shall make available to the department, within 15 days of receipt of a written request, such information as the department may request, including, but not limited to, the following:

(a) identification of persons conducting blasting activities and their level of training and experience;
(b) preblasting survey information, if available;
(c) blasting schedule and records identifying as accurately as possible location of the blasting sites and timing of blasts; and
(d) seismograph measurements, if available.

(2) The operator shall make available for interviewing by the department and its consultants all persons involved in the blasting operations.

(3) (a) After the department conducts its preliminary investigation by reviewing the records supplied by the operator using explosives and performs its own appropriate tests, if needed, the department shall do 1 or more of the following:
(i) if the department's preliminary investigation has determined that property damage or a safety hazard could not have occurred from blasting activities, the department shall give written notification of its findings to all concerned parties;
(ii) if, after its preliminary investigation, the department cannot determine whether property damage or a safety hazard may have occurred as the result of blasting, or if it appears damage or a safety hazard has occurred as the result of blasting, the department shall perform 1 or more of the following:
(A) continue to conduct its own tests;
(B) conduct additional investigations, including, but not limited to, geologic structure, frequency, and delay sequencing; or
(C) hire a third party consultant to conduct a survey of the blasting operation and, if necessary, structures.
(b) A survey prepared under (a)(ii)(C) above must be conducted by a recognized expert on the forces created by blasting and must document the condition of the structure, any blasting damage, any causes for the damage other than blasting, and whether blasting by the operator exceeded the standards contained in ARM 17.24.159(2)(f)(i), (2)(k)(i) and (2)(o)(iii). Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems must be limited to surface condition and readily available data. Special attention must be given to the condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.
(c) The recognized expert must submit his qualifications to the department for review. At a minimum, the expert must:
(i) have field experience covering at least 5 previous blasting-related projects; and
(ii) provide a brief summary of the number and type of pre-blast and post-blast investigations along with any conclusions or recommendations resulting from those investigations.
(d) The department shall require that a written report of the survey be prepared and signed by the person who conducted the survey. If the report finds that the standards were exceeded or that the blasting caused damage or safety hazard, the report must include recommendations of any special conditions or proposed adjustments to the blasting procedure that should be incorporated into the blasting plan to prevent damage or hazard. The department shall provide a copy of the report to the complainant and the operator.

(4) (a) If the third party investigation demonstrates that the operator exceeded the standards contained in ARM 17.24.159 (2)(f)(i), (2)(k)(i) or (2)(o)(iii), or that the damages or a hazard resulted from blasting by the operator,

the operator shall reimburse the department for all reasonable fees and expenses it has paid to the third-party consultant

(b) The operator may file a response, including proposed mitigation measures, to the written report submitted pursuant to (3)(d) of this rule within 15 days from receipt of the report.

(c) The department shall respond to the operator in a timely manner with directives and fees for all reasonable expenses incurred in the third-party investigations.

§17.24.159 BLASTING OPERATIONS: ORDERS OF THE DEPARTMENT

(1) If it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by blasting associated with exploration or mining activities by an operator, the department shall issue an order. In the event the order is not complied with, the department shall implement noncompliance procedures. The order must impose requirements reasonably necessary to prevent property damage or safety hazards.

(2) The department may require as many of the following requirements as are reasonably necessary for this purpose:

(a) Each operator shall comply with all applicable state and federal laws in the use of explosives.

(b) All blasting operations must be conducted by experienced, trained, and competent persons who understand the hazards involved.

(c) A record of each blast occurring over a period to be determined by the department, including seismograph records, must be prepared and retained for at least 3 years and must be available for inspection by the department on request. Blasting records must be accurate and completed in a timely fashion. The records must contain the following data:

(i) name of the operator conducting the blast;

(ii) location, date, and time of the blast;

(iii) name, signature, and, if applicable, license number and appropriate certification program name of blaster-in-charge;

(iv) direction and distance, in feet, to the nearest inhabited building or structure either:

(A) not located in the permit area; or

(B) not owned nor leased by the person who conducts the mining activities;

(v) weather conditions, including temperature, wind direction and approximate wind velocity;

(vi) type of material blasted;

(vii) number of holes, burden, and spacing;

(viii) diameter and depth of holes;

(ix) types of explosives used;

(x) total weight of explosives used;

(xi) maximum weight of explosives detonated within any 8-millisecond period;

(xii) maximum number of holes detonated within any 8-millisecond period;

(xiii) initiation system;

(iv) type and length of stemming;

(xv) mats or other protections used;

(xvi) type of delay detonator and delay periods used;

(xvii) sketch of the delay pattern;

(xviii) number of persons in the blasting crew;

(xix) seismographic and air blast records, where required, including:

(A) the calibration signal of the gain setting or certification of annual calibration;

(B) seismographic reading, including exact location of seismograph and its distance from the blast, air blast reading, dates and times of readings;

(C) name of the person taking the seismograph reading; and

(D) name of the person and firm analyzing the seismographic record.

(d) When blasting is conducted in an area where access is not restricted, warning and all-clear signals of different character that are audible at all points within a range of 1/2 mile from the point of the blast must be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area must be notified of the meaning of the signals through appropriate instructions. These instructions must be periodically delivered or otherwise communicated in a manner that can be reasonably expected to inform such persons of the meaning of the signals.

(e) Blasting must not eject fly rock off property controlled by the operator. Access to the blasting area and to areas where blasting effects, such as fly rock, occur, must be controlled by methods such as signs and fencing to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the operator has reasonably determined:

(i) that no unusual circumstances, such as imminent slides or un-detonated charges, exist; and

(ii) that access to and travel in or through the area can be safely resumed.

(f) (i) Air-blast must be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial, public, or institutional structure, unless the structure is owned by the operator and is not leased to any other person. If a building owned by the operator is leased to another person, the lessee may sign a waiver relieving the operator from meeting the air-blast limitations of this section.

Lower Frequency limit of Measuring system, Hertz (Hz)(+3dB)	Maximum level in decibels (dB)
0.1 Hz or lower – flat response	134 peak
2 Hz or lower – flat response	133 peak
6 Hz or lower – flat response	129 peak
C-weighted – slow response	105 peak dBC

If necessary to prevent damage based upon the consultant's report, the department shall specify lower maximum allowable air-blast levels than those above.

(ii) In all cases, except the C-weighted, slow-response system, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted system must be measured with a Type 1 sound level meter that meets the standard American national standards institute (ANSI) 81.4-1971 specifications. These specifications are hereby incorporated by reference. Copies of this publication are on file with the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(iii) The operator may satisfy the provisions of this subsection by meeting any of the 4 specifications in the chart in (i) above.

(iv) The operator shall conduct periodic monitoring to ensure compliance with the air-blast standards. The department may require an air-blast measurement of any or all blasts, and may specify the location of such measurements, except as noted in (i) above.

