

HOUSE BILL NO. 69

INTRODUCED BY M. MCCANN

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITIONS, APPLICABLE FEES, AND MINE PERFORMANCE BONDING AND APPEAL PROCEDURES, ~~AND THE SMALL MINER EXEMPTION PROVISIONS~~ OF THE METAL MINE RECLAMATION LAWS; ALLOCATING INTEREST FROM THE HARD-ROCK MINING AND RECLAMATION ACCOUNT AND THE OPENCUT MINING AND RECLAMATION ACCOUNT TO THOSE ACCOUNTS; AMENDING SECTIONS 82-4-303, ~~82-4-305~~, 82-4-311, 82-4-331, 82-4-332, 82-4-335, 82-4-338, 82-4-339, 82-4-341, 82-4-360, AND 82-4-424, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 will not significantly affect the human environment.~~

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

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

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

~~(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the~~



1 ~~operation and that have not been previously reclaimed under the reclamation plan.~~

2 ~~—— (7) "Exploration" means:~~

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

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

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

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

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

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

20 ~~—— (12) "Placer deposit" means:~~

21 ~~—— (a) naturally occurring, scattered or unconsolidated valuable minerals in gravel, glacial, eolian,~~
22 ~~colluvial, or alluvial deposits lying above bedrock; or~~

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

24 ~~—— (13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or~~
25 ~~persons.~~

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

29 ~~—— (a) a statement of the proposed subsequent use of the land after reclamation;~~

30 ~~—— (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use~~

- 1 of the land after reclamation is completed and the proposed method of accomplishment;
- 2 ~~—— (c) the manner and type of revegetation or other surface treatment of disturbed areas;~~
- 3 ~~—— (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public~~
- 4 ~~safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the~~
- 5 ~~area;~~
- 6 ~~—— (e) the method of disposal of mining debris;~~
- 7 ~~—— (f) the method of diverting surface waters around the disturbed areas when necessary to prevent~~
- 8 ~~pollution of those waters or unnecessary erosion;~~
- 9 ~~—— (g) the method of reclamation of stream channels and stream banks to control erosion, siltation,~~
- 10 ~~and pollution;~~
- 11 ~~—— (h) maps and other supporting documents that may be reasonably required by the department; and~~
- 12 ~~—— (i) a time schedule for reclamation that meets the requirements of 82-4-336.~~
- 13 ~~—— (15) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that~~
- 14 ~~is not exempt from this part pursuant to 82-4-310, and that:~~
- 15 ~~—— (i) engages in the business of reprocessing of tailings or waste materials, or that, except as~~
- 16 ~~provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned~~
- 17 ~~or controlled by the person, firm, or corporation; that~~
- 18 ~~—— (ii) does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2)~~
- 19 ~~or a permit that meets the criteria of subsection (15)(c); and that~~
- 20 ~~—— (iii) conducts:~~
- 21 ~~—— (i) an operation one or more operations that are located at least 1 mile apart at their closest points~~
- 22 ~~and that results result in not more than 5 acres of the earth's surface being disturbed and unreclaimed at~~
- 23 ~~any operation; or~~
- 24 ~~—— (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the~~
- 25 ~~respective mining properties are:~~
- 26 ~~—— (A) the only operations engaged in by the person, firm, or corporation; and~~
- 27 ~~—— (B) at least 1 mile apart at their closest point.~~
- 28 ~~—— (b) For the purpose of this definition only, the department shall, in computing the area covered~~
- 29 ~~by the operation:~~
- 30 ~~—— (i) exclude access or haulage roads that are required by a local, state, or federal agency having~~

1 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the
2 department in writing that it desires to have the road remain in use and will maintain it after mining ceases;
3 and

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

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

10 ~~———(16) "Soil materials" means earth material found in the upper soil layers that will support plant~~
11 ~~growth.~~

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

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

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

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

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

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30 ~~———Section 2. Section 82-4-305, MCA, is amended to read:~~

