

HOUSE BILL NO. 606

INTRODUCED BY GUTSCHE, CLARK, CAMPBELL, COHENOUR

A BILL FOR AN ACT ENTITLED: "~~AN ACT REQUIRING A SMALL MINER WHO INTENDS~~ CERTAIN SMALL MINERS WHO INTEND TO USE AN IMPOUNDMENT TO STORE WASTE FROM ORE PROCESSING TO OBTAIN ~~AN OPERATING PERMIT~~ OPERATING PERMITS APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF AN IMPOUNDMENT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO POST A PERFORMANCE BOND; ~~AND~~ AMENDING SECTION 82-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption -- small miners -- written agreement. (1) Except as provided in subsections (3) through ~~(4)~~ (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of

- 1 any class of voting stock has a small-miner exemption; or
- 2 (b) if the small miner is a partnership or business association, that:
- 3 (i) none of the associates or partners holds a small-miner exemption; and
- 4 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of
- 5 voting stock of a corporation that has a small-miner exemption; or
- 6 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any
- 7 class of voting stock of the corporation:
- 8 (i) holds a small-miner exemption;
- 9 (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
- 10 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another
- 11 corporation that holds a small-miner exemption.
- 12 (3) A small miner whose operations are placer or dredge mining shall post a performance bond equal
- 13 to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed
- 14 \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government
- 15 agency, the small miner is exempt from the requirement of this subsection.
- 16 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the
- 17 small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge
- 18 for services performed by state personnel and for state materials and equipment used. If the small miner posts
- 19 a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for
- 20 the remainder of the reasonable costs to the state of reclaiming the operation.
- 21 (5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation
- 22 of the operation within 6 months after cessation of mining or within an extended period allowed by the
- 23 department for good cause shown or if the small miner fails to diligently complete reclamation, the department
- 24 shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner
- 25 commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed
- 26 to the address stated on the small miner exclusion statement or, if the small miner has notified the department
- 27 of a different address by letter or in the annual certification form, to the most recent address given to the
- 28 department. If the small miner fails to commence reclamation within 30 days or to diligently complete
- 29 reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been
- 30 posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with

1 the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may
2 also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

3 (6) To collect additional reclamation costs, the department shall notify the small miner by certified mail,
4 at the address determined under subsection (5), of the additional reasonable reclamation costs and request
5 payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the
6 department may bring an action in district court for payment of the estimated future costs and, if the department
7 has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it
8 determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon
9 completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or
10 the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred
11 by the department.

12 (7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents
13 or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide
14 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage
15 disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents
16 and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and
17 (15)(a)(ii).

18 (8) (a) ~~A~~ EXCEPT FOR A SMALL MINER PROPOSING TO CONDUCT A PLACER OR DREDGE MINING OPERATION, A
19 small miner who intends to use an impoundment to store waste from ore processing shall obtain ~~an operating~~
20 permit APPROVAL FOR THE DESIGN, CONSTRUCTION, OPERATION, AND RECLAMATION OF THAT IMPOUNDMENT AND POST
21 A PERFORMANCE BOND for that part of the small miner's operation BEFORE CONSTRUCTING AN IMPOUNDMENT. THE
22 SMALL MINER SHALL POST A PERFORMANCE BOND EQUAL TO THE STATE'S DOCUMENTED COST ESTIMATE OF RECLAIMING
23 THE DISTURBED LAND. IF THE SMALL MINER HAS POSTED A BOND FOR RECLAMATION OF THAT SITE WITH A FEDERAL
24 GOVERNMENT AGENCY, THE SMALL MINER IS EXEMPT FROM THE REQUIREMENTS OF THIS SUBSECTION (8)(A).

25 (B) THE DEPARTMENT SHALL CONDUCT A REVIEW OF THE ADEQUACY OF THE BOND POSTED BY A SMALL MINER
26 USING AN IMPOUNDMENT PURSUANT TO THIS SECTION AT LEAST ONCE EVERY 5 YEARS AND ADJUST THE BOND IF
27 NECESSARY TO ENSURE RECLAMATION OF THE IMPOUNDMENT. ~~The acreage disturbed by the portion of the operation~~
28 that uses an impoundment to store waste from ore processing ~~and covered by the operating permit~~ is included
29 in the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii) AND IS SUBJECT TO THE PROVISIONS OF THIS
30 SUBSECTION (8).

1 (C) IF A SMALL MINER UNDER THIS SUBSECTION (8) FAILS TO RECLAIM THE OPERATION, THE SMALL MINER IS
 2 LIABLE TO THE DEPARTMENT FOR ALL ITS REASONABLE COSTS OF RECLAMATION, INCLUDING A REASONABLE CHARGE FOR
 3 SERVICES PERFORMED BY STATE PERSONNEL AND FOR STATE MATERIALS AND EQUIPMENT USED. IF THE SMALL MINER
 4 POSTS A SURETY BOND, THE SURETY IS LIABLE TO THE STATE TO THE EXTENT OF THE BOND AMOUNT AND THE SMALL
 5 MINER IS LIABLE FOR THE REMAINDER OF THE REASONABLE COSTS TO THE STATE OF RECLAIMING THE OPERATION.

