

Mine Permitting Processes in Michigan

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Mining in Michigan

- Historic Mines
 - Ferrous and non-ferrous
- Currently active mines
 - Empire and Tilden-taconite
- Mine in development
 - Eagle-massive sulfide
- Prospective mines
 - Orvana, Back Forty, Eagle East, KBIC, Huron River mines – non-ferrous metallic

Primary Mining Regulations

- Part 631 – regulates ferrous mines
- Part 632 – regulates non-ferrous metallic mines
- Part 625 – regulates exploration for both
- MDNR – regulates leasing of state lands and minerals

Context for Part 632

- 632 requires a list of all other applicable permit requirements and that all other necessary permits be obtained before a Part 632 permit becomes effective.
- Intended to work in conjunction with other state, federal, tribal and local laws, including:
 - Clean Water Act
 - Safe Drinking Water Act
 - Clean Air Act
 - Tribal laws (on reservation) and Treatment as State (TAS) regs
 - Groundwater Protection Act
 - Wetlands Protection Act
 - Inland Lakes and Streams Act
 - Endangered Species Act
 - Local Zoning/Ordinances

Comparison of States/Provinces

- Report comparing MI, WI, MN and ONT laws, regulations and implementation will be released in early 2012.
- Useful for regional approach to watershed protection and regulatory efforts
- Let me know if you would like to be on the distribution list.

History of Part 632

- Early 90s – Kennecott's first mineral rights leases/exploration begins
- 2002 – Clear that exploration was serious and Gov. ordered that a statute unique to the concerns arising from sulfide mining be developed.
- 2003/2004 – Multi-stakeholder workgroup appointed. Statute development was a consensus process and was fairly successful, though there are certainly gaps in MI statute. Dec. 2004 – enacted.
- 2005 – Rules developed, but not a consensus process. Dec. 2005 – adopted.

Key Statutory Components of Part 632 and its Rules

Tribe-specific Provisions

- Notice is made to every federally recognized tribe in Michigan of
 - public meetings and comment periods
 - contested case hearings
 - changes to the project “significant” enough to trigger public input (DEQ discretion)

Tribe-specific Provisions

- EIA must assess impacts to:
 - “Places of worship” (building v. non-building)
 - “Cultural, historical or archaeological resources”
 - Natural resources widely utilized by tribal members

Standard for Denial/Grant of Permit

- The DEQ shall deny a permit if it determines that the mining operation will “pollute, impair, or destroy, air, water or other natural resources or the public trust in those resources, in accordance with part 17(Michigan Environmental Protection Act)” or if the application does not meet the requirements of Part 632.

Burden of Proof on Applicant

- An applicant has the burden of establishing that the terms and conditions set forth in its application and plans will minimize adverse impacts on air, water and other natural resources and can meet the requirements of the Act.

Affected Area Assessment

- Analysis of “affected area” required—area outside of the mining area (fence line) that may potentially be impacted.
- Affected area analysis must include impacts from all “mining activities” defined in rules to include transportation, utilities (new or expansion), blasting, beneficiation, road-building...
- Affected area must be remediated to self-sustaining ecological conditions that approximate pre-mining conditions and do not require perpetual care

Ban on Perpetual Care

- Both the mining area and the affected area shall be reclaimed to achieve a self-sustaining ecosystem appropriate for the region that does not require perpetual care following closure and with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. Any portion of the mining area owned by the applicant may be used for any legal purpose.

Demonstration Clause

- An applicant must demonstrate that the methods, materials and techniques it plans to utilize can meet the stated purposes via actual testing, modeling or documentation of successful application at similar sites.

Financial Assurance Required

- Applicant must post financial assurance that “shall be sufficient to cover the cost to administer and to hire a third party to implement reclamation and necessary environmental protection measures.”
- The bond may consist of no more than 25% corporate guarantee and the remaining 75% must be conformance bond, escrow, cash, CD, irrevocable letter of credit or other equivalent security.
- The department has the authority to adjust (increase or decrease) the amount of financial assurance at any time to ensure sufficient funding.

Cumulative Impacts Analysis Required

- Must take into account deposition and discharges from all “mining activities” from past, current and reasonably foreseeable projects
- Must analyze additive and synergistic impacts of mining activities and discharges

Judicial Relief May Be Sought

- Parties aggrieved by an agency decision may file contested case proceedings.
- Post-administrative, an appeal by right to Circuit Crt.
- DEQ can request the attorney general to commence a civil action for appropriate relief should a mine operator violate Michigan environmental laws or their permit.

Post-closure Monitoring Required

- A post-mining monitoring period of 20 years is required, and is extendable in 20 year increments, unless/until the mine operator demonstrate s that there is no significant potential for water contamination resulting from the mining operation.

Immediate Termination Authority

- The agency can terminate the mining permit immediately if it determines that there is an “imminent and substantial endangerment to the public health or safety, environment, or other natural resources.”

Timeline for Permitting

- Day 1--Application Filed
- (Up to 14 days may lapse)

- By Day 15--DEQ determines whether app is administrative complete. If not, time is tolled until it is. If so...
- (Up to 42 days may lapse)

- By Day 57--Hold public meeting on application (requires 14-28 day notice).
- (Up to 28 days may lapse)

- By Day 85--Expiration for accepting public comments from public meeting.
- (Up to 28 days may lapse)

- By Day 113--DEQ reveals proposed decision to grant or deny permit and must give notice of 14-28 days for public hearing.
- (Up to 28 days may lapse)

- By Day 141--Hold Public Hearing on proposed decision
- (Up to 28 days may lapse)

- By Day 169--Expiration for accepting public comments from public hearing.
- No specific time frame
- DEQ provide summary of public comments and agency responses.
- (Up to 28 days may lapse)

- By Day ?
- Department shall grant or deny permit request.

Gaps in Part 632

- No socio-economic analysis requirement
- No siting requirements for assessing the appropriateness of particular locations for sulfide mining
- No certainty that DEQ will have adequate resources to consider permits and regulate thoroughly-application fee is \$5,000.
- No consideration of past performance by applicant



Thank you.

Q/A

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