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

4 ~~————(a) that the small miner will not pollute or contaminate any stream state waters;~~
5 ~~————(b) that the small miner will provide protection for human and animal life through the installation~~
6 ~~of bulkheads installed over safety collars and the installation of doors on tunnel portals;~~
7 ~~————(c) that the small miner will provide a map locating the miner's mining operations. The map must~~
8 ~~be of a size and scale determined by the department.~~

9 ~~————(d) if the small miner's operations are placer or dredge mining miner is required to reclaim pursuant~~
10 ~~to subsection (4), that the small miner shall salvage and protect all soil materials for use in reclamation of~~
11 ~~that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that~~
12 ~~of adjacent areas.~~

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

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

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

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

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

21 ~~————(i) none of the associates or partners holds a small miner exemption; and~~
22 ~~————(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class~~
23 ~~of voting stock of a corporation that has a small miner exemption; or~~

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

26 ~~————(i) holds a small miner exemption;~~
27 ~~————(ii) is a member or partner in a business association or partnership that holds a small miner~~
28 ~~exemption;~~

29 ~~————(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of~~
30 ~~another corporation that holds a small miner exemption A small miner may not join with the operator of~~

1 ~~an adjacent operation to share facilities or conduct joint mining operations.~~

2 ~~—— (3) A small miner whose operations are placer or dredge mining who files for an exemption after~~
 3 ~~[the effective date of this act] shall post a performance bond equal to the state's documented cost~~
 4 ~~estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation.~~
 5 ~~If the small miner has posted with another government agency a bond that the department determines~~
 6 ~~to be adequate for reclamation with another government agency, the small miner is exempt from the~~
 7 ~~requirement of this subsection.~~

8 ~~—— (4) (a) Except as provided in subsections (4)(b) and (4)(c), a small miner shall reclaim a new~~
 9 ~~operation or new facility to the same standard that is contained in 82-4-336:~~

10 ~~—— (i) if the operation is not a placer or dredge mining operation; and~~

11 ~~—— (ii) if, after [the effective date of this act], the small miner:~~

12 ~~—— (A) files for an exemption;~~

13 ~~—— (B) adds an operation to an existing exemption; or~~

14 ~~—— (C) adds a facility, such as a pit, adit, tunnel, dump, mill, or tailing impoundment, to an existing~~
 15 ~~operation.~~

16 ~~—— (b) For a new operation or new facility that is located totally on previously disturbed and~~
 17 ~~unreclaimed land, the small miner is required to reclaim the new disturbance if the department determines~~
 18 ~~that the new disturbance would actually or potentially add pollution or contamination to the air or state~~
 19 ~~waters. This subsection (4)(b) does not abrogate any reclamation requirement imposed by any other~~
 20 ~~statute.~~

21 ~~—— (c) For a new operation or new facility that is located partially on previously disturbed and~~
 22 ~~unreclaimed land, the small miner shall reclaim the portion of the operation that is located on previously~~
 23 ~~disturbed and unreclaimed land if the department determines that the new disturbance would actually or~~
 24 ~~potentially add pollution or contamination to the air or state waters. The small miner shall reclaim those~~
 25 ~~previously undisturbed areas to the same standard that is contained in 82-4-336. This subsection (4)(c)~~
 26 ~~does not abrogate any reclamation requirement imposed by any other statute.~~

27 ~~—— (d) A small miner who conducts a placer or dredge mining operation shall reclaim all land disturbed~~
 28 ~~by the operation or facility to the same standard that is contained in 82-4-336.~~

29 ~~—— (4)(5) If a small miner who conducts a placer or dredge mining operation is required by subsection~~
 30 ~~(4) to reclaim an operation fails to reclaim the operation, the small miner is liable to the department for all~~

1 its reasonable costs of reclamation, including a reasonable charge for services performed by state
2 personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety
3 is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the
4 reasonable costs to the state of reclaiming the operation.

