

Act No. 214
Public Acts of 2011
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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011

Introduced by Rep. Kowall

ENROLLED HOUSE BILL No. 4914

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending the headings of parts 631 and 633 and sections 1301, 9115, 63101, 63103, 63103a, 63103b, 63103c, 63103d, and 63103e (MCL 324.1301, 324.9115, 324.63101, 324.63103, 324.63103a, 324.63103b, 324.63103c, 324.63103d, and 324.63103e), section 1301 as amended by 2009 PA 120, section 9115 as amended by 2000 PA 504, section 63101 as amended by 2004 PA 449, section 63103 as added by 1995 PA 57, sections 63103a and 63103c as amended by 2004 PA 325, and sections 63103b, 63103d, and 63103e as added by 1997 PA 149; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit.

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee.

(d) "Permit" means a permit or operating license required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance adopted thereunder:

(i) Section 3104, floodplain alteration permit.

(ii) Section 3503, permit for use of water in mining iron ore.

(iii) Section 4105, sewerage system construction permit.

(iv) Section 6516, vehicle testing license.

- (v) Section 6521, motor vehicle fleet testing permit.
- (vi) Section 8310, restricted use pesticide dealer license.
- (vii) Section 8310a, agricultural pesticide dealer license.
- (viii) Section 8504, license to manufacture or distribute fertilizer.
- (ix) Section 9112, local soil erosion and sedimentation control permit.
- (x) Section 11509, solid waste disposal area construction permit.
- (xi) Section 11512, solid waste disposal area operating license.
- (xii) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.
- (xiii) Section 11702, septage waste servicing license or septage waste vehicle license.
- (xiv) Section 11709, septage waste site permit.
- (xv) Section 30104, inland lakes and streams project permit.
- (xvi) Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.
- (xvii) Section 31509, dam construction, repair, or removal permit.
- (xviii) Section 32312, flood risk, high risk, or environmental area permit.
- (xix) Section 32503, permit for dredging and filling bottomland.
- (xx) Section 35304, department permit for critical dune area use.
- (xxi) Section 36505, endangered species permit.
- (xxii) Section 41702, game bird hunting preserve license.
- (xxiii) Section 42101, dog training area permit.
- (xxiv) Section 42501, fur dealer's license.
- (xxv) Section 42702, game dealer's license.
- (xxvi) Section 44513, charter boat operating permit under reciprocal agreement.
- (xxvii) Section 44517, boat livery operating permit.
- (xxviii) Section 45503, permit to take frogs for scientific use.
- (xxix) Section 45902, game fish propagation license.
- (xxx) Section 45906, game fish import license.
- (xxxi) Section 61525, oil or gas well drilling permit.
- (xxxii) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.
- (xxxiii) Section 63103a, ferrous mineral mining permit.
- (xxxiv) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit, respectively.
- (xxxv) Section 63704, sand dune mining permit.
- (xxxvi) Section 72108, use permits for Michigan trailway.
- (xxxvii) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.
- (xxxviii) Section 76504, Mackinac Island motor vehicle and land use permits.
- (xxxix) Section 80159, buoy or beacon permit.
- (e) "Processing deadline" means the last day of the processing period.
- (f) "Processing period" means the following time period after the close of the application period, for the following permit, as applicable:
 - (i) Twenty days for a permit under section 61525 or 62509.
 - (ii) Thirty days for a permit under section 9112.
 - (iii) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.
 - (iv) Sixty days, for a permit under section 30104 for a minor project as established by rule under section 30105(7) or for a permit under section 32312.
 - (v) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.
 - (vi) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit for a minor project as established by rule under section 30105(7), or for a permit under section 31509.
 - (vii) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit under section 63525, or a permit under section 72108.

(viii) Ninety days or, if a hearing is held, 150 days for a permit under section 3104, 30304, or 32503 or an authorization for a specific project to proceed under a general permit issued under section 30312.

(ix) One hundred and twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

(x) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(xi) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

(a) Access roads to and from the site where active mining or logging is taking place.

(b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan or a mining, reclamation, and environmental protection plan if the plan contains soil erosion and sedimentation control provisions and is approved by the department under part 631 or 632, respectively.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

(4) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

PART 631

FERROUS MINERAL MINING

Sec. 63101. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Ferrous mineral" or "mineral" means ferrous ore or material mined for its ferrous content.