(g) When ever the standards contained in (k)(i) and (o)(iii) below have been exceeded, or whenever, based upon the consultant's report, it has been determined to be necessary to protect public safety or property, the department may require modification of blasting activities to protect:

(i) public, private or institution building, including any dwelling, school, church, hospital, or nursing facility; and

(ii) facilities including, but not limited to, disposal wells, petroleum or gas storage facilities, municipal water storage facilities, fluid transmission pipelines, gas or oil collection lines, or water and sewage lines or any active or abandoned underground mine.

(h) A blast design, including measures to protect the facilities in (g) above must be submitted to the department prior to continued blasting.

(i) Fly rock, including blasted material traveling along the ground, must not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under (e) above.

(j) Blasting must be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(k) (i) In all blasting operations, except as otherwise authorized in this subsection, the maximum peak particle velocity must not exceed the following limits at the location of any dwelling, public building, school, church, or commercial, public, or institutional structure:

Distance (D) from the peak blasting site, in feet	Maximum allowable particle velocity (V max) for ground vibration, in inches/second	Scaled-distance factor to be applied without seismic monitoring (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

(ii) Peak particle velocities must be recorded in 3 mutually perpendicular directions. The maximum peak particle velocity is the largest of any of the 3 measurements.

(iii) The department shall reduce the maximum peak velocity allowed if a lower standard is required, based upon the consultant's report, to prevent damage or to protect public safety because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.

(l) If blasting is conducted in such a manner as to avoid adverse impacts on any underground mine and changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of (k) above does not apply at the following locations:

(i) at structures owned by the operator and not leased to another party; and

(ii) at structures owned by the operator and leased to another party, if a written waiver by the lessee is submitted to the department prior to blasting.

(m) An equation for determining the maximum weight of explosives that can be detonated within any 8-millisecond period is in (n) below. If the blasting is conducted in accordance with this equation, the peak particle velocity is deemed to be within the limits specified in (k) above.

(n) The maximum weight of explosives to be detonated within any 8-millisecond period may be determined by the formula:

W=(D/Ds)2 where W=the maximum weight of explosives, in pounds, that can be detonated in any 8-millisecond period; D=the distance, in feet, from the blast to the nearest public building or structure, dwelling, school, church, or commercial or institutional building or structure, except as noted in (I) above; and Ds=the scaled distance factor, using the values identified in (k) above.

(o) (i) Whenever a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limits of (k) above are not exceeded, the equation in (n) above need not be used. If that equation is not used by the operator, a seismograph record must be obtained for each shot.

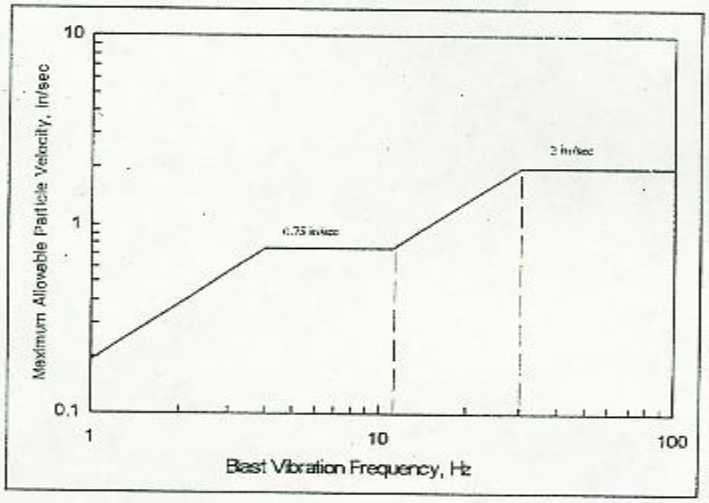
(ii) The use of a modified equation to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the department, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. The

department may not approve the use of a modified equation if the peak particle velocity for the limits specified in (k) above are exceeded, meeting a 95% statistical confidence level.

(iii) The operator may use the ground vibration limits in Figure 1 (30 CFR 816.67(d)(4)) as an alternative to (i) and (ii) above, upon approval by the department.

(iv) The department may require a seismograph record of any or all blasts and may specify the location at which the measurements are to be taken.

Figure 1: Blasting Level Chart



APPENDIX D: Drill Hole Plugging Information & Schematics

The next few pages contain drill hole plugging schematics for a variety of common situations encountered during exploration drilling. They are included in this manual for informational purposes. The Montana DEQ recognizes the fact that many situations are unique and require modifications to standard drill hole plugging procedures.

The primary purpose of the various drill hole-plugging requirements is to protect groundwater quality, and the mixing of aquifers. Secondary purposes include human and animal safety. A little common sense goes a long way when overseeing a drilling program.

If you run into any problems during the course of your drilling operation, feel free to contact the **DEQ's Environmental Management Bureau at 406-444-4953.** There's a good chance that we may be able to assist you, while keeping you in compliance with the **Montana Water Quality Act** as well as other applicable state and federal laws.

Table D-1: Drill Hole Sizes & Volumes Table

Hole Diameter (Inches)	Hole Volume (ft^3/foot)	Pounds of Material to Fill One Linear Foot	Feet Filled by One 50 lb. Bag	# Bags to Fill 100 Feet
3.5	0.067	4.8	10.4	9.6
5.5	0.165	11.9	4.2	23.8
10.0	0.545	39.2	1.3	78.4