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

18 ~~———(6)(7) To collect additional reclamation costs, the department shall notify the small miner by~~
19 ~~certified mail, at the address determined under subsection (5) (6), of the additional reasonable reclamation~~
20 ~~costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs~~
21 ~~within 30 days, the department may bring an action in district court for payment of the estimated future~~
22 ~~costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall~~
23 ~~order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation~~
24 ~~of the operation is completed. Upon completion of reclamation, the court shall order payment of any~~
25 ~~additional costs that it considers reasonable or the refund of any portion of any payment for estimated~~
26 ~~costs that exceeds the actual reasonable costs incurred by the department.~~

27 ~~———(7)(8) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching~~
28 ~~solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which~~
29 ~~the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed~~
30 ~~of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching~~

1 solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in
 2 82-4-303(15)(a)(i) and (15)(a)(ii).

3 ~~—— (8)(9) The exemption provided in this section does not apply to a person:~~

4 ~~—— (a) whose failure 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 the forfeiture of a bond, unless that person meets~~
 6 ~~the conditions described under 82-4-360 who is prohibited from mining under 82-4-360;~~

7 ~~—— (b) whose failure, or the failure of any firm or business association of which that person was a~~
 8 ~~principal or controlling member, to comply with the provisions of this part, the rules adopted under this~~
 9 ~~part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the~~
 10 ~~department or the completion of reclamation by the person's surety or by the department;~~

11 ~~—— (b)(c) who has not paid a penalty for which the department has obtained a judgment pursuant to~~
 12 ~~82-4-361;~~

13 ~~—— (c)(d) who has failed to post a reclamation bond required by this section, unless the department~~
 14 ~~has certified that the area for which the bond should have been posted has been reclaimed by that person~~
 15 ~~or reclaimed by the department and the person has reimbursed the department for the cost of the~~
 16 ~~reclamation; or~~

17 ~~—— (d)(e) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the~~
 18 ~~department has completed the abatement and the person has reimbursed the department for the cost of~~
 19 ~~abatement.~~

20 ~~—— (9)(10) The exemption provided in this section does not apply to an area:~~

21 ~~—— (a) under permit pursuant to 82-4-335;~~

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

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

26 ~~—— (10)(11) A small miner may not use mercury except in a contained facility that prevents the escape~~
 27 ~~of any mercury into the environment."~~

28

29 **SECTION 1. SECTION 82-4-303, MCA, IS AMENDED TO READ:**

30 **"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following

1 definitions apply:

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

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

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

8 (4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent
9 in leaching operations.

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

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

16 (7) "Exploration" means:

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

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

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

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

29 (10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard
30 hard-rock mineral concentration processes.

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

4 (12) "Placer deposit" means:

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

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

8 (13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
9 persons.

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

13 (a) a statement of the proposed subsequent use of the land after reclamation;

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

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

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

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

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

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

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

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

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

1 operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the
2 criteria of subsection (15)(c); 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
10 by the 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
13 department in writing that it desires to have the road remain in use and will maintain it after mining ceases;
14 and

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

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

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

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

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

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

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

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

10

11 **Section 2.** Section 82-4-311, MCA, is amended to read:

12 **"82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other
13 uncleared money that has been or will be paid to the department under the provisions of this part must
14 be placed in the state special revenue fund in the state treasury and credited to a special interest-bearing
15 account that is designated as the hard-rock mining and reclamation account. All accrued interest on the
16 account must be credited to the hard-rock mining and reclamation account. This account is available to
17 the department by appropriation and may be expended for the research, reclamation, and revegetation of
18 land and the rehabilitation of water affected by any mining operations. Any unencumbered and any
19 unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be
20 carried forward for the purposes of this section until expended or until appropriated by subsequent
21 legislative action."

22

23 **Section 3.** Section 82-4-331, MCA, is amended to read:

24 **"82-4-331. Exploration license required -- employees included -- limitation.** (1) A person may not
25 engage in exploration in the state without first obtaining an exploration license from the department. A
26 license must be issued for a period of 1 year from the date of issue and is renewable from year to year
27 on application. An application for renewal must be filed within 30 days preceding the expiration of the
28 current license and be accompanied by payment of a \$25 renewal fee ~~as required for a new license~~. A
29 license may not be renewed if the applicant for renewal is in violation of any provision of this part. A
30 license is subject to suspension and revocation as provided by this part.

1 (2) Employees of persons holding a valid license under this part are included in and covered by the
2 license.

3 (3) A person may not be issued an exploration license if:

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

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

12 (c) that person has failed to post a reclamation bond required by 82-4-305, ~~unless the department~~
13 ~~has certified that the area for which the bond should have been posted has been reclaimed by that person~~
14 ~~or reclaimed by the department and the person has reimbursed the department for the cost of the~~
15 ~~reclamation; or~~

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

19

20 **Section 4.** Section 82-4-332, MCA, is amended to read:

21 **"82-4-332. Exploration license.** (1) An exploration license ~~shall~~ must be issued to any applicant
22 ~~therefor~~ who ~~shall~~:

23 (a) ~~pay~~ pays a fee of ~~\$5~~ \$100 to the department;

24 (b) ~~agree~~ agrees to reclaim any surface area damaged by the applicant during exploration
25 operations, as may be reasonably required by the department;

26 (c) is ~~be~~ in default of any other reclamation obligation under this law.

27 (2) An application for an exploration license ~~shall~~ must be made in writing, notarized, and
28 submitted to the department in duplicate upon forms prepared and furnished by it. The application ~~shall~~
29 must include an exploration map or sketch in sufficient detail to locate the area to be explored and to
30 determine whether significant environmental problems would be encountered. The board shall by rule

1 determine the precise nature of ~~such~~ the exploration map or sketch. The applicant ~~must~~ shall state what
2 type of prospecting and excavation techniques will be employed in disturbing the land.

3 (3) Prior to the issuance of an exploration license, the applicant shall file with the department a
4 reclamation and revegetation bond in a form and amount as determined by the department in accordance
5 with 82-4-338.

6 (4) In the event that the holder of an exploration license desires to mine the area covered by the
7 exploration license and has fulfilled all of the requirements for an operating permit, the department shall
8 allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the
9 complete reclamation plan submitted with the application for an operating permit. Any land actually
10 affected by exploration or excavation under an exploration license and not covered by the operating
11 reclamation plan ~~shall~~ must be reclaimed within 2 years after the completion of exploration or
12 abandonment of the site in a manner acceptable to the department."

13

14 **Section 5.** Section 82-4-335, MCA, is amended to read:

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

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

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

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

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

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

9 (b) the minerals expected to be mined;

10 (c) a proposed reclamation plan;

11 (d) the expected starting date of operations;

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

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

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

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

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

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

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

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

1 and stable;

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

5 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential
6 for expansion of the tailings impoundment or waste site.

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

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

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

27 (8) A person may not be issued an operating permit if:

28 (a) that person's failure, or the failure of any firm or business association of which that person was
29 a principal or controlling member, to comply with the provisions of this part, the rules adopted under this
30 part, or a permit or license issued under this part has resulted in either the forfeiture receipt of a bond

1 ~~proceeds by the department or the completion of reclamation by the person's surety or by the department;~~
 2 ~~unless that person meets the conditions described in 82-4-360, UNLESS THAT PERSON MEETS THE CONDITIONS~~
 3 ~~DESCRIBED IN 82-4-360;~~

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

6 (c) that person has failed to post a reclamation bond required by 82-4-305, ~~unless the department~~
 7 ~~has certified that the area for which the bond should have been posted has been reclaimed by that person~~
 8 ~~or reclaimed by the department and the person has reimbursed the department for the cost of the~~
 9 ~~reclamation; or~~

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

13 (9) A person may not be issued a permit under this part unless, at the time of submission of a
 14 bond, the person provides the current information required in subsection (4)(a) and:

15 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or
 16 regulation of this state or of the United States pertaining to air quality, water quality, or mined land
 17 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
 21 certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors,
 22 owners of 10% or more of any class of voting stock, and business association members."