(c) "Ferrous mineral operator" or "operator" means a person who owns or leases the plant and equipment utilized in a mining area and is engaged in the business of mining ferrous minerals or preparing to engage in mining operations.

(d) "Ferrous product" means a commercially salable ferrous mineral in its final marketable form or state.

(e) "Life of the mine" means the period of time from issuance of a permit under this part through the completion of reclamation as required by this part.

(f) "Mining area" or "area subjected to mining" means land from which material is removed in connection with the production or extraction of ferrous minerals by surface or open pit mining methods, on which material from that mining is deposited, on which beneficiating or treatment plants and auxiliary facilities are located, or on which the water reservoirs used in the mining operation are located, and includes auxiliary land that is used for these purposes.

(g) "Mining operation" means a ferrous mineral mining operation.

(h) "Stockpile" means material, including, but not limited to, surface overburden, rock, or lean ore, that in the process of ferrous mineral mining and beneficiation or treatment has been removed from the earth and stored on the surface. However, stockpile does not include materials that are being treated in the production of mineral products and the mineral product that has been produced by that operation.

(i) "Supervisor of reclamation" means the department.

(j) "Surface or open pit mining" means the mining of more than 10,000 tons of a ferrous mineral or disturbing more than 1 acre of land a year in the regular operation of a business either by removing the overburden lying above a natural deposit of a ferrous mineral and mining directly from the natural deposit exposed or by mining directly from a deposit lying exposed in the ferrous mineral's natural state. Surface or open pit mining includes all ferrous mineral mining below the water table or which will upon cessation of mining result in creating a body of water of any size. Surface or open pit mining does not include excavation or grading preliminary to a construction project.

(k) "Tailings basin" means land on which is deposited, by hydraulic or other means, the material that is separated from the mineral product in the beneficiation or treatment of ferrous minerals including any surrounding dikes constructed to contain the material.

Sec. 63103. The department may promulgate rules pertaining to mining operations conducted subsequent to their effective date, subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by a governmental entity and to applicable mine safety laws or rules, for the following purposes:

(a) The sloping, terracing, or other practical treatment of stockpiles and tailings basins where erosion is occurring or is likely to occur that results or may result in injury or damage to fish and wildlife or the pollution of public waters or that is causing or might cause injury to the property or person of others.

(b) The vegetation or other practical treatment of tailings basins and stockpiles upon becoming permanently inactive if substantial natural vegetation is not expected within 5 years and if research reveals that vegetation can reasonably be accomplished within practical limitations.

(c) The stabilization of the surface overburden banks of open pits in rock and the entire bank of open pits in unconsolidated materials upon their abandonment.

(d) The cleanup of mining areas and the removal of debris from those areas on termination of the mining operation.

Sec. 63103a. A ferrous mineral operator shall not engage in the mining of ferrous minerals except as authorized by a permit issued by the department pursuant to part 13. The department shall not issue a permit unless the applicant has submitted to the department, in addition to the permit application, a mining and reclamation plan for the proposed ferrous mining activity as prescribed by section 63103b.

Sec. 63103b. The mining and reclamation plan submitted under section 63103a shall include all of the following for the total project:

(a) The method and direction of mining.

(b) Surface overburden stripping plans.

(c) The depth of grade level over the entire site from which the ferrous mineral will be removed.

(d) Provisions for grading, revegetation, and stabilization that will minimize soil erosion, sedimentation, and public safety concerns.

(e) The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area at the project termination.

(f) The interim use or uses of reclaimed areas before the cessation of the entire mining operation.

(g) Maps and other supporting documents required by the department.

(h) Fencing or other techniques to minimize trespass or unauthorized access to the mining activity.

(i) If required by the department when mining activity below the water table is proposed, a hydrogeological survey of the surrounding area.

(j) If threatened or endangered species are identified, an indication of how the threatened or endangered species will be protected or, if not protected, what mitigation measures will be performed.

(k) If the proposed mining activity includes beneficiation or treatment of the ferrous ore or material mined for its ferrous content, the application documents shall include specific plans depicting the beneficiation and treatment methods and techniques, and manufacturer's material safety data sheets on all chemicals or other additives that are not natural to the site, that will be utilized in the process. The operator shall obtain all applicable state and federal permits before beginning the beneficiation process.