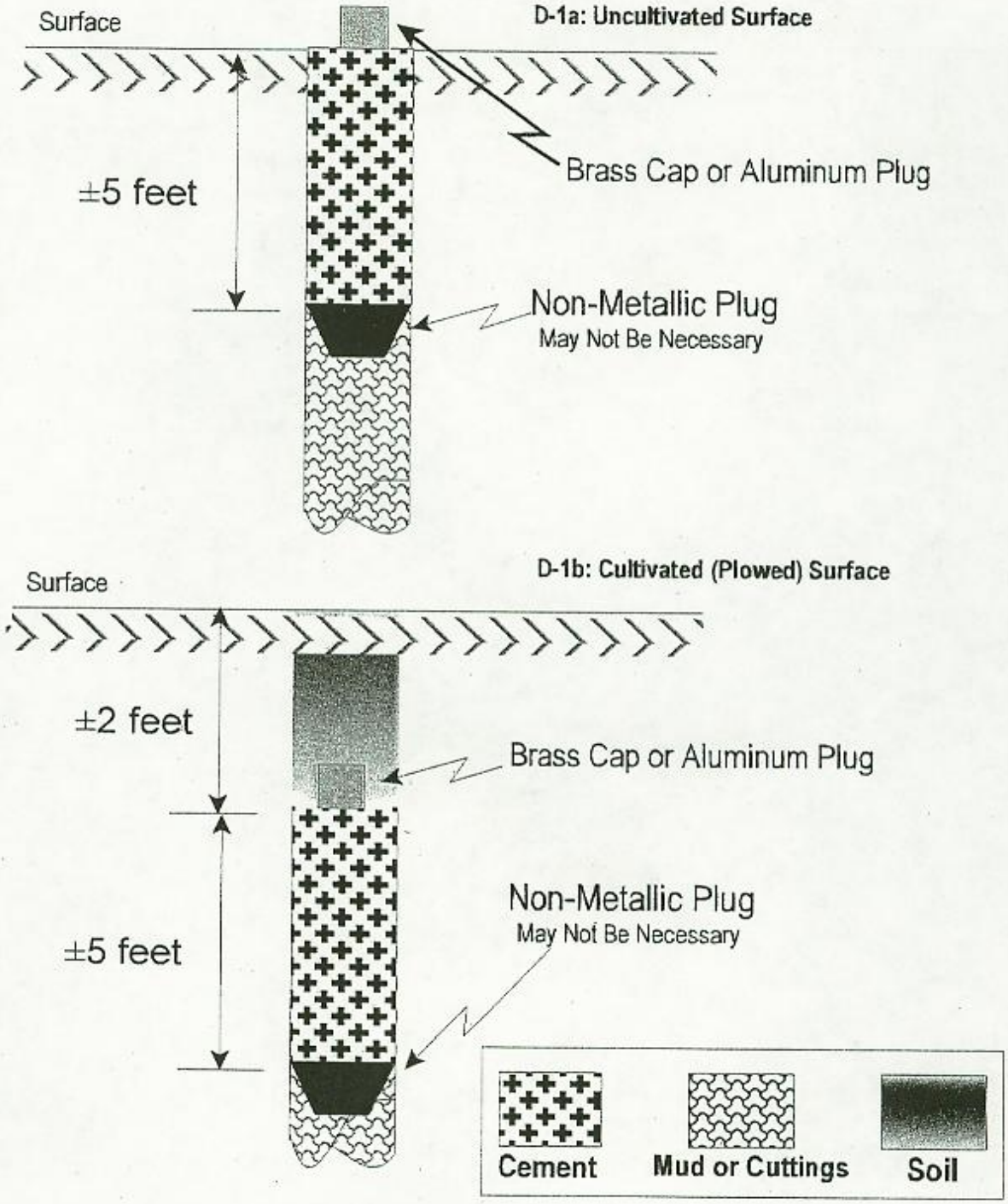


Figure D-1: Drill Hole Surface Plugging

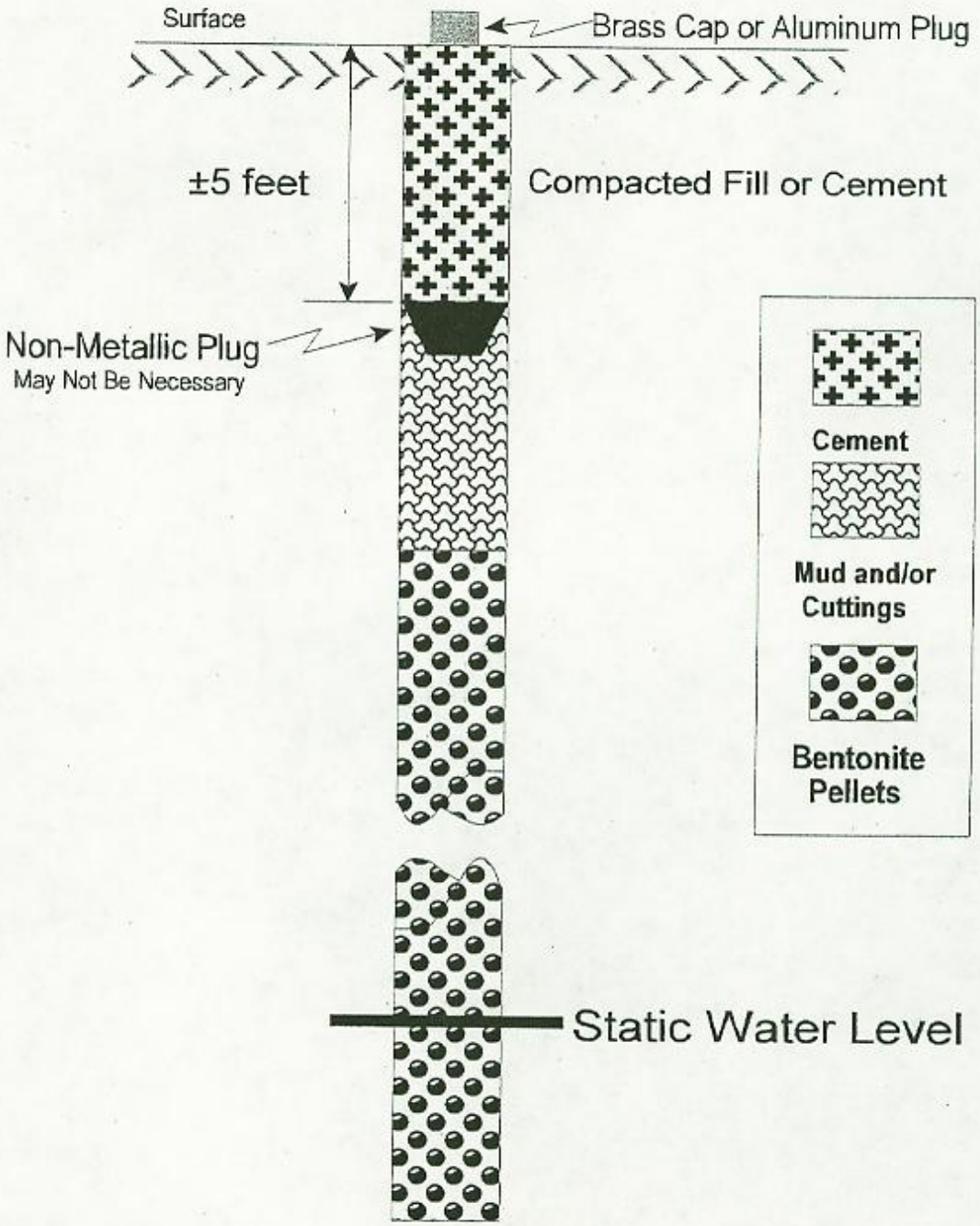


Figure D-2: Drill Hole Plugging When Static Water Encountered

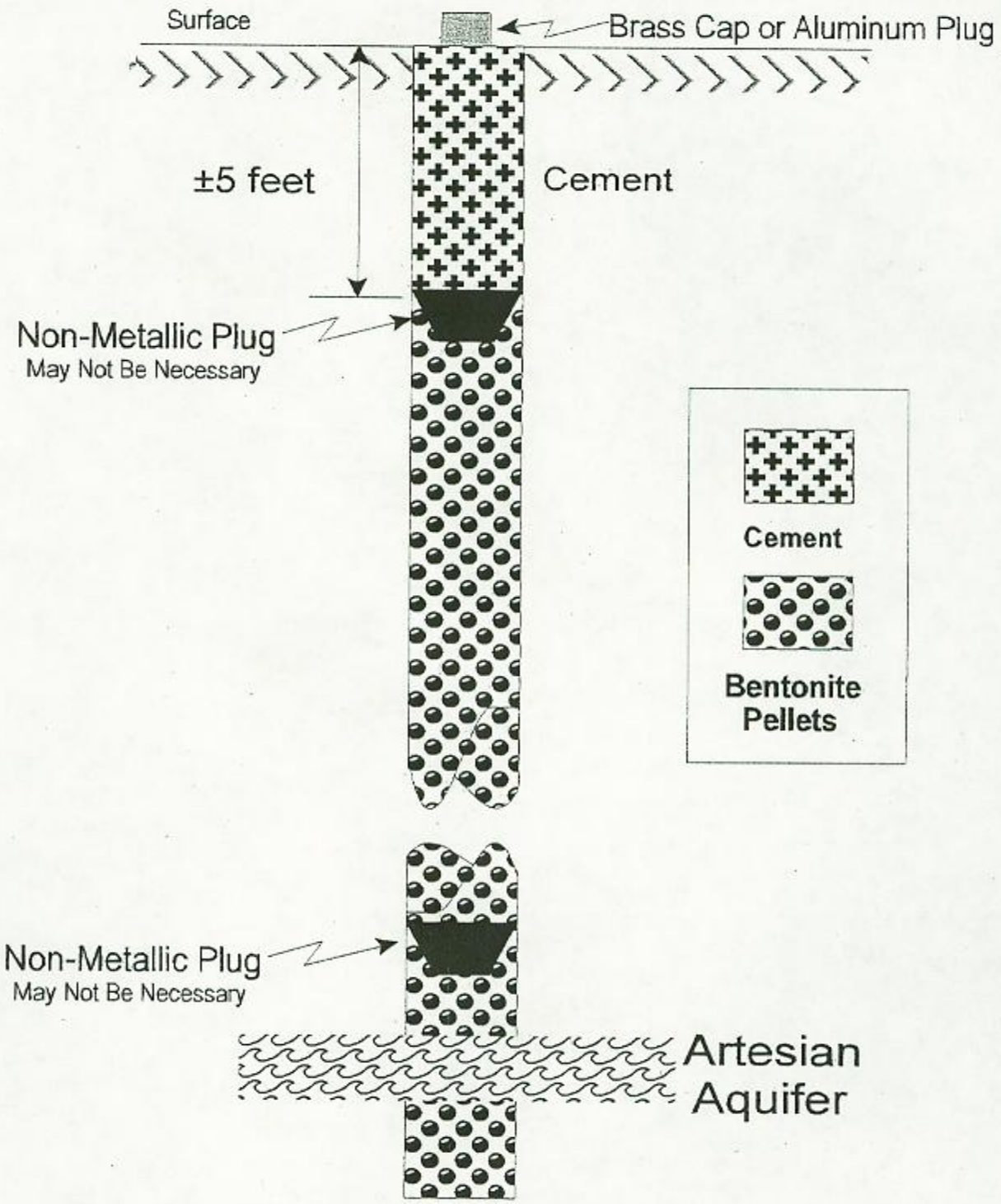


Figure D-3: Drill Hole Plugging When Artesian Aquifer Encountered

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82-4-301. Legislative intent and findings. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201; amd. Sec. 31, Ch. 361, L. 2003.

82-4-302. Purpose. (1) The purposes of this part are to:

(a) fulfill the responsibilities and exercise the powers delegated by Article IX, section 1(3) and 2(1) of the Montana constitution;

(b) allow mining as an activity beneficial to the economy of Montana;

(c) allow the production of minerals to meet the needs of society and the economic demands of the marketplace;

(d) provide for reclamation that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands;

(e) provide for reclamation that affords some utility to humans or the environment;

(f) prevent foreclosure of future access to mineral resources not fully developed by current mining operations;

(g) mitigate or prevent undesirable offsite environmental impacts; and

(h) provide authority for cooperation between private and governmental entities in carrying this part into effect.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202; amd. Sec. 1, Ch. 7, Sp. L. May 2000.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

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

(4) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

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

(7) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(8) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(9) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(10) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.

(11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(12) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(13) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(15) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation, which may

include use of the land as an industrial site not necessarily related to mining;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

(17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (17)(c) of this section, and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(18) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(19) (a) "Surface mining" means all or any part of the process involved in mining of minerals

by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(20) "Underground mining" means all methods of mining other than surface mining.

(21) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 39, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1979; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985; amd. Sec. 1, Ch. 93, L. 1989; amd. Sec. 1, Ch. 346, L. 1989; amd. Sec. 1, Ch. 347, L. 1989; amd. Sec. 1, Ch. 283, L. 1991; amd. Sec. 1, Ch. 637, L. 1991; amd. Sec. 4, Ch. 472, L. 1993; amd. Sec. 380, Ch. 418, L. 1995; amd. Sec. 1, Ch. 272, L. 1997; amd. Sec. 1, Ch. 507, L. 1999; amd. Sec. 1, Ch. 488, L. 2001; amd. Sec. 1, Ch. 365, L. 2003; amd. Sec. 1, Ch. 63, L. 2005; amd. Sec. 1, Ch. 410, L. 2011.

82-4-304. Exemption -- works performed prior to promulgation of rules. This part is not applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1979; amd. Sec. 2, Ch. 453, L. 1985; amd. Sec. 1, Ch. 204, L. 1995.

82-4-305. Exemption -- small miners -- written agreement. (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land

disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed $10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by

certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(17)(a)(i) and (17)(a)(ii).

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in 82-4-303(17)(a)(i) and (17)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner

has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 281, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985; amd. Sec. 2, Ch. 93, L. 1989; amd. Sec. 2, Ch. 346, L. 1989; amd. Sec. 2, Ch. 347, L. 1989; amd. Sec. 2, Ch. 637, L. 1991; amd. Sec. 1, Ch. 598, L. 1993; amd. Sec. 1, Ch. 329, L. 1995; amd. Sec. 2, Ch. 272, L. 1997; amd. Sec. 2, Ch. 507, L. 1999; amd. Sec. 2, Ch. 63, L. 2005; amd. Sec. 1, Ch. 505, L. 2005; amd. Sec. 2, Ch. 410, L. 2011.

82-4-306. Confidentiality of application information. (1) Except as provided in subsections (2) and (3), the information obtained by the department from applications for exploration licenses and the information obtained from small miners is confidential between the department and the applicant, except for the name of the applicant and the county of proposed operation. However, all activities conducted subsequent to exploration and other associated facilities are public information and must be conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the department or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the department from exploration license applications and from small miners and that is related to the exploration or mining on state and federal lands when the information identifies the location of exploration and mining activities and describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000.

History: En. Sec. 21, Ch. 252, L. 1971; amd. Sec. 1, Ch. 37, L. 1975; R.C.M. 1947, 50-1221; amd. Sec. 193, Ch. 575, L. 1981; amd. Sec. 3, Ch. 637, L. 1991; amd. Sec. 381, Ch. 418, L. 1995.

82-4-307. Review of existing files. Existing departmental files shall be reviewed, and their contents shall be segregated and available for public inspection to the same extent as new files under 82-4-306.

History: En. 50-1221.1 by Sec. 2, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.1.

82-4-308. Release by waiver. An applicant may release the department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department.

History: En. 50-1221.2 by Sec. 3, Ch. 37, L. 1975; R.C.M. 1947, 50-1221.2; amd. Sec. 382, Ch. 418, L. 1995.

82-4-309. Exemption -- operations on federal lands. This part shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land impose controls for reclamation of said lands substantially equal to or greater than those imposed by this part.

History: En. Sec. 23, Ch. 252, L. 1971; R.C.M. 1947, 50-1223.

82-4-310. Exemption -- scale and type of activity. (1) A person is exempt from this part when the person is engaging in a mining activity that does not:

(a) use motorized excavating equipment;

(b) use blasting agents;

(c) disturb more than 100 square feet or 50 cubic yards of material at any site;

(d) leave unreclaimed sites that are less than 1 mile apart;

(e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or

(f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

(a) the dredge in use has an intake of 4 inches in diameter or less;

(b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and

(c) the person has obtained for the activity:

(i) project approval pursuant to Title 75, chapter 7, part 1; and

(ii) a discharge permit issued pursuant to 75-5-402 and has paid the applicable fee provided in 75-5-516(12).

(3) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1).

History: En. Sec. 24, Ch. 252, L. 1971; R.C.M. 1947, 50-1224; amd. Sec. 3, Ch. 272, L. 1997; amd. Sec. 3, Ch. 507, L. 1999; amd. Sec. 3, Ch. 468, L. 2003.

82-4-311. Disposition of fees, fines, penalties, and other uncleared money. All fees, fines, penalties, and other uncleared money that has been or will be paid to the department under the provisions of this part must be placed in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

History: En. 50-1227 by Sec. 1, Ch. 29, L. 1977; R.C.M. 1947, 50-1227; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 383, Ch. 418, L. 1995; amd. Sec. 4, Ch. 338, L. 2001.

82-4-312. Hard-rock mining reclamation debt service fund. (1) There is a hard-rock mining reclamation debt service fund within the debt service fund type established in 17-2-102.

(2) The state pledges, allocates, and directs to be credited to the hard-rock mining reclamation debt service fund money from the metalliferous mines license tax, as provided in 15-37-117.

(3) Money in the hard-rock mining reclamation debt service fund that is in excess of the amount needed to satisfy the annual principal and interest payment requirements in 82-4-313 must be transferred to the hard-rock mining reclamation special revenue account created in 82-4-315.

History: En. Sec. 1, Ch. 460, L. 2001.

82-4-313. Hard-rock mining reclamation bonds. (1) When authorized by the legislature and within the limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell hard-rock mining reclamation bonds of the state in the amount and manner that it considers necessary and proper to finance legally required

reclamation, operation, and maintenance at hard-rock mines upon certification by the director of the department that the reclamation, operation, or maintenance would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of hard-rock mining reclamation bonds may be issued by the board of examiners upon request of the department, at public or private sale, in the denominations and forms, whether payable to the bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from the date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of hard-rock mining reclamation bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the hard-rock mining reclamation debt service fund created in 82-4-312 will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hard-rock mining reclamation special revenue account created in 82-4-315.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members.

History: En. Sec. 2, Ch. 460, L. 2001.

82-4-314. Authorization for sale of hard-rock mining reclamation bonds. The board of examiners is authorized to issue and sell hard-rock mining reclamation general obligation bonds in an amount not exceeding $8 million upon the request of the department, as provided for in 82-4-313. Proceeds of the bonds or notes are allocated to the hard-rock mining reclamation special revenue account provided for in 82-4-315 to fund:

(1) legally required reclamation, operation, and maintenance at hard-rock mines that would

otherwise not occur when the director of the department determines that there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient; and

(2) the costs of issuing the bonds or notes.

History: En. Sec. 3, Ch. 460, L. 2001.

82-4-315. Hard-rock mining reclamation special revenue account. (1) There is a hard-rock mining reclamation special revenue account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenue from the sale of hard-rock mining reclamation bonds issued by the board of examiners pursuant to 82-4-313 and 82-4-314;

(b) interest income earned on the account; and

(c) excess money transferred from the hard-rock mining reclamation debt service fund as described in 82-4-312.

(2) Funds may be appropriated from the hard-rock mining reclamation special revenue account for the following purposes only:

(a) state costs of implementing legally required reclamation, operation, and maintenance at hard-rock mines that would otherwise not occur because there is no likelihood of getting additional funds from the mine operator and the available surety bond is insufficient;

(b) state costs of implementing legally required reclamation, operation, and maintenance neither eligible for nor reasonably expected to be reimbursed from other federal or private funds; and

(c) state costs related to the implementation of 82-4-312 through 82-4-315.

History: En. Sec. 4, Ch. 460, L. 2001.

82-4-316 through 82-4-320 reserved.

82-4-321. Administration. The department is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The department shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors.

History: En. Sec. 4, Ch. 252, L. 1971; amd. Sec. 2, Ch. 281, L. 1974; R.C.M. 1947, 50-1204; amd. Sec. 384, Ch. 418, L. 1995.

82-4-322. Investigations, research, and experiments. The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining.

History: En. Sec. 5, Ch. 252, L. 1971; R.C.M. 1947, 50-1205; amd. Sec. 385, Ch. 418, L. 1995.

82-4-323. Interagency cooperation -- receipt and expenditure of funds. The department shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the

department requests that they provide. The department may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336.

History: En. Sec. 6, Ch. 252, L. 1971; R.C.M. 1947, 50-1206; amd. Sec. 386, Ch. 418, L. 1995.

82-4-324 through 82-4-330 reserved.

