

SENATE BILL NO. 180

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE METAL MINE RECLAMATION LAWS; AMENDING INFORMATION REQUIREMENTS FOR OPERATING PERMIT APPLICATIONS; MODIFYING THE RECLAMATION PLAN AMENDMENT PROCESS; PROVIDING FOR INTERIM BONDING INCREASES WHEN RECLAMATION PLAN AMENDMENTS BECOME NECESSARY; INCREASING BOND AMOUNTS FOR LONG-TERM WATER TREATMENT; AND AMENDING SECTIONS 82-4-335, 82-4-337, AND 82-4-338, MCA."

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

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit -- limitation -- fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. Except as provided in subsection (2), a separate operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

(iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;

(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or

(v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all

1 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
2 The performance bond required under this part is and must be conditioned upon compliance with this part, the
3 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
4 landowner's consent.

5 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents
6 or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide
7 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

8 (4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee
9 of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an
10 additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
11 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely
12 and adequate review of the application, including any environmental review conducted under Title 75, chapter
13 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines
14 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the
15 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The
16 department shall provide the applicant an opportunity to review the department's estimated expenses. The
17 applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

18 (5) The person shall submit an application on a form provided by the department, which must contain
19 the following information and any other pertinent data required by rule:

20 (a) the name and address of the operator and, if a corporation or other business entity, the name and
21 address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and
22 its resident agent for service of process, if required by law;

23 (b) the minerals expected to be mined;

24 (c) a proposed reclamation plan;

25 (d) the expected starting date of operations;

26 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,
27 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately
28 adjacent to the area, and the location of proposed access roads to be built;

29 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
30 the surface of the land within the permit area and the owners of record and any purchasers under contracts for

1 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
2 required to verify this information;

3 (g) the names and addresses of the present owners of record and any purchasers under contracts for
4 deed of all minerals in the land within the permit area, provided that the department is not required to verify this
5 information;

6 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
7 provided that the department is not required to verify this information;

8 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

9 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of
10 the operation;

11 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
12 length of time to characterize the hydrologic regime;

13 (l) sufficient geologic and geochemical data to characterize areas of reactive natural materials that have
14 the potential to release contaminants at concentrations that may violate water quality standards, including
15 nondegradation requirements;

16 (m) a plan detailing the design, operation, and monitoring of impounding structures, including but not
17 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

18 ~~(m)~~(n) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
19 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

20 ~~(n)~~(o) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
21 expansion of the tailings impoundment or waste site; ~~and~~

22 ~~(o)~~(p) a plan outlining methods to be used that will minimize contact of surface and ground water with
23 reactive natural materials that have the potential to release contaminants at concentrations that may violate water
24 quality standards, including nondegradation requirements;

25 (q) a plan outlining methods to be used to ensure that waste rock that contains reactive natural materials
26 that have the potential to release contaminants will be placed in a location and manner that will prevent, to the
27 extent possible, contact with surface and ground water causing the release of contaminants at concentrations
28 that may violate water quality standards, including nondegradation requirements; and

29 (r) an assessment of the potential for the postmining use of mine-related facilities for other industrial
30 purposes, including evidence of consultation with the county commission of the county or counties where the

1 mine or mine-related facilities will be located.

2 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
3 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may
4 not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written
5 guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule
6 with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply
7 with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock
8 mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact
9 board that the permittee is in compliance.

10 (7) When the department determines that a permittee has become or will become a large-scale mineral
11 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months
12 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a
13 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an
14 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does
15 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee
16 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter
17 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the
18 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review
19 and implementation requirements.

20 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing
21 when the aggregate samples are less than 10,000 tons.

22 (9) A person may not be issued an operating permit if:

23 (a) that person's failure, or the failure of any firm or business association of which that person was a
24 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or
25 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department
26 or the completion of reclamation by the person's surety or by the department, unless that person meets the
27 conditions described in 82-4-360;

28 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
29 82-4-361;

30 (c) that person has failed to post a reclamation bond required by 82-4-305; or

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

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 2. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.

