

**A proposal to amend Part 632 (Nonferrous Metallic Mineral Mining) of the Natural Resources and Environmental Protection Act, MCL 324.63201 *et seq.* by adding Section 63206 as follows:**

**324.63206 Additional requirements.**

Sec. 63206.

(1) The department shall not authorize, and a person shall not engage in, the mining or beneficiation of uranium until additional rules have been promulgated under this part to specifically authorize and regulate uranium mining or beneficiation operations. Notwithstanding section 63203(1), the department may promulgate such additional rules, which shall apply in addition to the requirements of this part and other rules promulgated under this part, and which shall at a minimum impose such requirements and restrictions as may be necessary to protect the environment, natural resources, and public health and safety from the special risks associated with uranium mining operations or beneficiation operations.

(2) A mining area, including any subsurface shafts, tunnels, or other underground mine workings that may be associated with a mining operation, shall not be located within 2,000 feet of a water body unless the department determines that the applicant or permittee has made the demonstration required by this subsection. The department may authorize a mining area to be located within 2,000 feet of a water body only if the applicant or permittee has demonstrated by clear and convincing evidence that mining operations within the mining area will not cause injurious impact to any groundwater or water body at any time during or after the mining operations. Beginning 30 days after the effective date of this section, a permittee holding a permit that was issued before the effective date of this section and which authorizes a mining area within 2,000 feet of a water body shall not commence or continue mining operations within the mining area until such a demonstration and determination are made, except that pending the department's determination, the permittee shall continue any operations that the department specifically identifies in writing as being necessary to protect the environment, natural resources, or public health and safety. The department shall provide the permittee with an opportunity for an evidentiary hearing if the permittee requests such a hearing. The department may require the same demonstration to be made for a mining area located more than 2,000 feet from any water body if it decides that a risk of injurious impact may exist in light of the specific characteristics of the existing or proposed mining operations or the area surrounding the mining operations. In considering a demonstration under this subsection, the department may take into account the extent to which other permit determinations afford protection to groundwater or water bodies only if the applicant or permittee demonstrates by clear and convincing evidence that the mining operation is capable of meeting the requirements of those permits. In making the determination required by this subsection, the department shall consider all aspects of the mining operations within the mining area, including, but not limited to, the following:

- (a) Clearing of land.
- (b) Drilling and blasting.
- (c) Excavation of earth materials to access or extract ore.
- (d) Extraction of ore.
- (d) Beneficiation.



(e) Storage, transportation, relocation, or disposal of overburden, rock, ore, or tailings, including any backfilling of mined areas.

(f) Storage, transportation, or use of chemical reagents.

(g) Construction or use of water impoundment and drainage features.

(h) Construction or use of haul roads.

(i) Construction of utilities or extension of existing utilities.

(j) Withdrawal, storage, transportation, treatment, or discharge of water or wastewater.

(k) Reclamation.

(3) In addition to the items required by section 63205(2), an application for a mining permit shall include all of the following:

(a) A complete United States Geological Survey hydrologic analysis of all groundwater and surface water within the United States Geological Survey hydrologic cataloging unit or units for the area that may be affected by the proposed mining operations. The hydrologic analysis required by this subsection shall have been conducted within the previous 10 years, and, in combination with other site-specific data submitted with the environmental impact assessment, shall contain sufficient information for the department to determine all potential impacts to water quantity and water quality that may result from the proposed mining operations. If such an analysis does not exist and the United States Geological Survey issues a written refusal to prepare such an analysis, the applicant may provide an equivalent hydrologic analysis prepared by the department or commissioned by the department and prepared by an unbiased, independent, and qualified third party organization. The department shall not commission the applicant or any person employed by, affiliated with, or otherwise associated with the applicant or associated with any other person engaged in the business of nonferrous metallic mineral mining or other mineral mining to prepare the hydrologic analysis. The department may require the applicant to finance the cost of the hydrologic analysis. The environmental impact assessment required by section 63205(2)(b) shall include a copy of the hydrologic analysis and shall utilize all relevant data from the hydrologic analysis.

(b) The demonstration required by subsection (2), if applicable.

(c) The demonstration required by subsection (4).

