

ENVIRONMENTAL QUALITY

CHAPTER 24

RECLAMATION

Subchapter 2

Rules and Regulations Governing the Open Cut Mining Act

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## Subchapter 2

Rules and Regulations Governing  
the Opencut Mining Act

17.24.201 APPLICABILITY (1) This subchapter applies to opencut operations as provided in the Opencut Mining Act (Title 82, chapter 4, part 4, MCA, hereinafter referred to as "the Act").

(2) An operator conducting opencut operations must comply with the provisions of a contract or permit issued under the Act and this subchapter. Except as provided in (5), a permit is required before an operator commences the following:

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

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

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

(3) Contracts and permits in effect before March 19, 2016, need not be amended to comply with rules and rule amendments adopted on March 19, 2016. Applications for permits, permit amendments, and permit assignments that the department determined to be complete prior to March 19, 2016, remain subject to provisions of this subchapter relating to application requirements as they read on the date the department determined the application to be complete.

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

(5) Except as provided in ARM 17.24.226(5), an operator holding a permit issued under the Act may commence a limited opencut operation that meets the criteria in ARM 17.24.226 and 82-4-431, MCA, after the operator has submitted the limited opencut operation form to the department. (History: 82-4-422, MCA; IMP, 82-4-431, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

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

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

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

(4) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(5) "Materials" has the meaning given in 82-4-403, MCA.

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

(7) "Opencut operation" has the meaning given in 82-4-403, MCA.

(8) "Overburden" has the meaning given in 82-4-403, MCA.

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

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

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

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

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

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

(13) "Soil" has the meaning given in 82-4-403, MCA.

(14) "Tilling" means breaking up the substrate or soil before seeding to a depth of at least one foot to improve conditions for plant growth. (History: 82-4-422, MCA; IMP, 82-4-403, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.203 BOND OR OTHER SECURITY (1) An application for a permit by a non-government operator must be accompanied by a bond or other security acceptable to the department under 82-4-433, MCA, and this subchapter.

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

(a) based on information available to the department; and

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

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

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

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

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

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

(a) a site map that shows:

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

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

(iii) roads; and

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

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

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

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

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

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

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

(8) State and federal agencies and counties, cities, and towns are not required to post a bond or security. These government operators may request release from responsibility for reclamation in the same manner as nongovernmental operators request bond or security release in accordance with this rule, including release of a portion of the permitted area, except that government operators may not request release of responsibility for phase I reclamation. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-433, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.204 SITE INFORMATION (REPEALED) (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.205 MINING AND RECLAMATION PLAN (REPEALED) (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.206 LANDOWNER CONSULTATION (1) An application for a permit or for an amendment to add acreage, for an asphalt or concrete plant, to change postmining land use, or to extend the reclamation date must demonstrate that the applicant consulted with the landowner about the proposed opencut operations by supplying a form provided by the department.

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

(a) acknowledge receipt of a copy of the application for a permit or amendment submitted to the department;

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

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

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

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

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

(3) The landowner consultation form also must require the operator and the landowner to consent to entry at reasonable times by the department and its employees, agents, or contractors to inspect the property and complete reclamation of all affected lands in accordance with the permit and the plan of operation in the event that the operator fails to do so. (History: 82-4-422, MCA; IMP, 82-4-422, 82-4-423, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

#### 17.24.207 ADDITIONAL REQUIREMENTS FOR BENTONITE MINES

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

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

- (i) saturation percentage;
- (ii) pH;
- (iii) electrical conductivity;
- (iv) sodium adsorption ratio;
- (v) texture; and
- (vi) additional characteristics the department may require.

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

- (a) the identifying number and depth of each sample taken;
- (b) the methods by which the samples were taken;
- (c) the names and addresses of the persons who took the samples;
- (d) the analytical methods used; and
- (e) the names and addresses of the persons who analyzed the samples.

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

- (a) the soil types identified;
- (b) the location and depth of each sample taken;
- (c) thicknesses of soil and overburden to be stripped for each soil type; and
- (d) the dominant vegetative species present on each soil type.