23

24 **Section 6.** Section 82-4-338, MCA, is amended to read:

25 **"82-4-338. Performance bond.** (1) ~~(a)~~ The applicant shall file with the department a bond payable
 26 to the state of Montana with surety satisfactory to the department in the sum to be determined by the
 27 department of not less than \$200 for each acre or fraction of an acre of the disturbed land, conditioned
 28 upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In
 29 lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate
 30 of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not

1 be less than:

2 ~~—— (i) the estimated cost to the state to ensure compliance with TITLE 75, CHAPTERS 2 AND 5, this part,~~
 3 the rules, and the permit, including the potential cost of department management, operation, and
 4 maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond
 5 liquidation can be effected; ~~and~~

6 ~~—— (ii) for unforeseen contingencies, an additional amount that is 10% of the amount determined under~~
 7 ~~subsection (1)(a)(i).~~

8 ~~(b)~~ A public or governmental agency may not be required to post a bond under the provisions of
 9 this part. A blanket performance bond covering two or more operations may be accepted by the
 10 department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

11 (2) (A) THE DEPARTMENT MAY CALCULATE ONE OR MORE RECLAMATION PLAN COMPONENTS WITHIN ITS
 12 JURISDICTION WITH THE ASSISTANCE OF ONE OR MORE OBJECTIVE THIRD-PARTY CONTRACTORS SELECTED JOINTLY BY THE
 13 DEPARTMENT AND THE MINE OPERATOR APPLICANT AND COMPENSATED BY THE MINE OPERATOR APPLICANT WHEN, BASED
 14 ON RELEVANT PAST EXPERIENCE, THE DEPARTMENT DETERMINES THAT ADDITIONAL EXPERTISE IS NECESSARY TO
 15 CALCULATE THE BOND AMOUNT FOR RECLAMATION PLAN COMPONENTS. THE DEPARTMENT MAY CONTRACT FOR
 16 ASSISTANCE PURSUANT TO THIS SUBSECTION IN DETERMINING BOND AMOUNTS FOR THE INITIAL BOND AND FOR ANY
 17 SUBSEQUENT BOND REVIEW AND ADJUSTMENT. THE MINE OWNER IS RESPONSIBLE FOR THE FIRST \$5,000 IN CONTRACTOR
 18 SERVICES PROVIDED UNDER THIS SUBSECTION. THE MINE OWNER AND THE DEPARTMENT ARE EACH RESPONSIBLE FOR 50%
 19 OF ANY AMOUNT OVER \$5,000.

20 (B) TO SELECT A THIRD-PARTY CONTRACTOR AS AUTHORIZED IN SUBSECTION (2)(A), THE DEPARTMENT SHALL
 21 PREPARE A LIST OF NO FEWER THAN FOUR CONTRACTORS ACCEPTABLE TO THE DEPARTMENT AND SHALL PROVIDE THE
 22 APPLICANT WITH A COPY OF THE LIST. THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH A LIST OF AT LEAST 50%
 23 OF THE CONTRACTORS FROM THE DEPARTMENT'S LIST. THE DEPARTMENT SHALL SELECT ITS CONTRACTOR FROM THE LIST
 24 PROVIDED BY THE APPLICANT.

