

What Permit Do I Need?

Recreational Mining: 82-4-310(1), MCA; ARM 17.24.101(6).

Recreational Miners are not regulated by the State of Montana provided the miner:

1. Does not use motorized excavating equipment
2. Does not use blasting agents
3. Does not disturb more than 100 sq. ft. of the earth's surface
4. Does not dig more than 50 cubic yards of material at any site
5. Does not leave un-reclaimed sites that are less than 1 mile apart
6. Does not use mercury
7. Does not use cyanide or other metal leaching agents

Recreational Miners may require other local, state, or federal permits.

Small Miner Exclusion Statement (SMES): 82-4-301, et seq., MCA; ARM 17.24.101, et seq.

A SMES is not a permit or a license, but a written agreement attesting that the small miner will follow the conditions of the small miner exclusion statement. Rules applicable to small miners are:

1. A small miner disturbs less than 5 acres of total surface disturbance.
2. A small miner may have 2 total SMES operations that have not been reclaimed. Those operations must be over 1 mile apart at their closest points.
3. Types of SMES activities and commodities may include: open pit, decorative rock, placer, underground, etc.
4. 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
5. SMES are valid for 1 year and can be renewed annually.

SMES operations may require other local, state or federal permits.

Exploration License: 82-4-332, et seq., MCA; ARM 17.24.103, et seq.

An exploration license is intended for exploration operations to determine the feasibility of mining.

1. License applies statewide and can include multiple sites and multiple plans of operation.
2. Often includes drill holes and associated surface disturbance, and exploration trenches, but can also include underground tunnels, adits, and declines.
3. No more than 10,000 short tons of material may be taken for testing from each site under an exploration license.
4. All activity must be bonded, and an environmental review must be conducted for each plan of operation.

Exploration Licenses may require other local, state or federal permits.

Operating Permits: 82-4-301, et seq., MCA; ARM 17.24.101 et seq.

1. Mining operations generally with greater than 5 acres of total surface disturbance, including quarries, roads, processing areas, loadouts, etc...
2. Can cover a single location or multiple quarries
3. All activity must be bonded, and an environmental review must be conducted

Operating Permit will likely require other local, state or federal permits.

State of Montana

Department of Environmental Quality

Small Miner Exclusion Statement

The Small Miner Exclusion Statement (SMES) is administered by the Department of Environmental Quality (DEQ) Mining Bureau (MB). The SMES is not a mining permit but is an exclusion from the requirement to obtain a mining permit. The SMES is a written agreement that a miner signs attesting that they will follow the rules and conditions of the exclusion statement in order to be exempted from obtaining a full mining permit.

The following notes and Frequently Asked Questions are meant to summarize the legal requirements and department policies related to the SMES program. However, this should not be relied upon as a comprehensive list of all legal requirements. Rather, the small miner should refer to the provisions of the Metal Miner Reclamation Act (MMRA) and Administrative Rules of Montana (ARM) to identify all compliance requirements.

SMES Laws and Rules

The following outlines some of the basic framework related to SMES compliance. The list is not comprehensive, so please take some time to read over all of the provisions of state law applicable to the SMES. The MMRA provisions are set forth in Sections 82-4-303(30) and 82-4-305 of the Montana Code Annotated and ARM 17.24.101 through 102, and 17.24.180 through 189.

- Size Limit - Total surface disturbance cannot exceed 5 acres.
 - Disturbance generally includes all land associated with the mining operation such as excavated ground, waste dumps, roads, conveyor systems and load-out areas.
 - Access roads can be bonded and once bonded, that acreage can be deducted from the total disturbed acreage.
- Reclamation - Reclamation is generally not required for SMES sites, with the exception of placer operations. All disturbance associated with a placer operation must be reclaimed within 6 months after cessation of mining.
- Number of SMES per person or company - A small miner may hold up to 2 SMES that disturb up to 5 acres each. A small miner may hold additional SMES after first fully reclaiming an earlier operation.
- SMES Location:
 - SMES held by the same operator must be located at least 1 mile apart.
 - Discontiguous sites are allowed within a 1-mile diameter, provided that they are part of the same operation, and the total disturbance is under 5 acres.
 - SMES may not be located on ground previously operated under an Operating Permit.
 - SMES may not be located on ground previously reclaimed by a public agency.

Getting Started

A SMES agreement must be submitted with an Administrative Fee in accordance with 82-4-305(1) and 82-4-305(12), MCA, for each individual operation. Once a SMES agreement has been submitted to DEQ, the small miner may commence mining activity with the exception of placer and dredge mines. Small miners wishing to placer mine, dredge, or operate a tailings impoundment must first submit a \$10,000 reclamation bond. If the placer/dredge miner or tailings impoundment operator thinks the bond may be calculated at less than \$10,000, a *SMES Placer Addendum* can also be submitted in order for DEQ to calculate an appropriate reclamation bond. Placer/dredge mining and tailings impoundment operation cannot proceed until the reclamation bond has been posted, and DEQ has issued a *Notice of Receipt*.

Annual Renewals

A SMES must be renewed annually by submitting a completed *Annual Renewal* and administrative fee in accordance with 82-4-305(1) and 82-4-305(12), MCA, for each individual operation. If the Small Miner fails to submit the administrative fee before March 1st of the renewal year, the Small Miner must pay a late fee in addition to the administrative fee, in accordance with 82-4-305(1) and 82-4-305(12), MCA. An *Annual Renewal* form, an updated map, and administrative fee must be submitted before mining commences each year. Renewals are valid for the remainder of the calendar year in which they are submitted. Renewals and administrative fees can be submitted to DEQ no earlier than December 1st of the year preceding the calendar year in which it would become valid.