(1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required.

1 (c) A permit may not be issued until:

2 (i) sufficient bond has been submitted pursuant to 82-4-338;

3 (ii) the information and certification have been submitted pursuant to 82-4-335(10); and

4 (iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7).

5 (d) (i) Prior to issuance of a permit, the department shall inspect the site, unless the department has
6 failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because
7 of extended adverse weather conditions, the department may extend the time period prescribed in subsection
8 (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall
9 serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject
10 to appeal to the board in accordance with the Montana Administrative Procedure Act.

11 (ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for
12 analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the
13 department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section
14 by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

15 (iii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed to
16 review the application and reclamation plan for a major operation, the department and the applicant shall
17 negotiate to extend the period prescribed in subsection (1)(b) of this section by not more than 365 days in order
18 to permit reasonable review. The applicant may by written waiver extend this time period.

19 (iv) If the department decides to hire a third-party contractor to prepare an environmental impact
20 statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to
21 the department and shall provide the applicant with a copy of the list. The applicant shall provide the department
22 with a list of at least 50% of the contractors from the department's list. The department shall select its contractor
23 from the list provided by the applicant.

24 (v) Failure of the department to act upon a complete application within the extension period constitutes
25 approval of the application, and the permit must be issued promptly upon receipt of the bond as required in
26 82-4-338.

27 (2) The operating permit must be granted for the period required to complete the operation and is valid
28 until the operation authorized by the permit is completed or abandoned, unless the permit is suspended or
29 revoked by the department as provided in this part.

30 (3) The operating permit must provide that the reclamation plan may be modified by the department,

1 upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the
2 term of the permit and for any of the following reasons:

3 (a) to modify the requirements so that they will not conflict with existing laws;

4 (b) when the previously adopted reclamation plan is impossible or impracticable to implement and
5 maintain;

6 (c) when significant environmental problem situations are revealed by field inspection.

7 (4) (a) The modification of an operating permit may be a major or minor permit amendment or a permit
8 revision. A modification of the operating permit, including a modification necessary to conform to the requirements
9 of existing law as interpreted by a court of competent jurisdiction, must be processed in accordance with the
10 procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and
11 this section, including any environmental analysis required by Title 75, chapter 1, part 2.

12 (b) The modification of an operating permit may not be finalized and an existing bond amount may not
13 be increased until the permit modification procedures and analysis described in subsection (4)(a) are completed.

14 (5) During the term of an operating permit, an operator may apply for an amendment or revision to the
15 permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

16 (6) Applications for major amendments must be processed in the same manner as applications for new
17 permits.

18 (7) Major amendments are those that may significantly affect the environment. Minor amendments are
19 those that will not significantly affect the environment. The board may by rule establish criteria for classification
20 of amendments as major or minor. The rules must establish requirements for the content of applications for
21 amendments and revisions and procedures for processing of minor amendments.

22 (8) If the department demonstrates that a revision may result in a significant environmental impact that
23 was not previously and substantially evaluated in an environmental impact statement, the application must be
24 processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications
25 for minor amendments and other revisions must be processed within 30 days of receipt of an application.

26 (9) (a) In determining whether to require modification of a reclamation plan under subsection (3)(c), the
27 department shall prepare or require the permittee to prepare a written analysis of changes in the reclamation plan
28 that may eliminate or mitigate to an acceptable level the environmental problem situation. The analysis must
29 include an assessment of the effectiveness of the changes and any negative environmental impacts of the
30 changes. The department shall prepare an environmental assessment or an environmental impact statement

1 pursuant to Title 75, chapter 1, only if the department determines that:

2 (i) the changes will not completely eliminate the environmental problem situation;

3 (ii) further analysis is necessary to determine whether the changes will eliminate the environmental
4 problem situation; or

5 (iii) the changes may have potentially significant negative environmental impacts.

6 (b) If the department determines that preparation of an environmental impact statement is necessary,
7 the permittee shall pay the department's costs pursuant to 75-1-205."

8
9 **Section 3.** Section 82-4-338, MCA, is amended to read:

10 **"82-4-338. Performance bond.** (1) (a) An applicant for an exploration license or operating permit shall
11 file with the department a bond payable to the state of Montana with surety satisfactory to the department in the
12 sum to be determined by the department of not less than \$200 for each acre or fraction of an acre of the disturbed
13 land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the
14 permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate
15 of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less
16 than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and
17 the permit, including the potential cost of department management, operation, and maintenance of the site upon
18 temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

19 (b) A public or governmental agency may not be required to post a bond under the provisions of this part.

20 (c) A blanket performance bond covering two or more operations may be accepted by the department.
21 A blanket bond must adequately secure the estimated total number of acres of disturbed land.

22 (d) (i) For an exploration license or operating permit authorizing activities on federal land within the state,
23 the department may accept a bond payable to the state of Montana and the federal agency administering the
24 land. The bond must provide at least the same amount of financial guarantee as required by this part.

25 (ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal
26 land management agency. The bond may provide that the federal land management agency may forfeit the bond
27 without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the
28 department and may also be payable to the federal land management agency. If the bond is payable to the
29 department and the federal land management agency, the department, before accepting the bond, shall enter
30 into an agreement or memorandum of understanding with the federal land management agency providing for

administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The ~~mine owner~~ applicant is responsible for the first \$5,000 in contractor services provided under this subsection. The ~~mine owner~~ applicant and the department are each responsible for 50% of any amount over \$5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing

1 under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented
2 by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee
3 or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not
4 be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

5 (b) The permittee or any person with an interest that may be adversely affected may obtain a contested
6 case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter
7 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final
8 bond determination, a written request for hearing stating the reason for the request. The request for hearing must
9 specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the
10 reasons that the licensee or permittee considers the department's final bond determination to be excessive. As
11 a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the
12 department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the
13 request for hearing or the amount that is one-half of the increase contained in the department's final bond
14 determination, whichever amount is greater. If the board determines that additional bond is necessary, the
15 licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the
16 board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence,
17 the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable
18 extension of the deadline.

19 (c) If a licensee or permittee fails to post bond in accordance with ~~subsection~~ subsections (3)(a), ~~or~~
20 (3)(b), or (7), in the required amounts by the required deadlines, the license or permit is suspended by operation
21 of law and the licensee or permittee shall immediately cease mining and exploration operations until the required
22 bond is posted with and approved by the department.

23 (4) ~~A~~ Except as provided in subsection (7)(d), a bond filed in accordance with the provisions of this part
24 may not be released by the department until the provisions of this part, the rules adopted pursuant to this part,
25 and the permit have been fulfilled.

26 (5) ~~A~~ Except for an interim bond that expires under subsection (7)(d), a bond filed for an operating permit
27 obtained under 82-4-335 may not be released or decreased until the public has been provided an opportunity for
28 a hearing and a hearing has been held if requested. The department shall provide reasonable statewide and local
29 notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general
30 daily circulation.

1 (6) (a) Except as provided in subsection (6)(b), all bonds required in accordance with the provisions
2 of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to
3 comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities
4 as described in subsection (1). Only those activities that themselves or in conjunction with other activities have
5 a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond
6 or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency
7 that is not a reasonably foreseeable result of any activity conducted by the applicant.

8 (b) Except as provided in subsection (6)(c), if the department determines that mine discharge water is
9 projected to require treatment to meet water quality standards and this treatment will be necessary after all other
10 reclamation is completed, the bond amount must be increased by 50% of the calculated treatment costs.

11 (c) A bond increase is not required if the water treatment is necessary only to remove nitrates from the
12 water.

13 (7) (a) If the department determines pursuant to 82-4-337(3) that a reclamation plan must be changed,
14 the department may require a permittee to submit an amended interim reclamation plan within a reasonable time
15 specified by the department. The department shall review the amended interim reclamation plan and may
16 approve it, reject it, or propose amendments. If the department rejects the permittee's plan or proposes
17 amendments, the department may require submission of changes to the permittee's proposal or submission of
18 another amended reclamation plan. When the department approves an amended reclamation plan, the permittee
19 shall submit an interim bond under subsections (7)(b) and (7)(c).

20 (b) In determining the amount of the interim bond, the department shall select a third-party contractor,
21 in consultation with the permittee, to provide a technical engineering analysis and report on the estimated costs
22 of addressing the situation. The department shall, if possible, provide the permittee with a list of at least four
23 qualified contractors. The permittee shall provide the department with a list that includes at least 50% of the
24 contractors from the department's list. The department shall select a contractor from the permittee's list. The
25 permittee shall reimburse the department for the reasonable costs of the contractor.

26 (c) When the department determines the interim bond amount, considering the contractor's calculations,
27 it shall notify the permittee in writing of the bond amount. Within 10 days of receipt of the notice, the permittee
28 may request an informal conference with the director of the department if the permittee disagrees with the bond
29 amount determined by the department. If an informal conference is requested, the director shall hold the informal
30 conference, determine the bond amount within 5 working days of the informal conference, and notify the permittee

1 of the bond amount in writing. The permittee shall, within 60 days of receipt of the last written notice, post the
2 interim bond with the department.

3 (d) An approved interim amended reclamation plan and interim bond must remain in effect until the
4 earlier of:

5 (i) the date that a revised reclamation plan is approved pursuant to 82-4-337 and a permanent bond for
6 the revised reclamation plan is submitted and accepted pursuant to this section; or

7 (ii) 3 years following the date of submission of a complete application pursuant to 82-4-337 to modify the
8 reclamation plan provision or remedy the conditions that created the need to amend the reclamation plan unless
9 the department approves or denies the complete application within 3 years of submission. The applicant may
10 agree to an extension of this deadline.

11 (e) The process provided for in this subsection (7) is not subject to the provisions of Title 75, chapter 1.

12 (8) At the applicant's discretion, bonding in addition to that required by this section may be posted. These
13 unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

14 ~~(8)(9)~~ (a) If the department determines that there exists at an area permitted or licensed under this part
15 an imminent danger to public health, safety, or the environment caused by a violation of this part, the rules
16 adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to
17 expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site,
18 and abate the danger. The department may thereafter institute proceedings to revoke the license or permit,
19 declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed \$150,000 or 10% of
20 the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the
21 forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the
22 department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the
23 suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest,
24 for any amount paid to and expended by the department pursuant to this subsection ~~(8)~~ (9) and for the actual cost
25 of the surety's expenses in responding to the department's forfeiture demand.

26 (b) If the department is unable to permanently abate the imminent danger using the amount forfeited
27 under subsection ~~(8)(a)~~ (9)(a), the department may forfeit additional amounts under the procedure provided in
28 subsection ~~(8)(a)~~ (9)(a).

29 (c) The department shall return to the surety any money received from the surety pursuant to this
30 subsection and not used by the department to abate the imminent danger. The amount not returned to the surety

1 must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

2 (d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined
3 in subsection ~~(8)(a)~~ (9)(a) must be returned to the surety, unless otherwise agreed to in writing by the surety.

4 ~~(9)(10)~~ If a bond is terminated as a result of the action or inaction of a licensee or permittee or is
5 canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new
6 bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to
7 the department, then the license or permit must be immediately suspended without further action by the
8 department."

9
10 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect proceedings pursuant to
11 82-4-337(3) that were begun before January 1, 2007, and that were required by a court judgment.

12 - END -