

Act No. 149  
Public Acts of 1997  
Approved by the Governor  
December 1, 1997  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1997

**Introduced by Senators Koivisto, McManus, North, Dingell and A. Smith**

# **ENROLLED SENATE BILL No. 742**

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, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 63101 (MCL 324.63101), as added by 1995 PA 57, and by adding sections 63103a, 63103b, 63103c, 63103d, and 63103e.

*The People of the State of Michigan enact:*

Sec. 63101. As used in this part:

(a) "Administratively complete" means an application for a mining permit under this part that is determined by the department to satisfy all of the conditions of this part and rules promulgated under this part.

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

(c) "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.

(d) "Metallic mineral" means metallic ore or material mined for its metallic content.

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

(f) "Metallic product" means a commercially salable metallic mineral in its final marketable form or state.

(g) "Mineral" means any substance to be excavated from the natural deposits on or in the earth for commercial, industrial, or construction purposes, including gypsum, limestone, dolostone, sandstone, shale, metallic mineral, or other solid materials. Mineral does not include clay, gravel, marl, peat, inland sand or sand mined for commercial or industrial purposes, from sand dune areas regulated under part 637, or coal regulated under part 635.

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

(i) "Operator" means a metallic mineral operator or other persons engaged in or preparing to engage in mining operations for the production of mineral products.

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

(k) "Supervisor of reclamation" means the state geologist.

(l) "Surface or open pit mining" means the mining of more than 10,000 tons of a mineral or disturbing more than 1 acre of land a year in the regular operation of a business by removing the overburden lying above a natural deposit of a mineral and mining directly from the natural deposit exposed or by mining directly from a deposit lying exposed in the mineral's natural state. Surface or open pit mining includes all 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.

(m) "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 minerals including any surrounding dikes constructed to contain the material.

Sec. 63103a. (1) After October 1, 1997, a metallic mineral operator shall not engage in the mining of metallic minerals without first obtaining a permit for that purpose from the department. A metallic mineral operator engaged in or carrying out a metallic mining operation as of the effective date of this section shall apply for a permit to mine 1 year after the effective date of this section. Any such existing metallic mining operation may continue mining until the department issues or denies a permit for the metallic mining operation.

(2) Prior to receiving a permit from the department, a metallic mineral operator shall submit the following:

(a) A permit application on a form provided by the department.

(b) A mining and reclamation plan for the proposed metallic mining activity as prescribed by section 63103b.

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

(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 metallic 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 metallic ore or material mined for its metallic 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 metallic mineral mining permit issued by the department is valid for the life of the mine. However, the department may revoke a metallic mineral mining permit under the following conditions:

(a) The person holding the permit 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 metallic 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 metallic 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 metallic mineral mining operation, including the removal of metallic 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 for the shorter of the following time periods: not more than 10 days, or 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. 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 metallic mineral mining permit may be transferred to a new person with approval of the department. The person acquiring 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 acquiring the permit shall not operate the mine.

(5) A metallic mineral mining permit shall not be transferred to a person who has been determined 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 of environmental quality.

(6) If the permittee of a metallic 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) Upon receipt of an application for a permit, the department shall have up to 60 days to review the application to determine if the application is accurate and complete. If the application is determined to be inaccurate or incomplete, then the department shall provide the person making the application for a permit, within the 60-day period, with a notice that the application is inaccurate or incomplete and what changes or additional information shall be submitted. Upon receipt of the requested information, the department shall have up to an additional 30 days to review the information to determine if the application is accurate and complete. Upon completion of the review process, the department shall approve or deny a metallic mineral mining permit application in writing within 60 days after the application is determined by the department to be administratively complete. A determination of administrative completeness shall not be construed to mean that additional information may not be required from the applicant as a result of new circumstances that come to the attention of the department. If a metallic mineral permit is denied, the reasons shall be stated in a written report to the applicant.

(8) A metallic 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 metallic 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 section 63103c(7). 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 metallic mineral operator shall be assessed a metallic mineral surveillance fee on the metallic product produced for the calendar year reported as described in subsection (2). The fee shall be assessed upon each metallic product at the following rates: gold shall be not more than 9.4 cents per troy ounce, silver shall not be more than 0.13 cents per troy ounce, copper shall not be more than 0.03 cents per pound, and iron shall not be more than 1 cent per metric ton. Funds collected by the assessment of the metallic mineral surveillance fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to metallic mineral mining. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the metallic mineral surveillance fee fund created in section 63103e.

(2) A metallic 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 metallic product from each metallic mineral mine.

(3) The metallic mineral surveillance fee described in subsection (1) shall be due not more than 30 days after the department sends written notice to the metallic 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 metallic mineral operator for a fee that is not paid when due. An unpaid fee and penalty shall constitute a debt and become 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 metallic 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 metallic mineral surveillance fund. The state treasurer shall direct the investment of the metallic mineral surveillance fund. The state treasurer shall credit to the metallic mineral surveillance fund interest and earnings from fund investments.

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

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

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Thomas R. Bell*

Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.