

SENATE BILL NO. 312

INTRODUCED BY C. VINCENT, G. BENNETT, CUFFE, HAMLETT, MURPHY, WAGNER, KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING METAL MINE RECLAMATION LAWS; REQUIRING THAT DRAFT PERMITS BE ISSUED FOR COMPLETE AND COMPLIANT APPLICATIONS; REVISING COORDINATION OF PERMIT REVIEWS WITH THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-335, 82-4-337, 82-4-342, AND 82-4-353, MCA."

WHEREAS, the metal mine reclamation laws provide substantive requirements for the permitting of metal mines in Montana; and

WHEREAS, the Montana Environmental Policy Act provides procedures for environmental assessment with respect to decisions of state agencies; and

WHEREAS, coordination of review of permit applications for compliance with substantive requirements of mine permitting statutes and environmental assessment of permit decisions would create efficiency, reduce burdens on state government, and require permit applicants to more fully bear the burden of providing complete permit applications that meet all requirements of the metal mine reclamation laws and other laws of the state related to mine permitting in a timely fashion; and

WHEREAS, completion of the requirements of the Montana Environmental Policy Act within the timeframes required can be facilitated by an initial determination of compliance with applicable permitting laws and regulations.

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

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. ~~A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that~~

1 ~~will not significantly affect the human environment.~~

2 (3) "Board" means the board of environmental review provided for in 2-15-3502.

3 (4) "Completeness" means that an application contains information addressing each applicable permit
 4 requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to
 5 make a decision as to adequacy of the application to meet the requirements of this part.

6 ~~(4)(5)~~ "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in
 7 leaching operations.

8 ~~(5)(6)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

9 ~~(6)(7)~~ "Disturbed land" means the area of land or surface water that has been disturbed, beginning at
 10 the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste
 11 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out
 12 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not
 13 been previously reclaimed under the reclamation plan.

14 ~~(7)(8)~~ "Exploration" means:

15 (a) all activities that are conducted on or beneath the surface of lands and that result in material
 16 disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and
 17 economic viability of mineralization in those lands, if any, other than mining for production and economic
 18 exploitation; and

19 (b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

20 ~~(8)(9)~~ "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel,
 21 peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for the
 22 purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing
 23 or for stockpiling for future use, refinement, or smelting.

24 ~~(9)(10)~~ "Mining" commences when the operator first mines ores or minerals in commercial quantities for
 25 sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing
 26 in excess of the aggregate of 10,000 short tons.

27 ~~(10)(11)~~ "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard
 28 hard-rock mineral concentration processes.

29 ~~(11)(12)~~ "Person" means any person, corporation, firm, association, partnership, or other legal entity
 30 engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or

1 waste materials, or operation of a hard-rock mill.

2 ~~(12)~~(13) "Placer deposit" means:

3 (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial,
4 or alluvial deposits lying above bedrock; or

5 (b) all forms of deposit except veins of quartz and other rock in place.

6 ~~(13)~~(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
7 persons.

8 ~~(14)~~(15) "Reclamation plan" means the operator's written proposal, as required and approved by the
9 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical
10 at the time of application for an operating permit:

11 (a) a statement of the proposed subsequent use of the land after reclamation, which may include use
12 of the land as an industrial site not necessarily related to mining;

13 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the
14 land after reclamation is completed and the proposed method of accomplishment;

15 (c) the manner and type of revegetation or other surface treatment of disturbed areas;

16 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public
17 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

18 (e) the method of disposal of mining debris;

19 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent
20 pollution of those waters or unnecessary erosion;

21 (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and
22 pollution;

23 (h) maps and other supporting documents that may be reasonably required by the department; and

24 (i) a time schedule for reclamation that meets the requirements of 82-4-336.

25 ~~(15)~~(16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other
26 minerals produced by typical quarrying activities or collected from or just below the ground surface.

27 ~~(16)~~(17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not
28 exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste
29 materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on
30 land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under

1 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (16)(c)
 2 of this section, and that conducts:

3 (i) an operation that results in not more than 5 acres of the earth's surface being disturbed and
 4 unreclaimed; or

5 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the
 6 respective mining properties are:

7 (A) the only operations engaged in by the person, firm, or corporation; and

8 (B) at least 1 mile apart at their closest point.

9 (b) For the purpose of this definition only, the department shall, in computing the area covered by the
 10 operation:

11 (i) exclude access or haulage roads that are required by a local, state, or federal agency having
 12 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department
 13 in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

14 (ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in
 15 the amount of the estimated total cost of reclamation along with a description of the location of the road and the
 16 specifications to which it will be constructed.

17 (c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit
 18 may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100
 19 acres at any time.

20 ~~(17)~~(18) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

21 ~~(18)~~(19) (a) "Surface mining" means all or any part of the process involved in mining of minerals by
 22 removing the overburden and mining directly from the mineral deposits exposed, including but not limited to
 23 open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all
 24 similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

25 (b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat,
 26 soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other
 27 onsite building construction.

28 ~~(19)~~(20) "Underground mining" means all methods of mining other than surface mining.

29 ~~(20)~~(21) "Unit of surface-mined area" means that area of land and surface water included within an
 30 operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date

1 of the issuance of the permit. The term includes the area from which overburden or minerals have been removed,
 2 the area covered by mining debris, and all additional areas used in surface mining or underground mining
 3 operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed
 4 portions of land.

5 ~~(21)~~(22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of
 6 natural cover considered suitable at time of reclamation."
 7

8 **Section 2.** Section 82-4-305, MCA, is amended to read:

9 **"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections
 10 (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in
 11 writing:

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

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

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

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

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

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

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

25 (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of
 26 any class of voting stock has a small-miner exemption; or

27 (b) if the small miner is a partnership or business association, that:

28 (i) none of the associates or partners holds a small-miner exemption; and

29 (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of
 30 voting stock of a corporation that has a small-miner exemption; or

1 (c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any
2 class of voting stock of the corporation:

3 (i) holds a small-miner exemption;

4 (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

5 (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another
6 corporation that holds a small-miner exemption.

7 (3) A small miner whose operations are placer or dredge mining shall post a performance bond equal
8 to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed
9 \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government
10 agency, the small miner is exempt from the requirement of this subsection.

11 (4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the
12 small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge
13 for services performed by state personnel and for state materials and equipment used. If the small miner posts
14 a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for
15 the remainder of the reasonable costs to the state of reclaiming the operation.

16 (5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation
17 of the operation within 6 months after cessation of mining or within an extended period allowed by the department
18 for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the
19 small miner by certified mail that it intends to reclaim the operation unless the small miner commences
20 reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address
21 stated on the small miner exclusion statement or, if the small miner has notified the department of a different
22 address by letter or in the annual certification form, to the most recent address given to the department. If the
23 small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department
24 may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and
25 enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable
26 costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation
27 costs, as set forth in subsection (6), before or after it incurs those costs.

28 (6) To collect additional reclamation costs, the department shall notify the small miner by certified mail,
29 at the address determined under subsection (5), of the additional reasonable reclamation costs and request
30 payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the

1 department may bring an action in district court for payment of the estimated future costs and, if the department
2 has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it
3 determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon
4 completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or
5 the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred
6 by the department.

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

13 (8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner
14 who intends to use an impoundment to store waste from ore processing shall obtain approval for the design,
15 construction, operation, and reclamation of that impoundment and post a performance bond for that part of the
16 small miner's operation before constructing an impoundment. The small miner shall post a performance bond
17 equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a
18 bond for reclamation of that site with a federal government agency, the small miner is exempt from the
19 requirements of this subsection (8)(a).

20 (b) The department shall conduct a review of the adequacy of the bond posted by a small miner using
21 an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure
22 reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an
23 impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(16)(a)(i)~~
24 82-4-303(17)(a)(i) and ~~(16)(a)(ii)~~ (17)(a)(ii) and is subject to the provisions of this subsection (8).

25 (c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the
26 department for all its reasonable costs of reclamation, including a reasonable charge for services performed by
27 state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety
28 is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the
29 reasonable costs to the state of reclaiming the operation.

30 (d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6

1 months after cessation of mining or within an extended period allowed by the department for good cause shown
2 or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified
3 mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and
4 diligently completes the reclamation. The notice must be mailed to the address stated on the small miner
5 exclusion statement or, if the small miner has notified the department of a different address by letter or in the
6 annual certification form, to the most recent address given to the department. If the small miner fails to commence
7 reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner
8 exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the
9 operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation
10 exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in
11 subsection (8)(e), before or after it incurs those costs.

12 (e) To collect additional reclamation costs, the department shall notify the small miner by certified mail,
13 at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request
14 payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the
15 department may bring an action in district court for payment of the estimated future costs and, if the department
16 has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it
17 determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon
18 completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or
19 the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred
20 by the department.

21 (f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing
22 an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design,
23 construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of
24 April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency,
25 the small miner is exempt from the requirements of this subsection (8)(f).

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

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

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

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

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

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

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

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

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

13 (11) A small miner may not use mercury except in a contained facility that prevents the escape of any
 14 mercury into the environment."
 15

16 **Section 3.** Section 82-4-335, MCA, is amended to read:

17 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
 18 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide
 19 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
 20 activities in the state without first obtaining ~~an~~ a final operating permit from the department. Except as provided
 21 in subsection (2), a separate, final, operating permit is required for each complex.

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

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

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

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

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

1 (v) impact significant historic or archaeological features.

2 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
3 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
4 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
5 The performance bond required under this part is and must be conditioned upon compliance with this part, the
6 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
7 landowner's consent.

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

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

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

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

26 (b) the minerals expected to be mined;

27 (c) a proposed reclamation plan;

28 (d) the expected starting date of operations;

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

1 adjacent to the area, and the location of proposed access roads to be built;

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

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

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

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

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

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

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

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

1 mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact
2 board that the permittee is in compliance.

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

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

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

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

21 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to
22 82-4-361;

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

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

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

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

- 1 (ii) presents a certification by the administering agency that the violation is in the process of being
 2 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and
 3 (b) if the person is a partnership, corporation, or other business association, provides the certification
 4 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
 5 or more of any class of voting stock, and business association members."
 6

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

8 **"82-4-337. Inspection -- issuance of operating permit -- modification, or amendment, or revision.**

9 (1) (a) The department shall review all applications for operating permits for completeness and compliance with
 10 the requirements of this part and rules adopted pursuant to this part within ~~60~~ 90 days of receipt of the initial
 11 application and within 30 days of receipt of responses to notices of deficiencies. The initial ~~completeness~~
 12 notice must note all deficiency issues, and the department may not in a later ~~completeness~~
 13 notice raise an issue pertaining to the initial application that was not raised in the initial notice. ~~The department may, however, raise~~
 14 ~~any deficiency during the adequacy review pursuant to subsection (1)(b).~~ The department shall notify the
 15 applicant concerning completeness and compliance as soon as possible. An application is considered complete
 16 and compliant unless the applicant is notified of ~~any~~ deficiencies within the appropriate review period.

17 ~~—— (b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), unless the review period is extended as~~
 18 ~~provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan of~~
 19 ~~operation within 30 days of the determination that the application is complete or within 60 days of receipt of the~~
 20 ~~application if the department does not notify the applicant of any deficiencies in the application.~~

21 (b) The review for completeness and compliance is limited to areas in regard to which the department
 22 has statutory authority.

23 (c) When providing notice of deficiencies, the department shall:

24 (i) identify each section in this part or rules adopted pursuant to this part related to the deficiency; and

25 (ii) provide options to remedy the deficiency.

26 (d) When an application is complete and compliant, the department shall:

27 (i) declare in writing that the application is complete and compliant;

28 (ii) detail in writing the substantive requirements of this part and how the application complies with those
 29 requirements;

30 (iii) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the

1 applicant obtain other permits required by law but not provided for in this part. However, the department may not
 2 withhold issuance of the draft permit in the absence of those permits; and

3 (e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible
 4 because of extended adverse weather conditions, the department shall inspect the site at the first available
 5 opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

6 (f) Issuance of the draft permit as a final permit is the proposed state action subject to review required
 7 by Title 75, chapter 1.

8 (g) If the applicant is not notified of that there are deficiencies or inadequacies in the proposed
 9 reclamation plan and plan of operation application or that the application is compliant within the time period
 10 required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in
 11 82-4-338 and pursuant to the requirements of subsection (4)(e) (1)(h) of this section. The department shall
 12 promptly notify the applicant of the form and amount of bond that will be required. After the department notifies
 13 the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further
 14 action by the department is required until the applicant has responded to the deficiency notification.

15 (e)(h) A Except as provided in (1)(g), a final permit may not be issued until:

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

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

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

19 (iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft
 20 permit was issued, whichever is less. The applicant may by written waiver extend this time period.

21 (v) the department has made a determination that the application and the final permit meet the
 22 substantive requirements of this part and the rules adopted pursuant to this part.

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

29 ~~————(ii) Except as provided in 75-1-208(4)(b), if the department determines that additional time is needed for~~
 30 ~~analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the~~

1 department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) of this section
 2 by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

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

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

12 ~~—— (v) Failure of the department to act upon a complete application within the extension period constitutes~~
 13 ~~approval of the application, and the permit must be issued promptly upon receipt of the bond as required in~~
 14 ~~82-4-338.~~

15 (2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose
 16 modifications to the application. The applicant may negotiate with the department on permit stipulations to
 17 address compliance issues. The department may not impose permit stipulations in a draft or final permit without
 18 prior agreement with the applicant. IF THE PROPOSED MODIFICATIONS SUBSTANTIALLY CHANGE THE PROPOSED PLAN
 19 OF OPERATION OR RECLAMATION, THE DEPARTMENT MAY TERMINATE THE DRAFT PERMIT AND REVIEW THE APPLICATION
 20 AS MODIFIED PURSUANT TO SUBSECTION (1) FOR COMPLETENESS AND COMPLIANCE AND ISSUANCE OF A NEW DRAFT
 21 PERMIT.

22 (B) THE DEPARTMENT SHALL CONSULT WITH THE APPLICANT BEFORE PLACING STIPULATIONS IN A DRAFT OR FINAL
 23 PERMIT. Permit stipulations in a draft or final permit may, UNLESS THE APPLICANT CONSENTS, address only
 24 compliance issues within the substantive requirements of this part AND RULES ADOPTED PURSUANT TO THIS PART.

25 ~~(b)(c)~~ Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the
 26 date the draft permit is issued, whichever is less, the department shall issue its bond determination.

27 ~~(c)(D)~~ When the department prepares an environmental review jointly with a federal agency acting under
 28 the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained
 29 in subsection (1)(g)(iv).

30 ~~(d)(E)~~ Upon submission of the bond AND SUBJECT TO SUBSECTION (1)(H), the department shall issue the

1 final permit.

2 ~~(2)~~(3) The final operating permit must be granted for the period required to complete the operation and
3 is valid until the operation authorized by the permit is completed or abandoned, unless the permit is suspended
4 or revoked by the department as provided in this part.

5 ~~(3)~~(4) The final operating permit must provide that the reclamation plan may be modified by the
6 department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time
7 during the term of the permit and for any of the following reasons:

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

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

11 (c) when significant environmental problem situations not permitted under the terms of regulatory permits
12 held by the permittee are revealed by field inspection and the department has the authority to address them under
13 the provisions of this part.

14 ~~(4)~~ ~~(a)~~(5) The modification of an a final operating permit ~~may be a major or minor permit by an~~
15 ~~amendment or a permit revision. A modification of the operating permit, including a modification necessary to~~
16 ~~conform to~~ comply with the requirements of existing law as interpreted by a court of competent jurisdiction; must
17 be processed in accordance with the procedures for an application for a permit amendment ~~or revision~~ that are
18 established pursuant to 82-4-342 and this section, ~~including any environmental analysis required by Title 75,~~
19 ~~chapter 1, part 2.~~

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

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

24 ~~_____ (6) Applications for major amendments must be processed in the same manner as applications for new~~
25 ~~permits.~~

26 ~~_____ (7) Major amendments are those that may significantly affect the environment. Minor amendments are~~
27 ~~those that will not significantly affect the environment. The board may by rule establish criteria for classification~~
28 ~~of amendments as major or minor. The rules must establish requirements for the content of applications for~~
29 ~~amendments and revisions and procedures for processing of minor amendments.~~

30 ~~_____ (8) If the department demonstrates that a revision may result in a significant environmental impact that~~

1 was not previously and substantially evaluated in an environmental impact statement, the application must be
 2 processed in the same manner as is provided for new permits. Except as provided in 75-1-208(4)(b), applications
 3 for minor amendments and other revisions must be processed within 30 days of receipt of an application."
 4

5 **Section 5.** Section 82-4-342, MCA, is amended to read:

6 **"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under
 7 this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment
 8 to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the
 9 disturbance, as required under 82-4-338.

10 (2) ~~(a)~~ The board may by rule establish criteria for the classification of amendments as major or minor.
 11 ~~The board shall adopt rules establishing requirements for the content of applications for major and minor~~
 12 ~~amendments and the procedures for processing minor amendments.~~

13 ~~_____ (b) An amendment must be considered minor if:~~

14 ~~_____ (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;~~

15 ~~_____ (ii) evidence is submitted showing that a local government has requested retention of the mine-related~~
 16 ~~facilities for a postmining use; and~~

17 ~~_____ (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.~~

18 (3) Applications for major amendments must be processed pursuant to 82-4-337.

19 ~~_____ (4) The department shall review an application for a minor amendment and provide a notice of decision~~
 20 ~~on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the~~
 21 ~~permit is revised in accordance with the application.~~

22 ~~(5)~~(4) The department is not required to prepare an environmental assessment or an environmental
 23 impact statement for the following categories of action:

24 (a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review
 25 pursuant to Title 75, chapter 1;

26 (b) administrative actions, such as routine, clerical, or similar functions of a department, including but
 27 not limited to administrative procurement, contracts for consulting services, and personnel actions;

28 (c) repair or maintenance of the permittee's equipment or facilities;

29 (d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement
 30 of environmental standards;

1 (e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon
2 a given state of facts in a prescribed manner;

3 (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the
4 human environment;

5 (g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative
6 to the entire operation, provided that the increase is less than ~~40~~ 50 acres or ~~5%~~ 10% of the permitted area,
7 whichever is less;

8 (h) changes to an approved reclamation plan if the changes are consistent with this part and rules
9 adopted pursuant to this part;

10 ~~(h)(i)~~ changes in an approved operating plan or ~~reclamation plan~~ for an activity that was previously
11 permitted, ~~provided that the impacts of~~ if the change changes will be insignificant relative to the ~~impacts of~~ the
12 entire operation and ~~there is less than 10 acres of additional disturbance~~ the changes are consistent with
13 subsection (4)(g); and

14 ~~(i)(j)~~ changes in a permit for the purpose of retention of mine-related facilities that are valuable for
15 postmining use."

16

17 **Section 6.** Section 82-4-353, MCA, is amended to read:

18 **"82-4-353. Administrative remedies -- notice -- appeals -- parties.** (1) Upon receipt of an application
19 for an operating permit, the department shall provide notice of the application by publication in a newspaper of
20 general circulation in the area to be affected by the operation. The notice must be published once a week for 3
21 successive weeks.

22 (2) An applicant for a permit or license or for an amendment or revision to a permit or license may
23 request a hearing on a denial of the application by submitting a written request for a hearing within 30 days of
24 receipt of written notice of the denial. The request must state the reason that the hearing is requested.

25 (3) All hearings and appeals under ~~82-4-337(3)~~ 82-4-337(4), 82-4-338(3)(b), 82-4-341(7) and (8),
26 82-4-361, 82-4-362, and subsection (2) of this section must be conducted by the board in accordance with the
27 Montana Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an
28 action taken pursuant to this part may become a party to any proceeding held under this part upon a showing that
29 the person is capable of adequately representing the interests claimed.

30 (4) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

31

- END -