



ADMINISTRATIVE RULES OF MONTANA



17.24.404 REVIEW OF APPLICATION

- (1) The department shall review each administratively complete application, written comments, written objections submitted, and records of any informal conference held and determine the acceptability of the application within 120 days of its determination of administrative completeness. If the applicant significantly modifies the application before the acceptability determination, the department shall conduct a new review, including an administrative completeness determination, public notice, public review, and 120-day review period.
- (2)
 - (a) If the application is not acceptable, the department shall notify the applicant in writing, setting forth the reasons why it is not acceptable. The department may propose modifications, delete areas, or reject the entire application. All items not identified as unacceptable are presumed acceptable.
 - (b) If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant within 120 days of date of receipt, except that if the revision constitutes a significant modification, the department shall conduct a new review, including an administrative completeness determination, public notice, and public review.
- (3) If the department determines that the application is acceptable, the department shall:
 - (a) publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed activity. The notice must state that any person with an interest that is or may be adversely affected may, within 10 days of the second published notice, file written objections or file written objections and request an informal conference within 10 days of the second published notice; and
 - (b) if a written objection is filed and an informal conference requested, hold an informal conference in the locality of the proposed activity within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of the decision and the reasons therefor within 10 days of the informal conference.
- (4) The department shall determine the adequacy of the fish and wildlife plan submitted pursuant to ARM 17.24.312 in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed strip or underground mining operations.
- (5) The department shall assure that:

- (a) cultural resource locations remain confidential;
 - (b) a determination of effect is completed for all listed or eligible cultural resource sites in accordance with 36 CFR 800;
 - (c) coordination of the review process for cultural resource compliance is carried out in accordance with the provisions of the Archeological Resources Protection Act of 1979 (16 USC 470aa, et seq.), where federal or Indian lands are involved; and
 - (d) the permit review process is coordinated with applicable requirements of the Endangered Species Act of 1973, as amended (16 USC 1531, et seq.); the Fish and Wildlife Coordination Act, as amended (16 USC 661, et seq.); the Migratory Bird Treaty Act of 1918, as amended (16 USC 703, et seq.); the National Historic Preservation Act of 1966, as amended (16 USC 470, et seq.); and the Bald Eagle Protection Act, as amended (16 USC 469, et seq.).
- (6) If the department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued.
- (7)
- (a) If, based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to 30 USC 1268, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violation of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any strip or underground coal mining operation, the department determines that issuance of the permit is prohibited pursuant to 82-4-227(11), MCA, the department may issue the permit only upon a showing that the applicant or person who either owns or controls the applicant or is owned or controlled by the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the violation.
 - (b) If the initial judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any strip or underground coal mining operations being conducted under a permit issued according to this section must be terminated within 30 days of the judicial decision, unless the applicant provides within that period, proof that the violation has been or is in the process of being resolved to the satisfaction of the agency having jurisdiction over the violation.
- (8) Any permit that is issued on the basis of proof submitted under 82-4-227(11) , MCA, that a violation is in the process of being corrected, or pending the outcome of an appeal described in (7), must be conditionally issued.

Authorizing statute(s): 82-4-205, 82-4-206, MCA

Implementing statute(s): 82-4-226, 82-4-231, MCA

History: NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; AMD, 1990 MAR p. 936, Eff. 5/18/90; AMD, 1994 MAR p. 2957, Eff. 11/11/94; AMD, 1995 MAR p. 30, Eff. 1/13/95; TRANS, from DSL, 1996 MAR p. 2852; AMD, 1999 MAR p. 811, Eff. 4/23/99; AMD, 1999 MAR p. 2768, Eff. 12/3/99; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2024 MAR p. 255, Eff. 2/10/24.