82-4-331. Exploration license required -- employees included -- limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from the date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a $25 renewal fee. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of the abatement.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(part); amd. Sec. 3, Ch. 588, L. 1979; amd. Sec. 3, Ch. 93, L. 1989; amd. Sec. 2, Ch. 598, L. 1993; amd. Sec. 387, Ch. 418, L. 1995; amd. Sec. 3, Ch. 488, L. 2001.

82-4-332. Exploration license. (1) An exploration license must be issued to any applicant who:

(a) pays a fee of $100 to the department;

(b) agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the department;

(c) is not in default of any other reclamation obligation under this law.

(2) An application for an exploration license must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The board shall by rule determine the precise nature of the exploration map or sketch. The applicant shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(2); amd. Sec. 5, Ch. 201, L. 1979; amd. Sec. 4, Ch. 588, L. 1979; amd. Sec. 2, Ch. 137, L. 1991; amd. Sec. 388, Ch. 418, L. 1995; amd. Sec. 4, Ch. 488, L. 2001.

82-4-333. Repealed. Sec. 8, Ch. 588, L. 1979.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(3), (4).

82-4-334. Exception -- geological phenomena. Upon proper application by the holder of an exploration license, the department may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made.

History: En. Sec. 7, Ch. 252, L. 1971; amd. Sec. 3, Ch. 281, L. 1974; R.C.M. 1947, 50-1207(6); amd. Sec. 5, Ch. 588, L. 1979; amd. Sec. 389, Ch. 418, L. 1995.

82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the

landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

(3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

(5) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) the name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; and

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(9) A person may not be issued an operating permit if:

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment

pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305; or

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

History: En. Sec. 8, Ch. 252, L. 1971; amd. Sec. 4, Ch. 281, L. 1974; R.C.M. 1947, 50-1208; amd. Sec. 6, Ch. 588, L. 1979; amd. Sec. 13, Ch. 617, L. 1981; amd. Sec. 1, Ch. 489, L. 1983; amd. Sec. 1, Ch. 345, L. 1985; amd. Sec. 3, Ch. 453, L. 1985; amd. Sec. 2, Ch. 582, L. 1985; amd. Sec. 1, Ch. 311, L. 1987; amd. Sec. 4, Ch. 93, L. 1989; amd. Sec. 3, Ch. 347, L. 1989; amd. Sec. 4, Ch. 227, L. 1991; amd. Sec. 1, Ch. 403, L. 1991; amd. Sec. 4, Ch. 637, L. 1991; amd. Sec. 3, Ch. 598, L. 1993; amd. Sec. 390, Ch. 418, L. 1995; amd. Sec. 4, Ch. 507, L. 1999; amd. Sec. 5, Ch. 488, L. 2001; amd. Sec. 2, Ch. 365, L. 2003; amd. Sec. 3, Ch. 63, L. 2005; amd. Sec. 1, Ch. 145, L. 2011; amd. Sec. 3, Ch. 410, L. 2011.

82-4-336. Reclamation plan and specific reclamation requirements. (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive

solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to

minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

History: En. Sec. 9, Ch. 252, L. 1971; amd. Sec. 5, Ch. 281, L. 1974; amd. Sec. 14, Ch. 39, L. 1977; R.C.M. 1947, 50-1209; amd. Sec. 2, Ch. 345, L. 1985; amd. Sec. 4, Ch. 453, L. 1985; amd. Sec. 391, Ch. 418, L. 1995; amd. Sec. 1, Ch. 464, L. 1995; amd. Sec. 2, Ch. 7, Sp. L. May 2000; amd. Sec. 3, Ch. 365, L. 2003; amd. Sec. 1, Ch. 459, L. 2003.

82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision. (1) (a) The department shall review all applications for operating permits for completeness and compliance with the requirements of this part and rules adopted pursuant to this part within 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial notice must note all deficiency issues, and the department may not in a later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department shall notify the applicant concerning completeness and compliance as soon as possible. An application is considered complete and compliant unless the applicant is notified of deficiencies within the appropriate review period.

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; and

(iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified that there are deficiencies or inadequacies in the application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(h) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(h) Except as provided in subsection (1)(g), a final permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(10);

(iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

(i) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and, for a stipulation imposed in the final permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(h)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

(3) The final operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the department as provided in this part.

(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has

the authority to address them under the provisions of this part.

(5) (a) The modification of a final operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to comply with the requirements of existing law as interpreted by a court of competent jurisdiction must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(1), (2); amd. Sec. 7, Ch. 588, L. 1979; amd. Sec. 5, Ch. 453, L. 1985; amd. Sec. 5, Ch. 637, L. 1991; amd. Sec. 5, Ch. 472, L. 1993; amd. Sec. 4, Ch. 598, L. 1993; (4) thru (7)En. Sec. 5, Ch. 598, L. 1993; amd. Sec. 2, Ch. 204, L. 1995; amd. Sec. 392, Ch. 418, L. 1995; amd. Sec. 295, Ch. 42, L. 1997; amd. Sec. 12, Ch. 299, L. 2001; amd. Sec. 1, Ch. 287, L. 2003; amd. Sec. 4, Ch. 63, L. 2005; amd. Sec. 15, Ch. 337, L. 2005; amd. Sec. 4, Ch. 410, L. 2011.

82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with

a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the

increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

(4) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

(6) Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably foreseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists or that there is a reasonable probability that a violation of water quality standards will occur, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(c) An approved interim amended reclamation plan and interim bond must remain in effect

until the earlier of:

(i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for the revised reclamation plan is submitted and accepted pursuant to this section; or

(ii) 2 years following the date of submission of a complete application pursuant to 82-4-337 to modify the reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless the department approves or denies the complete application within 2 years of submission. The applicant may agree to an extension of this deadline.

(d) Except as provided in subsection (8), the process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

(8) (a) In determining whether to require amendment of a reclamation plan under subsection (7)(a), the department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan that may eliminate or mitigate to an acceptable level the environmental condition. The analysis must include an assessment of the effectiveness of the changes and any potential negative environmental impacts of the changes. The department shall prepare an environmental impact statement pursuant to Title 75, chapter 1, only if the department determines that the changes would not mitigate the condition to an acceptable level or may have potentially significant negative environmental impacts.

(b) If the department determines that preparation of an environmental impact statement is necessary, the permittee shall pay the department's costs pursuant to 75-1-205.

(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection (10)(a), the department may forfeit additional amounts under the procedure provided in subsection (10)(a).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection (10) and not used by the department to abate the imminent danger. The amount not returned to the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection (10)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department.

