

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)
HARD ROCK MINING SECTION (HRM)
RECLAMATION BOND REQUIREMENTS**

If you need to post a reclamation bond with DEQ for hard rock mining activities, please have your Bank or Surety Company call DEQ at 444-4953 to get an electronic copy of the appropriate DEQ-HRM form and to verify the license number covered by this bond. Once the forms have been completed, the forms can be emailed to DEQ-HRM for review prior to mailing the originals (Jean Correia – jcorreia@mt.gov).

For a summary of the hard rock mining bonding requirements, see below.

I. Small Miner Exclusion Statements (SMES)

Per 82-4-305 (3) and (4), Montana Code Annotated (MCA) (below): all small miner exclusion statements conducting placer or dredge operations will be bonded.

(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.

II. Exploration Licenses

Per 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 reclamation and re-vegetation 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.**

Per 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.

III. Operating Permits

Per 82-4-335(1) through 82-4-335(3), MCA, 82-4-337(1)(g), MCA, and 82-4-337(1)(h), MCA, all operating permits will be bonded (below):

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 oreprocessing reagent or other metal leaching solvents or reagents will be used or disposed of.

82-4-337, MCA, Inspection -- issuance of operating permit -- modification, amendment, or revision.

(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;

Per 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.

V. Types of Bonds (Your Bank or Surety Rep will have the details of how these work.)

A. CD (Certificate of Deposit)

1. In addition to the operator or licensee, the CD must be in the name of “State of Montana, Department of Environmental Quality”. [If applicable (i.e. – if your project is located on Federal Land), the CD would include BLM or USFS too.] The operator or licensee must assign its interest in the CD to the Department of Environmental Quality.
2. Must be AUTOMATICALLY renewable.
3. Dollar amount cannot exceed \$250,000 per banking institution. Anything over \$250,000 must be issued by a different/another bank.
4. Bank must be Federal Deposit Insurance Corporation (FDIC) insured.
5. Bank must be licensed to do business in the State of Montana or bank must sign an Addendum to the Assignment designating a Montana business as their Agent for Service of Process.
6. Margin of Value must be added to the total bond to come up with the actual face amount of the CD. The margin of value is the early withdraw penalty charged by the banking institution.

EXAMPLE: If bond amount = \$10,000 and the early withdraw penalty = \$30, then the total face amount of the CD required would be \$10,030. Your banking institution can tell you what the actual penalty amount might be. For variable rates, they need to estimate worse case scenario.

B. Surety

1. In addition to the operator, the Surety must be in the name of “State of Montana, Department of Environmental Quality”. [If applicable (i.e. – if your project is located on Federal land), the Surety would include BLM or USFS too.]
2. Notice must be given to Montana DEQ-HRMB, 60 days prior to cancellation.
3. Surety must be licensed to do business in the state of Montana.
4. Surety must be listed with Montana’s State Auditor’s office.
5. Surety amount cannot exceed 10% of the surety’s capital-surplus.

C. Irrevocable Letter of Credit (LOC)

1. In addition to the operator, the LOC must be in the name of “State of Montana, Department of Environmental Quality”. If applicable it would include BLM or USFS.
2. Must be with a bank that is FDIC insured.

3. Bank must be licensed to do business in the state of Montana.
4. “The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.” 40 CFR § 258.74. (i.e. National or International Banks are regulated by Office of the Comptroller of the Currency at web page occ.treas.gov and we put Charter # in the FDIC field of the form)
5. The amount of LOC cannot exceed 10% of bank’s capital surplus account and is not in excess of 3 times the company’s maximum single obligation.
6. Must be AUTOMATICALLY renewable or notice must be given to Montana DEQ-HRMB 90 days prior to cancellation.

D. Cash: All cash bonds must be accompanied by a W-9 or WBEN (foreign corporations); No exceptions will be made.

Bonds in the form of check, money order, certified or cashier’s check will be accepted. The name on the check must be in the name of the operator, licensee, or small miner. Individuals may not submit a check, money order, certified or cashier’s check when the operating permit or exploration license is issued to a corporation. A W-9 must be submitted in order to be registered as a vendor within the State’s accounting system.

Example:

If corporation (or business) XYZ posts a check as a bond, then the check must be a corporate check or the corporation’s name (or business’s name) must be on the check. If it is a cashier’s check or money order, then the remitter must be the corporation XYZ.

If the operator, licensee, or small miner is an individual, then the check or cash must come from the individual. Checks or cash will not be accepted from other individuals other than the operator, licensee, or small miner. A W-9 must be filled out by the individual licensee.

As stated above, the receipt for the cash will be made out to the licensee and the bond will be returned to the licensee.

DEQ/HRM reserves the right to not accept cash as a bond and may require a check, money order or cashier’s check.

Bonds are not valid until the bond has cleared the State’s accounting system and HRM has been notified.

Bonds are not valid until the assignment forms have been accepted by all the parties involved (DEQ, BLM, USFS, etc.)

All corporations or businesses should be licensed to conduct business in the State of Montana and **must** have a tax ID number issued by the IRS. Foreign corporations must provide a W-8BEN for cash bonds.

All bonds should be accompanied by the proper applicable forms. In the case of cash bonds, this means a completed W-9 in the licensee's name and the proper assignment form (depending upon the landowner). Submitting properly filled out forms will **expedite** processing of the bond.

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