6 (D) IF A SMALL MINER UNDER THIS SUBSECTION (8) FAILS TO COMMENCE RECLAMATION OF THE OPERATION
 7 WITHIN 6 MONTHS AFTER CESSATION OF MINING OR WITHIN AN EXTENDED PERIOD ALLOWED BY THE DEPARTMENT FOR
 8 GOOD CAUSE SHOWN OR IF THE SMALL MINER FAILS TO DILIGENTLY COMPLETE RECLAMATION, THE DEPARTMENT SHALL
 9 NOTIFY THE SMALL MINER BY CERTIFIED MAIL THAT IT INTENDS TO RECLAIM THE OPERATION UNLESS THE SMALL MINER
 10 COMMENCES RECLAMATION WITHIN 30 DAYS AND DILIGENTLY COMPLETES THE RECLAMATION. THE NOTICE MUST BE
 11 MAILED TO THE ADDRESS STATED ON THE SMALL MINER EXCLUSION STATEMENT OR, IF THE SMALL MINER HAS NOTIFIED
 12 THE DEPARTMENT OF A DIFFERENT ADDRESS BY LETTER OR IN THE ANNUAL CERTIFICATION FORM, TO THE MOST RECENT
 13 ADDRESS GIVEN TO THE DEPARTMENT. IF THE SMALL MINER FAILS TO COMMENCE RECLAMATION WITH 30 DAYS OR TO
 14 DILIGENTLY COMPLETE RECLAMATION, THE DEPARTMENT MAY REVOKE THE SMALL MINER EXCLUSION STATEMENT, FORFEIT
 15 ANY BOND THAT HAS BEEN POSTED WITH THE DEPARTMENT, AND ENTER AND RECLAIM THE OPERATION. IF THE SMALL
 16 MINER HAS NOT POSTED A BOND WITH THE DEPARTMENT OR IF THE REASONABLE COSTS OF RECLAMATION EXCEED THE
 17 AMOUNT OF THE BOND, THE DEPARTMENT MAY ALSO COLLECT ADDITIONAL RECLAMATION COSTS, AS SET FORTH IN
 18 SUBSECTION (8)(E), BEFORE OR AFTER IT INCURS THOSE COSTS.

19 (E) TO COLLECT ADDITIONAL RECLAMATION COSTS, THE DEPARTMENT SHALL NOTIFY THE SMALL MINER BY
 20 CERTIFIED MAIL, AT THE ADDRESS DETERMINED UNDER SUBSECTION (8)(D), OF THE ADDITIONAL REASONABLE
 21 RECLAMATION COSTS AND REQUEST PAYMENT WITHIN 30 DAYS. IF THE SMALL MINER DOES NOT PAY THE ADDITIONAL
 22 RECLAMATION COSTS WITHIN 30 DAYS, THE DEPARTMENT MAY BRING AN ACTION IN DISTRICT COURT FOR PAYMENT OF THE
 23 ESTIMATED FUTURE COSTS AND, IF THE DEPARTMENT HAS PERFORMED ANY RECLAMATION, OF ITS REASONABLE ACTUAL
 24 COSTS. THE COURT SHALL ORDER PAYMENT OF COSTS THAT IT DETERMINES TO BE REASONABLE AND SHALL RETAIN
 25 JURISDICTION UNTIL RECLAMATION OF THE OPERATION IS COMPLETED. UPON COMPLETION OF RECLAMATION, THE COURT
 26 SHALL ORDER PAYMENT OF ANY ADDITIONAL COSTS THAT IT CONSIDERS REASONABLE OR THE REFUND OF ANY PORTION
 27 OF ANY PAYMENT FOR ESTIMATED COSTS THAT EXCEEDS THE ACTUAL REASONABLE COSTS INCURRED BY THE
 28 DEPARTMENT.

29 ~~(b)~~(F) A EXCEPT FOR A SMALL MINER WHO CONDUCTS A PLACER OR DREDGE MINING OPERATION, A small miner
 30 utilizing an impoundment to store solid waste from ore processing on or after [the effective date of this act] shall

1 ~~apply for an operating permit~~ OBTAIN AN OPERATING PERMIT APPROVAL OF THE DESIGN, CONSTRUCTION, OPERATION,
 2 AND RECLAMATION OF THAT IMPOUNDMENT AND POST A PERFORMANCE BOND WITHIN 1-YEAR 6 MONTHS OF [THE
 3 EFFECTIVE DATE OF THIS ACT]. IF THE SMALL MINER HAS POSTED A BOND FOR RECLAMATION OF THAT SITE WITH A
 4 FEDERAL GOVERNMENT AGENCY, THE SMALL MINER IS EXEMPT FROM THE REQUIREMENTS OF THIS SUBSECTION (8)(F).

5 ~~(8)~~(9) The exemption provided in this section does not apply to a person:

6 (a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit
 7 or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions
 8 described under 82-4-360;

9 (b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

10 (c) who has failed to post a reclamation bond required by this section, unless the department has
 11 certified that the area for which the bond should have been posted has been reclaimed by that person or
 12 reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

13 (d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
 14 department has completed the abatement and the person has reimbursed the department for the cost of
 15 abatement.

16 ~~(9)~~(10) The exemption provided in this section does not apply to an area:

17 (a) under permit pursuant to 82-4-335;

18 (b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or
 19 any other state or federal agency; or

20 (c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a
 21 public agency, under supervision of a public agency, or using public funds.

22 ~~(10)~~(11) A small miner may not use mercury except in a contained facility that prevents the escape of
 23 any mercury into the environment."
 24

25 NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

26 - END -