History: En. Sec. 11, Ch. 252, L. 1971; amd. Sec. 7, Ch. 281, L. 1974; R.C.M. 1947, 50-1211; amd. Sec. 3, Ch. 345, L. 1985; amd. Sec. 6, Ch. 637, L. 1991; amd. Sec. 6, Ch. 598, L. 1993; amd. Sec. 1, Ch. 395, L. 1995; amd. Sec. 393, Ch. 418, L. 1995; amd. Sec. 5, Ch. 507, L. 1999; amd. Sec. 11, Ch. 79, L. 2001; amd. Sec. 6, Ch. 488, L. 2001; amd. Sec. 1, Ch. 32, L. 2005; amd. Sec. 1, Ch. 269, L. 2007.

82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by rules of the board and each year after that date until reclamation is completed and approved, the permittee shall pay the annual fee of $100 and shall file a report of activities completed during the preceding year on a form prescribed by the department. The report must:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(5)(a); and

(f) update any maps previously submitted or specifically requested by the department. The maps must show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located.

History: En. Sec. 12, Ch. 252, L. 1971; R.C.M. 1947, 50-1212; amd. Sec. 3, Ch. 582, L. 1985; amd. Sec. 5, Ch. 227, L. 1991; amd. Sec. 7, Ch. 637, L. 1991; amd. Sec. 394, Ch. 418, L. 1995; amd. Sec. 7, Ch. 488, L. 2001; amd. Sec. 5, Ch. 63, L. 2005.

82-4-340. Successor operator. When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the department may release the

first operator from the duties imposed upon the operator by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part.

History: En. Sec. 10, Ch. 252, L. 1971; amd. Sec. 6, Ch. 281, L. 1974; amd. Sec. 1, Ch. 427, L. 1977; R.C.M. 1947, 50-1210(3); amd. Sec. 6, Ch. 453, L. 1985; amd. Sec. 395, Ch. 418, L. 1995.

82-4-341. Compliance -- reclamation by department. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan or as required pursuant to subsection (8). Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in 82-4-336 and in this section for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable after notice and hearing, the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The department shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety by certified mail. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands according to the existing reclamation plan or a modified reclamation plan if the department makes a written finding that the modifications are necessary to prevent a violation of Title 75, chapter 2 or 5, or to prevent a substantial reclamation failure. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive bidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the

state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return to the surety any amount not expended, including any unexpended interest accrued on bond proceeds, unless otherwise agreed to in writing by the surety.

(7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation.

History: En. Sec. 13, Ch. 252, L. 1971; amd. Sec. 8, Ch. 281, L. 1974; R.C.M. 1947, 50-1213; amd. Sec. 3, Ch. 204, L. 1995; amd. Sec. 396, Ch. 418, L. 1995; amd. Sec. 6, Ch. 507, L. 1999; amd. Sec. 8, Ch. 488, L. 2001.

82-4-342. Amendment to operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

(i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;

(ii) evidence is submitted showing that a local government has requested retention of the mine- related facilities for a postmining use; and

(iii) the postmining use of the mine-related facilities meets the requirements provided for in

82-4-336.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action and permit revisions:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g); and

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use.

History: En. Sec. 3, Ch. 472, L. 1993; amd. Sec. 397, Ch. 418, L. 1995; amd. Sec. 4, Ch. 365, L. 2003; amd. Sec. 5, Ch. 410, L. 2011.

82-4-343 through 82-4-348 reserved.

82-4-349. Limitations of actions -- venue. (1) Legal actions seeking review of a department decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made. Summons must be issued and process served on all defendants within 60 days after the action is filed.

(2) An action to challenge the issuance of a license or permit pursuant to this part must be brought in the county in which the exploration or permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the exploration or activity is proposed to occur.

(3) A judicial challenge to an exploration license or operating permit issued pursuant to this part by a party other than the license or permitholder or applicant must include the party to

whom the license or permit was issued unless otherwise agreed to by the license or permitholder or applicant. All judicial challenges of licenses or permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 1, Ch. 472, L. 1993; amd. Sec. 398, Ch. 418, L. 1995; amd. Sec. 7, Ch. 507, L. 1999; amd. Sec. 32, Ch. 361, L. 2003; amd. Sec. 16, Ch. 337, L. 2005.

82-4-350. Award of costs and attorney fees. When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

History: En. Sec. 2, Ch. 472, L. 1993.

82-4-351. Reasons for denial of permit. (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

History: En. Sec. 14, Ch. 252, L. 1971; R.C.M. 1947, 50-1214; amd. Sec. 1, Ch. 174, L. 1979; amd. Sec. 7, Ch. 453, L. 1985; amd. Sec. 6, Ch. 472, L. 1993.

82-4-352. Reapplication with new reclamation plan. A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the department a new plan for reclamation.

History: En. Sec. 15, Ch. 252, L. 1971; R.C.M. 1947, 50-1215; amd. Sec. 399, Ch. 418, L. 1995.

82-4-353. Administrative remedies -- notice -- appeals -- parties. (1) Upon receipt of an application for an operating permit, the department shall provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice must be published once a week for 3 successive weeks.

(2) An applicant for a permit or license or for an amendment or revision to a permit or license may request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of receipt of written notice of the denial. The request must state the reason that the hearing is requested.

(3) All hearings and appeals under 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8), 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that the person is capable of adequately representing the interests claimed.

(4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity.

History: En. Sec. 16, Ch. 252, L. 1971; amd. Sec. 9, Ch. 281, L. 1974; amd. Sec. 1, Ch. 313, L. 1975; amd. Sec. 2, Ch. 427, L. 1977; R.C.M. 1947, 50-1216; amd. Sec. 12, Ch. 79, L. 2001; amd. Sec. 6, Ch. 410, L. 2011.

82-4-354. Mandamus to compel enforcement. (1) A person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to the attention of the public officer or employee by an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform the duties. If the officer or employee fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) A person having an interest that is or may be adversely affected may commence a civil action to compel compliance with this part against a person for the violation of this part or any rule, order, or permit issued under it. However, an action may not be commenced:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it. A person having an interest that is or may be adversely affected may intervene as a matter of right in the civil action.

(4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district.

(5) Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief.

History: En. Sec. 4, Ch. 345, L. 1985; amd. Sec. 1, Ch. 535, L. 1997.

82-4-355. Action for damages to water supply -- replacement. (1) An owner of an interest in real property who obtains all or part of the owner's supply of water for beneficial uses, as defined in 85-2-102, from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue the operator engaged in an operation for which

a license is required pursuant to 82-4-332 or for which a permit is required pursuant to 82-4-335 to recover damages for loss in quality or quantity of the water supply resulting from mining or exploration. The owner is required to exhaust the administrative remedy under subsection (2) prior to filing suit.

