



ADMINISTRATIVE RULES OF MONTANA



17.24.1266 QUESTIONS ABOUT AND CHALLENGES TO OWNERSHIP OR CONTROL FINDINGS

- (1) At any time a person listed in AVS as an owner or controller of a surface coal mining operation in Montana may request an informal explanation from the department as to the reason that person is shown in AVS in an ownership or control capacity. Within 14 days of the request, the department shall provide a response describing why the person is listed in AVS.
- (2) An applicant or permittee affected by an ownership or control listing or finding, a person listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, or person found to be an owner or controller of an entire surface coal mining operation or any portion or aspect thereof, may challenge an ownership or control listing or finding to:
 - (a) the board if the challenge concerns a pending permit application; or
 - (b) the department if the challenge concerns the challenger's ownership or control of a surface coal mining operation, and the challenger is not currently seeking a permit.
- (3) Challenges to an ownership or control listing or finding may be made as follows:
 - (a) when the challenge is made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by submitting a request for a hearing to the board pursuant to 82-4-206, MCA; or
 - (b) when the challenge is not made in connection with the approval or denial of a permit application, permit amendment application, or permit renewal application, by submitting to the department a challenge, including written explanation of the basis for the challenge, along with evidence and explanatory materials.
- (4) A person who challenges a finding of ownership or control under ARM 17.24.1264(5) or a listing or finding of ownership or control bears the burden of proving by a preponderance of the evidence that the person either:
 - (a) does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or
 - (b) did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.
- (5) In meeting that burden of proof, the challenger must present reliable, credible, and substantial evidence and any explanatory materials to the board or department. The materials presented in connection with the challenge must become part of the permit file, an investigation file, or another public file. The challenger may request that information be kept confidential. The board or department shall determine whether the information may be kept confidential under Montana

law. If the board or department determines that the information may not be kept confidential, the board or department shall notify the challenger and shall hold the documents confidential for ten days in order to allow the challenger to obtain a court order requiring the board or department to keep the documents confidential.

- (6) Materials that may be submitted in response to the requirements of (8) include, but are not limited to:
 - (a) notarized affidavits containing specific facts concerning the specific duties the challenger performed for the relevant operation, the beginning and ending dates of the challenger's ownership or control of the operation, and the nature and details of any transaction creating or severing the challenger's ownership or control of the operation;
 - (b) certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;
 - (c) certified copies of documents filed with or issued by any state, municipal, or federal governmental agency; and
 - (d) an opinion of counsel, when supported by:
 - (i) evidentiary materials;
 - (ii) a statement by counsel that he or she is qualified to render the opinion; and
 - (iii) a statement that counsel has personally and diligently investigated the facts of the matter.
- (7) When the department receives a written challenge to an ownership or control listing pursuant to (2)(b), the department shall review and investigate the evidence and explanatory materials submitted with the challenge and any other reasonably available information that has bearing on the challenge, and shall issue a written decision within 60 days of receipt of the challenge, stating whether the department finds that the person who submitted the challenge owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. The department shall send its decision to the challenger by certified mail or by any means consistent with the rules governing service of a summons and complaint under the Montana Rules of Civil Procedure. Service of the decision is complete upon delivery and is not incomplete if the challenger refuses to accept delivery.
- (8) The department shall post all decisions made under this rule on AVS.
- (9) Following the department's written decision or any decision by the board or a court, the department shall review the information in AVS to determine if it is consistent with the decision. If it is not, the department shall promptly revise the information in AVS to reflect the decision.

Authorizing statute(s): 82-4-205, MCA

Implementing statute(s): 82-4-227, MCA

History: NEW, 2012 MAR p. 737, Eff. 4/13/12; AMD, 2024 MAR p. 260, Eff. 2/10/24.