Field Inspections

DEQ or other authorized parties may inspect the site. Small miners operating a tailings impoundment or conducting placer or dredge mining who have completed reclamation must make a formal request to DEQ for release of the associated bond. DEQ will conduct an inspection of the site before determining whether release of the reclamation bond is appropriate. DEQ will typically conduct no more than one reclamation inspection per year at the small miner's request. No reclamation inspections will be scheduled while snow is on the ground as it is not feasible to adequately assess reclamation progress.

Site Status

SMES sites fall into three statuses: *Active*, *Inactive*, and *Closed*. *Active* sites are up to date on annual renewals. *Inactive* sites are not up to date on annual renewals and remain unreclaimed. *Closed* sites are those that have been fully reclaimed, and for placer, dredge, and impoundment sites, the full amount of the reclamation bond has been released.

As stated previously, each small miner may hold up to 2 SMES. Only sites that are categorized as *Closed* do not count against a small miner's 2 allowable SMES. Any site that is categorized as *Active* or *Inactive* is included in the total number of SMES that can be held by a small miner.

Frequently Asked Questions

What mining activities do not require a SMES?

All of the following criteria must be met in order to be categorized as "Recreational Mining", which is not regulated by the State of Montana:

- Does not use motorized excavating equipment
- Does not use blasting agents
- Does not disturb more than 100 sq. ft. of the earth's surface
- Does not dig more than 50 cubic yards of material at any site
- Does not leave unreclaimed sites that are less than 1 mile apart
- Does not use mercury
- Does not use cyanide or other metal leaching agents

Recreational Miners may need other local, state, or federal permits to operate.

Is a SMES required for high banking or suction dredging?

Review the above "Recreational Mining" criteria to determine if your high banking activity may require a SMES. Suction dredging does require a suction dredge permit, which is administered by the DEQ Water Quality division. Please contact the Water Quality Division at (406) 444-5546 to receive the most updated forms.

What mined commodities are regulated by the Mining Bureau?

- Coal and uranium mining are regulated by the Coal Section.
- Sand, gravel, clay, and soil mining is regulated by the DEQ Opencut Section.
- Suction dredging is regulated by the DEQ Water Protection program.

Commodities that are *not* regulated by DEQs Mining Bureau include

- Oil and gas are regulated by the Department of Natural Resources and Conservation (DNRC) Board of Oil and Gas Conservation program.

Does DEQ administer mineral rights or mining claims?

No. Mineral rights and mining claim regulation is a function of the federal Bureau of Land Management (BLM).

I have a permit to mine from the US Forest Service or BLM. Do I also need permission from DEQ?

Yes. DEQ regulates mining activity on state, federal, and private land. DEQ does not regulate mining activity within a reservation boundary.

Do I need a SMES or OP to mine on my own private land?

Yes. DEQ regulates mining activity on state, federal, and private land. DEQ HRMB does not regulate mining activity within a reservation boundary.

Is a SMES or OP from the DEQ Mining Bureau the only permit I need?

Sometimes. While DEQ can provide you with a list of common permits you may also need, it is the responsibility of the miner to know and to obtain all necessary permits before the operation commences.

How much does a SMES cost? How much is the cost to renew my SMES annually?

SMES and SMES renewals must pay an administrative fee in accordance with 82-4-305(1) and 82-4-305(12), MCA.

Whom should I contact if I have questions about the SMES program?

Please email us at DEQSMESandExploration@mt.gov or call (406) 444-6460 to learn more about the program.

State of Montana

Department of Environmental Quality Small Miner Exclusion Statement

Completeness Checklist

- ☐ Signed Written Agreement Form
- ☐ Placer Addendum (if applicable)
- ☐ Map 1 – Overview Map showing project location
- ☐ Map 2 – Detailed Map

THIS MAY NOT BE THE ONLY LICENSE OR PERMIT YOU NEED

State of Montana Permits

310 Permit – For work proposed in streams, wetlands, floodplains, and other water bodies. One joint application form is available to apply for several different Local/State/Federal permits. See: <https://dnrc.mt.gov/licenses-and-permits/stream-permitting/>

Montana Pollutant Discharge Elimination System (MPDES) Permit – for projects that have a surface water discharge. See: <https://deq.mt.gov/water/assistance>

Montana Ground Water Pollution Control System (MGWPCS) Permit – for projects that have a groundwater discharge. See: <https://deq.mt.gov/water/assistance>

Stormwater Pollution Prevention – for projects that have the potential to contribute sediment or pollution to surface waters from surface disturbances as a result of a storm event. See: <https://deq.mt.gov/water/assistance>

Suction Dredge Permit – for projects that utilize a suction dredge. Call: (406) 444-5326

Sage Grouse – In response to Senate Bill 261 and Executive Orders 10-2014 and 12-2015, many DEQ permits and approvals in sage grouse core, general, or connectivity habitat, received on or after January 1, 2016, must include a letter of comment from the Sage Grouse Habitat Conservation Program. See: <https://sagegrouse.mt.gov/>

Federal Authorizations

MSHA – Contact the MSHA field office in Helena. See: <https://www.msha.gov/montana>

USFS – Contact local USFS office. See: <https://www.fs.usda.gov/>

BLM – Contact local BLM office. See: <https://www.blm.gov/montana-dakotas>

US Army Corp of Engineers 404 Permit – may be required for any work in streams or wetlands See: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>