25 ~~(2)(3)~~ (A) The department shall conduct an overview of the amount of each bond annually and shall
 26 conduct a comprehensive bond review at least every 5 years. The department may conduct additional
 27 comprehensive bond reviews if, after modification of the reclamation or operation plan, an annual
 28 overview, or an inspection of the permit area, the department determines that an increase of the bond level
 29 may be necessary. The department shall consult with the licensee or permittee if the review indicates that
 30 the bond level should be adjusted. When determined by the department that the set bonding level of a

1 permit or license does not represent the present costs of compliance with this part, the rules, and the
 2 permit, the department ~~may shall~~ modify the bonding requirements of that permit or license. The licensee
 3 or permittee must have 60 days to discuss ~~NEGOTIATE~~ the preliminary bond determination with the
 4 department, at the end of which time period the department shall issue the proposed bond determination.
 5 The department shall ~~make written findings,~~ give the licensee or permittee a copy of the findings bond
 6 calculations that form the basis for the proposed bond determination, and, for operating permits, publish
 7 notice of the findings proposed bond determination in a newspaper of general circulation in the county in
 8 which the operation is located. ~~After a 30-day public comment period on the proposed bond determination,~~
 9 ~~the~~ THE department shall issue a final bond determination IN 30 DAYS. THE UNLESS THE LICENSEE OR PERMITTEE
 10 REQUESTS A HEARING UNDER SUBSECTION (3)(B), THE licensee or permittee shall post bond with the department
 11 in the amount represented by the final bond determination no later than 30 days after issuance OF THE FINAL
 12 BOND DETERMINATION. IF THE LICENSEE OR PERMITTEE DEMONSTRATES THAT, THROUGH THE EXERCISE OF REASONABLE
 13 DILIGENCE, THAT THE LICENSEE OR PERMITTEE WILL NOT BE ABLE TO POST THE BOND WITHIN 30 DAYS, THE DEPARTMENT
 14 SHALL GRANT A REASONABLE 30-DAY EXTENSION OF THE DEADLINE.

15 (B) The permittee or any person with an interest that may be adversely affected may obtain a
 16 contested case hearing under the provisions of the Montana Administrative Procedure Act on the ~~adjusted~~
 17 ~~bond level~~ final bond determination by filing with the department, within 30 days of the ~~notice~~ issuance
 18 of the final bond determination, a written request for hearing. THE REQUEST FOR HEARING MUST SPECIFY THE
 19 AMOUNT OF BOND INCREASE, IF ANY, THAT THE LICENSEE OR PERMITTEE CONSIDERS APPROPRIATE AND STATE THE
 20 REASONS THAT THE LICENSEE OR PERMITTEE CONSIDERS THE DEPARTMENT'S FINAL BOND DETERMINATION TO BE
 21 EXCESSIVE. As a condition precedent to any right to request a hearing, the licensee or permittee shall post
 22 bond with the department in the amount of the final bond determination. Failure to post bond with the
 23 department in the amount of the final bond determination, as provided in this section, must result in the
 24 immediate suspension of the permit or license without further action by the department. BOND INCREASE
 25 THAT THE LICENSEE OR PERMITTEE HAS STATED IS APPROPRIATE IN THE REQUEST FOR HEARING OR THE AMOUNT THAT IS
 26 ONE-HALF OF THE INCREASE CONTAINED IN THE DEPARTMENT'S FINAL BOND DETERMINATION, WHICHEVER AMOUNT IS
 27 GREATER. IF THE BOARD DETERMINES THAT ADDITIONAL BOND IS NECESSARY, THE LICENSEE OR PERMITTEE SHALL POST
 28 BOND IN THE AMOUNT DETERMINED BY THE BOARD WITHIN 30 DAYS OF RECEIPT OF THE BOARD'S DECISION. IF THE
 29 LICENSEE OR PERMITTEE DEMONSTRATES THAT, THROUGH THE EXERCISE OF REASONABLE DILIGENCE, THE LICENSEE OR
 30 PERMITTEE WILL NOT BE ABLE TO POST THE BOND WITHIN 30 DAYS, THE DEPARTMENT SHALL GRANT A REASONABLE