(2) (a) An owner described in subsection (1) may file a complaint with the department detailing the loss in quality or quantity of water. Upon receipt of a valid complaint, the department:

(i) shall investigate the statements and charges in the complaint using all available information, including monitoring data gathered at the exploration or mine site;

(ii) may require the operator, if necessary, to install monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity and quality;

(iii) shall issue a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity and quality;

(iv) shall, if it determines that the preponderance of evidence indicates that the loss is caused by an exploration or mining operation, order the operator, in compliance with Title 85, chapter 2, to provide the needed water immediately on a temporary basis and within a reasonable time replace the water in like quality, quantity, and duration. If the water is not replaced, the department shall order the suspension of the operator's exploration or operating permit until the operator provides substitute water, except that nothing in this section preempts the application of Title 85, chapter 2. The operator may not be required to replace a junior right if the operator's withdrawal or dewatering is not in excess of the operator's senior right.

(b) If the department determines that there is a great potential that surface or subsurface water quality and quantity may be adversely affected by a mining or exploration operation, the operator shall install a water quality monitoring program or a water quantity monitoring program, or both, which must be approved by the department prior to the commencement of exploration or mining.

History: En. Sec. 5, Ch. 345, L. 1985; amd. Sec. 8, Ch. 637, L. 1991; amd. Sec. 2734, Ch. 56, L. 2009.

82-4-356. Action in response to complaints related to use of explosives. (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible

person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

History: En. Sec. 1, Ch. 443, L. 1989.

82-4-357. Abatement of environmental emergencies. (1) Whenever an environmental emergency exists, as determined by the department, at an active, temporarily abandoned, or permanently abandoned exploration, mining, ore processing, or hard-rock mill site, the department may enter the site and may apply for and, if approved by the governor, use the funds in the environmental contingency account created in 75-1-1101 to abate the situation on either a temporary or a permanent basis, or both.

(2) The department may bring an action against the operator to recover the abatement costs in the district court of the first judicial district in Lewis and Clark County. Nothing in this section affects the right of the department to retain or pursue forfeiture of any bond posted pursuant to 82-4-338. Expenditures from the environmental contingency account that are recovered under this subsection must be deposited in the environmental contingency account.

History: En. Sec. 9, Ch. 637, L. 1991.

82-4-358 through 82-4-359 reserved.

82-4-360. When activity prohibited -- exception. (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part, if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the person's surety completed reclamation on the person's behalf.

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under 82-4-305 if:

(a) that person pays to the department:

(i) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for reclamation of the area for which the bond was forfeited;

(ii) the full amount of any penalties assessed under this part; and

(iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and

(b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist.

History: En. Sec. 7, Ch. 93, L. 1989; amd. Sec. 400, Ch. 418, L. 1995; amd. Sec. 296, Ch. 42, L. 1997; amd. Sec. 9, Ch. 488, L. 2001.

82-4-361. Violation -- penalties -- waiver. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend

corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) (a) By issuance of an order pursuant to subsection (6), the department may assess an administrative penalty of not less than $100 or more than $1,000 for each of the following violations and an additional administrative penalty of not less than $100 or more than $1,000 for each day during which the violation continues and may bring an action for an injunction from continuing the violation against:

(i) a person or operator who violates a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation of a provision of this part, a rule adopted or an order issued under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum administrative penalty is $5,000 for each day of violation.

(c) This subsection does not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 for a violation listed in subsection (2)(a) and a penalty of not more than $5,000 for each day that the violation continues.

(4) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(5) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order issued under this part.

(6) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (6)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of the order by mail is complete 3 business days after mailing. If a request for a hearing is submitted, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(7) Legal actions for penalties or injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in the first judicial district, Lewis and Clark County.

History: En. Sec. 22, Ch. 252, L. 1971; amd. Sec. 11, Ch. 281, L. 1974; R.C.M. 1947, 50-1222; amd. Sec. 1, Ch. 284, L. 1985; amd. Sec. 3, Ch. 386, L. 1985; amd. Sec. 5, Ch. 93, L. 1989; amd. Sec. 2, Ch. 283, L. 1991; amd.

Sec. 4, Ch. 204, L. 1995; amd. Sec. 1, Ch. 271, L. 1997; amd. Sec. 4, Ch. 273, L. 1997; amd. Sec. 2, Ch. 535, L. 1997; amd. Sec. 13, Ch. 79, L. 2001; amd. Sec. 2, Ch. 486, L. 2005; amd. Sec. 26, Ch. 487, L. 2005.

82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, of the rules adopted under this part, or of a license or permit has not been complied with, the department shall serve a notice of violation on the licensee or permittee or, if necessary, the director shall order the suspension of the license or permit. A license or permit may also be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The director may order immediate suspension of a license or permit whenever the director finds that a violation of this part, of the rules adopted under this part, or of a license or permit is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served on the licensee or permittee by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of violation or order of suspension must specify the provision of this part, the rules adopted under this part, or the license or permit violated and the facts alleged to constitute the violation and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of violation or order of suspension within the time limits set in the notice or order, the license or permit may be revoked by order of the department and the performance bond forfeited to the department. The notice of violation or order of suspension must state when those measures may be undertaken and must give notice of the opportunity for a hearing before the board. A hearing may be requested by submitting a written request stating the reason for the request to the board within 30 days after receipt of the notice or order. If a hearing is requested within the 30-day period, the license or permit may not be revoked and the bond may not be forfeited until a final decision is made by the board.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the director shall suspend the permit. The director shall reinstate the permit upon compliance.

History: En. 50-1225 by Sec. 12, Ch. 281, L. 1974; R.C.M. 1947, 50-1225; amd. Sec. 2, Ch. 284, L. 1985; amd. Sec. 6, Ch. 93, L. 1989; amd. Sec. 3, Ch. 283, L. 1991; amd. Sec. 7, Ch. 598, L. 1993; amd. Sec. 5, Ch. 204, L. 1995; amd. Sec. 401, Ch. 418, L. 1995; amd. Sec. 14, Ch. 79, L. 2001.

82-4-363 through 82-4-366 reserved.

82-4-367. Long-term or perpetual water treatment permanent trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) funds transferred from the orphan share account pursuant to 75-10-743; and

(b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be

appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

History: En. Sec. 1, Ch. 278, L. 2005.

82-4-368 through 82-4-370 reserved.

82-4-371. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase. A gift or purchase must be approved by the board of land commissioners. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or

prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995; amd. Sec. 2, Ch. 78, L. 2009.

82-4-372. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

82-4-373 through 82-4-389 reserved.

82-4-390. Cyanide heap and vat leach open-pit gold and silver mining prohibited. (1) Open-pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited except as described in subsection (2).

(2) A mine described in this section operating on November 3, 1998, may continue operating under its existing operating permit or any amended permit that is necessary for the continued operation of the mine.

History: En. Sec. 1, I.M. No. 137, approved Nov. 3, 1998; amd. Sec. 1, Ch. 457, L. 1999.

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