(4) Notwithstanding section 63205(11), the department shall deny a mining permit unless it determines that the applicant has demonstrated by clear and convincing evidence that a demonstration mine meeting the requirements of this subsection has not caused nonferrous metallic mineral mining damage at any time during or after active operation of the demonstration mine. This subsection applies in addition to the requirements of section 63205(11). To meet the requirements of this subsection, the demonstration mine must have been operated and closed for a significant period of time, and the demonstration mine must be sufficiently comparable to the proposed nonferrous metallic mineral mining operation under this part to demonstrate that the methods, techniques, and technologies to be used at the proposed mining operation have prevented nonferrous metallic mineral mining damage from



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occurring under the geologic, climatic, hydrologic, geochemical, and operational conditions that are expected to exist at the proposed mining operation. A demonstration mine does not meet the requirements of this subsection unless the department determines that the applicant has demonstrated all of the following by clear and convincing evidence:

- (a) Ore was actively extracted for at least 5 consecutive years at the demonstration mine.
  - (b) All reclamation and post-closure activities at the demonstration mine other than long-term monitoring have been complete for at least 10 consecutive years.
  - (c) The geologic, climatic, and hydrologic conditions in the area in which the demonstration mine is located are similar in all material respects to the conditions of the area in which the applicant proposes to engage in nonferrous metallic mineral mining under this part.
  - (d) The ore and surrounding rock associated with the demonstration mine has or had materially similar geochemical characteristics to the ore and surrounding rock within which the applicant proposes to conduct nonferrous metallic mineral mining under this part.
  - (e) The demonstration mine successfully utilized pollution prevention techniques and technologies that are similar in all material respects to those proposed for the nonferrous metallic mineral mining operation under this part. The techniques and technologies to be considered under this requirement include, but are not limited to, wastewater treatment and discharge, air emissions, and acid rock drainage prevention techniques and technologies.
  - (f) The demonstration mine utilized mining and waste management methods and techniques that are similar in all material respects to those proposed for the nonferrous metallic mineral mining operation under this part. The techniques to be considered under this requirement include, but are not limited to, the use of surface or subsurface mining methods, the methods for handling and storing ore and waste rock, the existence and methods of on-site beneficiation, and the method of handling mine tailings, as applicable.
  - (g) The demonstration mine utilized reclamation methods and techniques that are similar in all material respects to those proposed for the nonferrous metallic mineral mining operation under this part.
- (5) In addition to the items required by section 63213(1), a mining and reclamation report shall include information and data sufficient for the department to determine both of the following:
- (a) Whether the mining operations have caused, are causing, or are likely to cause an injurious impact to groundwater or a water body.
  - (b) Whether the demonstration mine upon which the department's determination under subsection (4) was based has caused nonferrous metallic mineral mining damage within the preceding calendar year.
- (6) A permittee shall notify the department immediately upon receiving information or data, regardless of its source, indicating any of the following:
- (a) That the mining operations have caused, are causing, or are likely to cause an injurious impact to groundwater or a water body.



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(b) That a notice of violation, order, enforcement action, or similar action has been issued or instituted by any municipality, state agency, federal agency, or court of competent jurisdiction alleging that the demonstration mine that formed the basis for the department's determination under subsection (4) has caused or is likely to have caused conditions that constitute nonferrous metallic mineral mining damage.

(c) That the demonstration mine that formed the basis for the department's determination under subsection (4) has caused or is likely to have caused nonferrous metallic mineral mining damage.

(7) If the department determines that a mining operation has caused, is causing, or is likely to cause an injurious impact to groundwater or a water body, the department shall take action under subsection (9) as may be necessary to eliminate, curtail, or prevent the injurious impact. This subsection does not limit the authority of the department to take any other action authorized by law to address such an injurious impact.

(8) If the department determines that the demonstration mine upon which the department's determination under subsection (4) was based has caused, or is likely to have caused, nonferrous metallic mineral mining damage, the department shall take action under subsection (9) as may be necessary to prevent a similar occurrence at the mining operation.

(9) The department may revoke a mining permit, issue an order to an operator requiring the immediate suspension of activities at a mining operation, issue an order to an operator requiring such other actions as may be necessary, or any combination of the foregoing, for the purposes authorized under subsection (7) and (8). The following procedures apply to an action by the department under this subsection:

(a) Before taking action to suspend operations or revoke a mining permit, or to otherwise prevent the continuation of mining operations, the department shall give written notice, in person or by mail, to the operator. Subject to subdivision (b), the department shall provide the operator an opportunity for an evidentiary hearing.

(b) If the department finds that emergency action is required to protect the public health, safety, or welfare, or to protect the environment or natural resources, the department may issue an emergency order without a public hearing to require an operator to suspend operations and to take any other actions the department determines to be necessary. An emergency order shall remain in force and effect for not more than 21 days.