Sec. 63103c. (1) A ferrous mineral mining permit issued by the department is valid for the life of the mine. However, the department may revoke a ferrous mineral mining permit under the following conditions:

(a) The permittee has not commenced construction of plant facilities or conducted actual mining and reclamation activities covered by the permit within 3 years after the date of issuance of the permit.

(b) The permittee requests the revocation of the ferrous mineral mining permit and the department determines the mining activity has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources, as provided in part 17.

(c) The permittee fails to submit the annual report of production as required by section 63103d(2).

(d) The department finds that the permittee is not in compliance with this part, the rules promulgated under this part, or the ferrous mineral permit and there exists an imminent threat to the health and safety of the public.

(2) The department may order immediate suspension of any or all activities at a ferrous mineral mining operation, including the removal of ferrous product from the site, if the department finds there exists an emergency endangering the public health and safety or an imminent threat to the natural resources of the state.

(3) An order suspending operations shall be in effect until the operation is in compliance and protection of the public health and safety is ensured or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department shall issue an emergency order to continue the suspension of

operations and shall schedule a hearing as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The total duration of the suspension of operations shall not be more than 30 days.

(4) A ferrous mineral mining permit may be transferred with approval of the department. The person seeking to acquire the permit shall submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit shall accept the conditions of the existing permit and adhere to the requirements set forth on the approved mining and reclamation plan. Pending the transfer of the existing permit, the person seeking to acquire the permit shall not operate the mine.

(5) A ferrous mineral mining permit shall not be transferred to a person who has been determined by the department to be in violation of any of the following, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and a written agreement has been reached to correct the violations:

- (a) This part.
- (b) The rules promulgated under this part.
- (c) Permit conditions.
- (d) An order of the department.

(6) If the permittee of a ferrous mineral mining operation is under notice because of unsatisfactory conditions at the mining site involved in the transfer, then the permit for the mining operation shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the permit has entered into a written agreement to correct all of the unsatisfactory conditions.

(7) A ferrous mineral mining permit may be amended upon submission to the department of a request by the permittee. Upon receipt of the request to amend an existing ferrous mineral permit, the department shall determine if the request constitutes a significant change from the conditions of the approved permit. If the department determines the request is a significant change from the conditions of the approved permit, the department may submit the request for amendment to the same review process as provided in part 13. If a request to amend the permit is denied, the reasons for denial shall be stated in a written report to the permittee. If the department determines the request for amendment does not constitute a significant change from the conditions of the approved permit, the department shall approve the amendment and notify the permittee.

Sec. 63103d. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, a ferrous mineral operator shall be assessed a ferrous mineral surveillance fee on the ferrous product produced for the calendar year reported as described in subsection (2). The fee shall be assessed upon ferrous product and shall not be more than 1 cent per metric ton. Funds collected by the assessment of the ferrous mineral surveillance fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to ferrous mineral mining. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the ferrous mineral surveillance fund created in section 63103e.

(2) A ferrous mineral operator shall file an annual report of production on or before February 15 of each year. The report shall contain the annual production of ferrous product from each ferrous mineral mine.

(3) The ferrous mineral surveillance fee described in subsection (1) is due 30 days after the department sends written notice to the ferrous mineral operator of the amount due.

(4) Failure to submit an annual report of production in compliance with rules promulgated by the department constitutes grounds for revocation of a permit.

(5) A penalty equal to 10% of the amount due, or \$1,000.00, whichever is greater, shall be assessed against the ferrous mineral operator for a fee that is not paid when due. An unpaid fee and penalty constitute a debt and the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

(6) Records upon which the annual report of production is based shall be preserved for 3 years and are subject to audit by the department.

Sec. 63103e. (1) The ferrous mineral surveillance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the ferrous mineral surveillance fund. The state treasurer shall direct the investment of the ferrous mineral surveillance fund. The state treasurer shall credit to the ferrous mineral surveillance fund interest and earnings from fund investments.

(3) Money in the ferrous mineral surveillance fund at the close of the fiscal year shall remain in the ferrous mineral surveillance fund and shall not lapse to the general fund.

(4) The department shall expend money from the ferrous mineral surveillance fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part and for computing the surveillance fee under section 63103d.

PART 633

MINING AUTHORIZATION, MULTIPLE OWNERS

Enacting section 1. Section 63102 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63102, is repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor