

1 HOUSE BILL NO. 422

2 INTRODUCED BY A. HALE, VINCENT, G. BENNETT, OLSON, MURPHY, MCCLAFFERTY, VUCKOVICH,
3 YATES, NOONAN, KEANE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING PERMIT CONTRACTORS UNDER THE METAL
6 MINE RECLAMATION LAWS TO DIRECTLY INVOICE THE PERMIT APPLICANT; AMENDING SECTION
7 82-4-335, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

10
11 **Section 1.** Section 82-4-335, MCA, is amended to read:

12 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
13 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide
14 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
15 activities in the state without first obtaining an operating permit from the department. Except as provided in
16 subsection (2), a separate operating permit is required for each complex.

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

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

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

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

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

26 (v) impact significant historic or archaeological features.

27 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
28 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
29 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
30 The performance bond required under this part is and must be conditioned upon compliance with this part, the

1 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
2 landowner's consent.

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

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

16 (b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit
17 invoices of contractor expenses to the applicant.

18 (ii) A contractor's work is ~~supervised, controlled, and directed~~ ASSIGNED, REVIEWED, ACCEPTED, OR
19 REJECTED by the department pursuant to this section.

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

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

25 (b) the minerals expected to be mined;

26 (c) a proposed reclamation plan;

27 (d) the expected starting date of operations;

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

1 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
2 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
3 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
4 required to verify this information;

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

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

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

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

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

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

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

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

21 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
22 purposes, including evidence of consultation with the county commission of the county or counties where the
23 mine or mine-related facilities will be located.

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

1 board that the permittee is in compliance.

2 (7) When the department determines that a permittee has become or will become a large-scale mineral
3 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months
4 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a
5 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an
6 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does
7 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee
8 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter
9 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the
10 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review
11 and implementation requirements.

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

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

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

20 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
21 82-4-361;

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

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

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

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

30 (ii) presents a certification by the administering agency that the violation is in the process of being

1 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and
2 (b) if the person is a partnership, corporation, or other business association, provides the certification
3 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
4 or more of any class of voting stock, and business association members."

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6 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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