(4) The department may also require that the plan of operation contain a description of the location and method of disposal of bentonite cleanings, stray bentonite seams, and overburden that are unsuitable for plant growth. Such materials must be buried under at least three feet of material suitable for sustaining the postmining vegetation, but if suitable burial material is not available, then the material that is unsuitable for plant growth must be laid and graded to a condition that is as good or better than the pre-mine condition, minimizes adverse impacts to plant growth, and blends into the surrounding area. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-434, MCA; NEW, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

Rules 17.24.208 through 17.24.211 reserved

17.24.212 REVIEW OF AN APPLICATION (1) Upon receipt of an application to conduct opencut operations and within the time limits provided in 82-4-432, MCA, the department shall evaluate the application to determine if the requirements of the Act and this subchapter are satisfied.

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

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

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

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

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

(7) A permit becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the permit is approved and issued by the department. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, Eff. 2/5/76; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an application on a form provided by the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432, MCA, the department shall evaluate the amendment application to determine if the requirements of the Act and this subchapter will be satisfied.

(2) An application to amend a permit is acceptable if it meets the requirements of ARM 17.24.212 and includes the following:

- (a) a new or additional bond or other security sufficient to cover additional estimated costs of reclamation required by ARM 17.24.203 and 17.24.220;
- (b) a new landowner consultation form if required under ARM 17.24.206;
- (c) a new zoning compliance form if required under ARM 17.24.223; and
- (d) a revised plan of operation.

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

(4) An amendment becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the amendment is approved and issued by the department. Once approved, an amendment becomes part of the original permit. (History: 82-4-422, MCA; IMP, 82-4-432, 82-4-433, 82-4-434, 82-4-436, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

(2) The annual production report must be submitted on a form provided by the department. The report must list all sites where the operator engaged in permitted, unpermitted, or limited opencut operations and describe the amount of materials removed for each site.

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

(4) The department may require an operator to provide documentation of materials removed for the purpose of verifying the amounts reported under this rule. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-434, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; AMD, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.215 PENALTIES (REPEALED) (History: 82-4-422, MCA; IMP, 82-4-434, 82-4-435, 82-4-441, MCA; NEW, Eff. 9/5/73; AMD, Eff. 11/4/74; AMD, 1994 MAR p. 1871, Eff. 7/8/94; TRANS, from DSL, 1996 MAR p. 2852; REP, 2004 MAR p. 317, Eff. 2/13/04.)

17.24.216 GENERAL APPLICATION CONTENT AND PROCEDURES (REPEALED) (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; REP, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.217 PLAN OF OPERATION--PREMINE INFORMATION (REPEALED) (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; REP, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.218 PLAN OF OPERATION (SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following:

(a) unless otherwise approved in writing by the department, a markers section that includes a statement that the operator clearly marked on the ground all required boundaries and permitted access roads to be improved or constructed and will maintain the markings as required by this rule. Boundary and road markers must be placed so that no less than two consecutive markers are readily visible in any direction from any point on a line. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:

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

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

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

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

(A) proposed permit or proposed amended permit boundaries;

(B) non-bonded areas;

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

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

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

(v) the requirements of (1)(a) do not apply to active hayland, cropland, or existing roads to be permitted;

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

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

(i) for the purposes of this subsection:

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

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

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

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

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

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

(ii) before mining, remove and stockpile overburden separately from soil and designate soil and overburden stockpiles with signage that is legible, readily visible, and placed so that equipment operators and inspectors may readily identify the type of stockpile for the life of the stockpile;

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

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

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

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

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

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

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

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

(iii) a description of the methods and equipment to be used to mine, haul, and process material;

(iv) a description of the anticipated general mining progression, including the location of the first stripping and excavation, the direction of mining progress, and timing for the mobilization and setup of processing facilities such as a screen, crusher, asphalt plant, wash plant, batch plant, pug mill, and other facilities; and

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

(f) a section describing the hours of operation of the proposed opencut operation. The department may reasonably limit hours to reduce adverse impacts on residential areas. The department may require an operator to keep and maintain a complete and accurate record of the hours operated. The operator shall submit the record to the department within two work days after receipt of a request from the department;

(g) a water resources section that includes:

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

- (ii) identification of the sources of the information reported, such as landowners, field observations, and water well logs;
- (iii) copies of all available well logs;
- (iv) the estimated seasonal high and seasonal low water table levels in the permit area and the information sources used, such as landowners, field observations, and water well logs; and
- (v) in the event that the proposed opencut operation involves or may result in the diversion, capture, or use of water, acknowledgement that the operator consulted with the regional office of the Department of Natural Resources and Conservation, Water Resources Division, concerning the requirements to obtain water rights and possible adverse impacts to existing water rights;
- (h) a water quality protection and management section that includes:
  - (i) a description of the source, quantity, storage, use, and discharge of water to be used for opencut operations;
  - (ii) an explanation of measures to prevent pollution of state waters or impairment of a water right including, but not limited to:
    - (A) an explanation of water management and erosion control plans for stormwater, ground water, and surface disturbances that discharge off-site or intercept any waterway with a defined channel; and
    - (B) an explanation of proposed measures to protect the water rights of other parties or to replace an adversely affected water source that has a beneficial use;
  - (iii) a statement that the operator will keep non-mobile equipment above the seasonal high water level of surface water and ground water;
    - (i) a spill prevention and management section that includes a statement that the operator will:
      - (i) install or construct fuel storage containment structures in accordance with the current codes adopted by the state fire marshal for each single-wall, non-mobile, fuel storage tank placed and used in and within 300 feet of the permit area; and
      - (ii) routinely inspect and maintain these tanks to prevent leaks and spills, retrieve and discard spilled fuel and contaminated materials in a lawful manner, and report to the department a fuel spill that reaches state waters, as defined in 75-5-103, MCA, or is greater than 25 gallons;
    - (j) a statement by the operator that:
      - (i) opencut operations may not occur within a prohibited area described in the permit for purposes that include, but are not limited to, reclamation of a highwall or protection of an easement, a right of way, a drainage, or a waterway area;
      - (ii) no opencut operations will occur within an easement unless written permission to do so is obtained from the holder of the dominant estate; and
      - (iii) before commencing opencut operations, the operator, on a form provided by the department, notified the weed board in the county or counties in which the proposed operation is located. A copy of the form that the applicant submitted to the weed board must be attached to the application;
    - (k) an additional impacts section that includes:

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

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

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

(l) an additional commitments section that includes a statement that the operator will:

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

(ii) take proper precautions to prevent wildfires;

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

(iv) promptly notify the state historic preservation office should such resources be found.

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

(3) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

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

(b) a surface cleanup section that includes a statement that the operator will:

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) backfill and grade to at least three feet above the seasonal high water table level for dryland reclamation and at approved depths below the seasonal low water table level for pond reclamation;

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

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

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

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

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

(e) an access road reclamation section describing:

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

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

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

(g) an overburden and soil conditioning section that includes a statement that the operator will:

(i) till replaced overburden, graded surfaces, and other compacted surfaces:

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

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

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

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

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

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

- (iii) till through replaced soil and into the surface of the underlying backfill prior to seeding or planting unless otherwise required by the department; and
- (iv) the soil surface must be free of rocks that are not characteristic of the soil prior to disturbance;
- (h) a revegetation section that:
  - (i) describes the types and rates of fertilizer and other soil amendment applications, methods of seedbed preparation, and methods, species, and rates of seeding or planting; and
  - (ii) includes a statement that the operator will:
    - (A) establish vegetation to protect the soils from erosion and that is capable of sustaining the designated postmining land uses;
    - (B) seed all affected land for vegetation species that are consistent with the premining species composition, cover, production, density, and diversity, or otherwise as appropriate for the designated postmining land use;
    - (C) ensure that areas seeded or planted to perennial species are adequately protected and managed from the time of seeding or planting through two consecutive growing seasons or until the vegetation is established, whichever is longer;
    - (D) use seed that is as weed free as is reasonably possible;
    - (E) ensure that seedbed preparation and drill seeding is done on the contour;
    - (F) apply drill seeding at the rate of no less than ten pounds per acre or at another rate approved by the department;
    - (G) apply broadcast seeding at a rate that is at least 100 percent higher than drill seeding rates and drag or press the surface to cover the seed unless otherwise required by the department;
    - (H) provide seeding rates as pounds of pure live seed per acre;
    - (I) seed during the late fall or early spring seeding seasons;
    - (J) apply cover crop seeding and mulch as needed to help stabilize an area or establish vegetation;
    - (K) achieve revegetation of a non-cropland area by establishing vegetation capable of sustaining the designated postmining land use;
    - (L) achieve revegetation of a cropland area when a crop has been harvested from the entire area and the yield is comparable to those of crops grown on similar sites under similar growing conditions; and
    - (M) agree that reclamation for cropland areas will be considered complete upon inspection by the department or notification by the landowner to the department in writing that the crop yield on the reclaimed land is acceptable;
- (i) a reclamation schedule section that includes:

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

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

(2) Upon issuance of the permit, the operator shall comply with all commitments required by this rule and with the requirements for the conduct of operations contained in this rule. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

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

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

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

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

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

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

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

(4) Federal agencies, the state of Montana, counties, cities, and towns are not required to post a bond or other security. (History: 82-4-422, MCA; IMP, 82-4-405, 82-4-431, 82-4-432, 82-4-433, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

(2) The following items must be shown and labeled on each map submitted to the department: operator name, site name, legal description of the proposed permit area, bar scale, date of drafting, and north arrow.

(3) Site maps must show and identify the following existing and proposed features as applicable:

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

(b) permit boundaries;

(c) bonded area boundary;

(d) non-bonded area boundary;

(e) excess overburden and fines disposal sites;

(f) sedimentation ponds and other water quality control structures;

(g) staging areas;

(h) heavy equipment parking areas;

(i) fuel storage areas;

(j) sight and sound barriers and berms;

(k) soil stockpile areas;

(l) overburden and excess overburden stockpile areas;

(m) material stockpile areas;

(n) processing facilities, including approximate locations of:

(i) crusher;

(ii) asphalt plant;

(iii) wash plants; and

(iv) concrete plant;

(o) detention ponds;

(p) concrete and asphalt recycling stockpile area;

(q) soil and overburden test hole and observation point locations;

(r) existing and proposed monitoring well locations;

(s) water system and structures, including:

(i) supply wells;

(ii) water recycling and settling ponds;

(iii) surface water extraction points;

(iv) discharge points for water used in opencut operations; and

(v) all surface waters including, but not limited to, ponds, lakes, wetlands, and defined and/or eroded channels of waterways including, but not limited to, rivers, creeks, intermittent streams, drainages, ditches, and other waterways;

(t) above and below ground utilities and easements;

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

(v) erosion controls;

(w) historic disturbances within or adjacent to permit area boundary;

(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table that is required by (8); and

(y) any other pertinent features that are necessary to ensure compliance with the Act and rules.

(4) Area maps must show and identify the following features within 1,000 feet outside of the permit boundary:

(a) roads leading to the site;

(b) access roads from the public road turnoff to the permit area (if roads go beyond the area map, show the full extent on the location map) including the location, width, waterway crossings, and surfacing;

(c) water wells;

(d) natural and man-made drainage features including, but not limited to, ephemeral, intermittent, and perennial streams, wetlands, ponds, springs, ditches, and impoundments in and within 500 feet of access roads and show the defined and/or eroded channel of any such feature and any setback areas, along with a description of the use of any man-made feature;

(e) other opencut operations;

(f) above and below ground utilities;

(g) significant geographical features;

(h) residential areas and structures that could be impacted by opencut operations, such as inhabitable dwellings and commercial and industrial facilities; and

(i) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.

(5) Reclamation maps must show and identify all the following existing and proposed features in accordance with the plan of operation:

(a) all postmining land uses;

(b) mined area backfill sites;

(c) landowner material stockpile areas to remain;

(d) all roads or portions of roads proposed to remain open, at the request of the landowner, at the conclusion of opencut operations, including road locations, intended use, final width, and surfacing;

(e) long and short axis cross-sections of any pond or depression in which water is expected to collect;

(f) arrows depicting the anticipated direction of water flow across the reclaimed site; and

(g) any other pertinent features that are necessary to ensure compliance with the Act and this subchapter.

(6) The location map may be on an aerial or topo base and must show the site's location in relation to the nearest town, city, or major intersection and be sufficient to allow the public to locate the proposed site.

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

(8) Marker, road, and boundary locations that must be marked in the field under ARM 17.24.218(1)(a) and markers, roads, and boundaries located in hayland or cropland must be provided on a boundary coordinate table form or through another method approved by the department. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

#### 17.24.222 PLAN OF OPERATION--ADDITIONAL INFORMATION AND

CERTIFICATION (1) The department may require that an operator provide additional information for the plan of operation that includes, but is not limited to:

(a) vegetation;

(b) soil;

(c) surface water;

(d) ground water; and

(e) fish and wildlife surveys and assessments.

