

HOUSE BILL NO. 626

INTRODUCED BY N. MCCONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
5 FROM ISSUING A METAL MINES OPERATING PERMIT IF THE MINE WILL REQUIRE PERPETUAL CARE  
6 OF THE DISTURBED LANDS AFTER RECLAMATION; REQUIRING A METAL MINES PERMIT APPLICANT  
7 TO DESIGN A RECLAMATION PLAN THAT AVOIDS THE NEED FOR PERPETUAL CARE OF THE  
8 DISTURBED LANDS; EXTENDING A DEFINITION; REQUIRING AN ANNUAL COMPLIANCE REVIEW FEE;  
9 AMENDING SECTIONS 82-4-303, 82-4-335, AND 82-4-339, MCA; AND PROVIDING AN IMMEDIATE  
10 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

15 **"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following  
16 definitions apply:

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

19 (2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment  
20 is an amendment that may significantly affect the human environment. A minor amendment is an amendment that  
21 will not significantly affect the human environment.

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

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

26 (5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in  
27 leaching operations.

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

29 (7) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the  
30 date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste

1 materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out  
2 facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not  
3 been previously reclaimed under the reclamation plan.

4 (8) "Exploration" means:

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

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

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

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

17 (11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock  
18 mineral concentration processes.

19 (12) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged  
20 in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste  
21 materials, or operation of a hard-rock mill.

22 (13) "Placer deposit" means:

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

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

26 (14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or  
27 persons.

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

- 1 (a) a statement of the proposed subsequent use of the land after reclamation, which may include use  
2 of the land as an industrial site not necessarily related to mining;
- 3 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the  
4 land after reclamation is completed and the proposed method of accomplishment;
- 5 (c) the manner and type of revegetation or other surface treatment of disturbed areas;
- 6 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public  
7 safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;
- 8 (e) the method of disposal of mining debris;
- 9 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent  
10 pollution of those waters or unnecessary erosion;
- 11 (g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and  
12 pollution;
- 13 (h) procedures and design elements proposed to prevent perpetual remediation of the disturbed lands,  
14 including perpetual water treatment;
- 15 ~~(h)~~(i) maps and other supporting documents that may be reasonably required by the department; and  
16 ~~(i)~~(j) a time schedule for reclamation that meets the requirements of 82-4-336.
- 17 (16) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other  
18 minerals produced by typical quarrying activities or collected from or just below the ground surface.
- 19 (17) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not  
20 exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste  
21 materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on  
22 land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under  
23 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection (17)(c)  
24 of this section, and that conducts:
- 25 (i) an operation that results in not more than 5 acres of the earth's surface being disturbed and  
26 unreclaimed; or
- 27 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the  
28 respective mining properties are:
- 29 (A) the only operations engaged in by the person, firm, or corporation; and  
30 (B) at least 1 mile apart at their closest point.

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

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

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

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

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

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

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

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

21 (21) "Unit of surface-mined area" means that area of land and surface water included within an operating  
22 permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the  
23 issuance of the permit. The term includes the area from which overburden or minerals have been removed, the  
24 area covered by mining debris, and all additional areas used in surface mining or underground mining operations  
25 that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

26 (22) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural  
27 cover considered suitable at time of reclamation."

28

29 **Section 2.** Section 82-4-335, MCA, is amended to read:

30 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore

1 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide  
2 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those  
3 activities in the state without first obtaining a final operating permit from the department. Except as provided in  
4 subsection (2), a separate final operating permit is required for each complex.

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

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

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

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

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

14 (v) impact significant historic or archaeological features.

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

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

24 (4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit  
25 fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay  
26 an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal  
27 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely  
28 and adequate review of the application, including any environmental review conducted under Title 75, chapter  
29 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines  
30 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the

1 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The  
2 department shall provide the applicant an opportunity to review the department's estimated expenses. The  
3 applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

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

6 (ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this  
7 section.

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

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

13 (b) the minerals expected to be mined;

14 (c) a proposed reclamation plan;

15 (d) the expected starting date of operations;

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

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

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

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

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

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

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

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

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

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

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

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

20 (7) When the department determines that a permittee has become or will become a large-scale mineral  
21 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months  
22 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a  
23 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an  
24 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does  
25 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee  
26 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter  
27 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the  
28 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review  
29 and implementation requirements.

30 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing

1 when the aggregate samples are less than 10,000 tons.

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

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

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

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

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

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

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

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

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

23 (11) After [the effective date of this act], a person may not be issued an operating permit if the department  
24 determines, pursuant to information provided in the reclamation plan, that the proposed mining operation requires  
25 perpetual treatment to meet applicable water quality standards under Title 75, chapter 5, after reclamation of the  
26 disturbed site is concluded."

27

28 **Section 3.** Section 82-4-339, MCA, is amended to read:

29 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer**  
30 **status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30

1 days after each anniversary date of the permit, whichever is earlier, or at a later date that may be provided by  
2 rules of the board and each year after that date until reclamation is completed and approved, the permittee shall  
3 pay ~~the~~ an annual reporting fee of \$100 and an annual compliance review fee of \$50 and shall file a report of  
4 activities completed during the preceding year on a form prescribed by the department. The report must:

5 (a) identify the permittee and the permit number;  
6 (b) locate the operation by subdivision, section, township, and range and with relation to the nearest town  
7 or other well-known geographic feature;

8 (c) estimate acreage to be newly disturbed by operation in the next 12-month period;

9 (d) include the number of persons on the payroll for the previous permit year and for the next permit year  
10 at intervals that the department considers sufficient to enable a determination of the permittee's status under  
11 90-6-302(4);

12 (e) update the information required in 82-4-335(5)(a); ~~and~~

13 (f) update any procedures and design elements proposed or implemented to avoid perpetual remediation  
14 of the disturbed lands, including perpetual water treatment; and

15 ~~(f)(g)~~ update any maps previously submitted or specifically requested by the department. The maps must  
16 show:

17 (i) the permit area;

18 (ii) the unit of disturbed land;

19 (iii) the area to be disturbed during the next 12-month period;

20 (iv) if completed, the date of completion of operations;

21 (v) if not completed, the additional area estimated to be further disturbed by the operation within the  
22 following permit year; and

23 (vi) the date of beginning, amount, and current status of reclamation performed during the previous 12  
24 months.

25 (2) Whenever the department determines that the permittee has become or will, during the next permit  
26 year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the  
27 permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."  
28

29 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.  
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