(c) If the operator or surety fails or neglects to take action as specified in an order of the department, the department may, after giving written notice to the operator and surety, enter in or upon the mining area and upon and across any private or public property necessary to reach the mining area, and may take whatever action the department determines to be necessary to accomplish the actions required by the order. The operator and surety are jointly and severally liable for all expenses incurred by the department in taking such action. The claim shall be paid by the operator or surety within 30 days, and, if the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction. This subdivision does not limit the department's authority to take whatever action it determines to be necessary to protect the environment, natural resources, or public health, safety, or welfare.

(10) The revocation of a mining permit or suspension of activities under subsection (9) does not relieve a permittee of the responsibility to complete reclamation, maintain financial assurance required under

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section 63211, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

(11) The department shall not amend or authorize an amendment to a mining permit if the amendment would authorize a deviation from any of the methods, techniques, and technologies that formed the basis for the department's determination under subsection (4), unless the amendment is necessary to protect the environment, natural resources, or public health and safety. The department shall consider any proposed deviation from the methods, techniques, and technologies that formed the basis for the department's determination under subsection (4) to be a significant change for purposes of section 63207(6)(c), and the department shall submit the request for amendment to the same review process as provided for a new permit application in section 63205(4) to (9).

(12) The requirements of subsections (4)(e), (4)(f), and (4)(g) shall not be interpreted to prevent an applicant from proposing incremental advancements or improvements to the methods, techniques, and technologies that have been successfully used at the demonstration mine, and shall not prohibit an applicant from proposing modifications that are reasonably necessary to address site-specific conditions, provided that the applicant demonstrates by clear and convincing evidence that the proposed modifications or incremental advancements or improvements will achieve their stated purpose.

(13) The department may extend any of the timelines established in section 63205(4) to (9), section 63207(6)(c), or rules promulgated under this part for such time as the department determines to be necessary to assure adequate review of, or public comment on, an application for a mining permit or a request to amend a mining permit.

(14) The department shall not promulgate rules to implement this section except as explicitly authorized by this section.

(15) This section is declared to be severable. If any subsection, paragraph, clause, or provision of this section or the application of this section to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining subsections, paragraphs, clauses, provisions, or applications of this section.

(16) For purposes of this section:

(a) "Applicable criterion" means, with respect to each individual substance or condition in each environmental medium, the more stringent of the following:

(i) The applicable municipal, state, provincial, or federal criterion for the place where the demonstration mine is located.

(ii) The criterion that would apply if the demonstration mine were located in Michigan.

(b) "Demonstration mine" means a single nonferrous metallic mineral mining operation located in the United States or Canada that meets all of the criteria specified under subsection (4).

(c) "Groundwater" means underground water within the zone of saturation.



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(d) “Injurious impact” means the presence of metals, acidic conditions, or any other substance or condition in groundwater or a water body that is or may become injurious to any of the following:

(i) To the public health, safety, or welfare.

(ii) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.

(iii) To the value or utility of riparian lands.

(iv) To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.

(v) To the value of fish and game.

(e) “Nonferrous metallic mineral mining damage” means the presence of metals, acidic conditions, or any other substance or condition at levels exceeding an applicable criterion in ground water, in surface water, on land, in the air, or in any other environmental medium, regardless of whether any violation or exceedance of an applicable criterion has been alleged by any governmental subdivision or agency. Nonferrous metallic mineral mining damage also includes injury to, destruction of, or loss of natural resources, regardless of whether injury to, destruction of, or loss of natural resources has been alleged by any governmental subdivision or agency. If a notice of violation, order, enforcement action, or similar action has been issued or instituted by a governmental subdivision, governmental agency, or court of competent jurisdiction alleging that a demonstration mine has caused or is likely to have caused conditions that constitute nonferrous metallic mineral mining damage, the department shall consider such allegation as evidence that the demonstration mine has caused nonferrous metallic mineral mining damage, but the department shall not consider the absence of such actions as evidence that the demonstration mine has not caused nonferrous metallic mineral mining damage.

(f) “Water body” means a lake, river, stream, or any other watercourse or surface water within the jurisdiction of the state, and includes all of the following:

(i) The Great Lakes and their connecting waters.

(ii) Inland lakes.

(iii) Rivers.

(iv) Streams.

(v) Impoundments.

(vi) Open drains.

(vii) Wetlands.

(viii) Other surface bodies of water within the confines of the state.

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