(2) The information provided pursuant to (1)(a) through (e) must be gathered, analyzed, and presented according to current professionally accepted practices. Field data must be accompanied by the names and addresses of the parties that collected and analyzed the data, and by a description of the methodologies used to gather and analyze the data.

(3) The plan of operation must include a statement signed and dated by the operator certifying that:

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

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

(c) the operator will follow and adhere to the plan of operation and all other requirements of the operator described in the application and the permit and as the permit may be amended by the department in accordance with the Act and this subchapter. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, 82-4-434, 82-4-436, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

#### 17.24.223 ZONING COMPLIANCE FOR SAND OR GRAVEL MINING

(1) Permit applications for sand or gravel opencut operations, including amendment applications that add acreage or change the postmining land use or add an asphalt or concrete plant, must include a statement from the appropriate local governing body certifying, on a form provided by the department, that the proposed mine site and plan of operation comply with local zoning regulations. (History: 82-4-422, MCA; IMP, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

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

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

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

(b) the application includes an acknowledgment that:

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

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

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

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

(d) the application includes a reclamation bond or other security that meets the requirements of 82-4-433, MCA, this subchapter, and the plan of operation.

(3) An assignment becomes effective when the department notifies the applicant in writing that the information and materials provided to the department meet all the requirements of the Act and this subchapter and that the assignment is approved and issued by the department. Upon notification of the department's approval of the assignment, the assignee becomes responsible for all the obligations described in (2)(b). (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-432, 82-4-433, 82-4-434, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2016 MAR p. 513, Eff. 3/19/16.)

17.24.225 PERMIT COMPLIANCE (1) An operator shall comply with the provisions of its permit, this subchapter, and the Act.

(2) A permittee may allow another person to mine and process mine materials at the permitted operator's site only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If a violation of the provisions of the Act, this subchapter, or the permit occurs, the permittee is responsible for the violation and the department may require abatement pursuant to (1) or initiate an enforcement action under the Act. (History: 82-4-422, MCA; IMP, 82-4-402, 82-4-422, 82-4-423, 82-4-431, 82-4-432, MCA; NEW, 2004 MAR p. 317, Eff. 2/13/04; AMD, 2015 MAR p. 513, Eff. 3/19/16.)

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) An operator holding an opencut permit may conduct a limited opencut operation that meets the criteria in 82-4-431(2), MCA, without first obtaining an additional permit or an amendment to an existing permit when, prior to commencing the limited opencut operation, the operator completes and submits to the department appropriate site and opencut operation information on a limited opencut operation form provided by the department.

(2) The operator must submit a completed limited opencut operation form and the following information to the department prior to commencing the opencut operation:

- (a) the operator's complete name and address;
- (b) the location, in a format acceptable to the department, of the limited opencut operation site;
- (c) the locational coordinates of the approximate center of the limited opencut operation site;
- (d) the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site;
- (e) plans to expand or continue the limited opencut operation in accordance with 82-4-431(4), MCA;
- (f) the landowner's name and address;

- (g) driving directions to access the site from the nearest public road;
  - (h) a description of the pre-mine condition of the limited opencut operation site and the pre-mine condition of any private access roads to the limited opencut operation site;
  - (i) an aerial or topographic map of the limited opencut operation site; and
  - (j) certification by the operator that the information provided to the department in the limited opencut operation form is complete and accurate.
- (3) The department's receipt of a limited opencut operation form initiates the timeframes set forth in 82-4-431, MCA, for either:
- (a) salvaging soil, removing materials, and reclaiming the limited opencut operation site; or
  - (b) applying for a permit to continue or expand the opencut operation.
- (4) A person conducting a limited opencut operation, authorized under 82-4-431(2), MCA, may not remove more than 10,000 cubic yards of materials and overburden. This limitation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for site reclamation.
- (5) An operator may not commence a limited opencut operation within 300 feet of a permitted operation until the operator submits a written statement to the department that:
- (a) no part of the proposed limited opencut operation is on land affected by the permitted operation;
  - (b) both operations can be reclaimed according to their respective requirements under the Act and this subchapter; and
  - (c) the principal amount of the new reclamation bond or other security, if required, is sufficient to cover the estimated costs of reclamation of the limited opencut operations under the Act and this subchapter. (History: 82-4-422, MCA; IMP, 82-4-431, MCA; NEW, 2014 MAR p. 679, Eff. 4/11/14; AMD, 2016 MAR p. 513, Eff. 3/19/16.)