1 EXTENSION OF THE DEADLINE.

2 (C) IF A LICENSEE OR PERMITTEE FAILS TO POST BOND IN ACCORDANCE WITH SUBSECTION (3)(A) OR (3)(B) IN
 3 THE REQUIRED AMOUNTS BY THE REQUIRED DEADLINES, THE LICENSE OR PERMIT IS SUSPENDED BY OPERATION OF LAW AND
 4 THE LICENSEE OR PERMITTEE SHALL IMMEDIATELY CEASE MINING AND EXPLORATION OPERATIONS UNTIL THE REQUIRED BOND
 5 IS POSTED WITH AND APPROVED BY THE DEPARTMENT.

6 ~~(3)~~(4) A bond filed in accordance with the provisions of this part may not be released by the
 7 department until the provisions of this part, the rules adopted pursuant to this part, and the permit have
 8 been fulfilled.

9 ~~(4)~~(5) A bond filed for an operating permit obtained under 82-4-335 may not be released or
 10 decreased until the public has been provided an opportunity for a hearing and a hearing has been held if
 11 requested. The department shall provide reasonable statewide and local notice of the opportunity for a
 12 hearing, including but not limited to publishing the notice in newspapers of general daily circulation.

13 ~~(5)~~(6) ~~With the exception of the unforeseen contingency portion of the bond, all~~ ALL ~~All~~ bonds
 14 required in accordance with the provisions of this section must be based upon reasonably foreseeable
 15 activities that the applicant may conduct in order to comply with conditions of an operating permit or
 16 license. Bonds may be required only for anticipated activities as described in subsection (1). ~~With the~~
 17 ~~exception of the unforeseen contingency portion of the bond, only~~ ONLY ~~Only~~ those activities that
 18 themselves or in conjunction with other activities have a reasonable possibility of occurring may be
 19 bonded. BOND CALCULATIONS, INCLUDING CALCULATIONS FOR THE INITIAL BOND OR FOR SUBSEQUENT BOND REVIEWS
 20 AND ADJUSTMENTS, MAY NOT INCLUDE AMOUNTS FOR ANY OCCURRENCE OR CONTINGENCY THAT IS NOT A REASONABLY
 21 FORSEEABLE RESULT OF ANY ACTIVITY CONDUCTED BY THE APPLICANT.

22 ~~(6)~~(7) At the applicant's discretion, bonding in addition to that required by this section may be
 23 posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by
 24 this section.

25 ~~(7) If a permittee fails or refuses to fulfill any condition of the permittee's operating permit, the~~
 26 ~~department may declare the permittee in default and the surety bond forfeited. The surety shall then pay~~
 27 ~~to the department within 30 days after receipt of notice of default by certified mail 10% of the entire bond~~
 28 ~~amount for use in interim reclamation activities pending payment of the entire amount by the surety. The~~
 29 ~~department shall use the bond proceeds for reclamation of the disturbed land, which may include~~
 30 ~~establishment of a trust to fund long-term compliance with air or water quality requirements. Any interest~~

1 ~~on bond proceeds forfeited by the surety or otherwise received by the department accrues in favor of the~~
2 ~~department for purposes of reclamation.~~

3 (8) (A) IF THE DEPARTMENT DETERMINES THAT THERE EXISTS AT AN AREA PERMITTED OR LICENSED UNDER THIS
4 PART AN IMMINENT DANGER TO PUBLIC HEALTH, SAFETY, OR THE ENVIRONMENT CAUSED BY A VIOLATION OF THIS PART,
5 THE RULES ADOPTED PURSUANT TO THIS PART, OR THE PERMIT OR LICENSE, AND IF THE PERMITTEE OR LICENSEE FAILS OR
6 REFUSES TO EXPEDITIOUSLY ABATE THE DANGER, THE DEPARTMENT MAY IMMEDIATELY SUSPEND THE PERMIT OR LICENSE,
7 ENTER THE SITE, AND ABATE THE DANGER. THE DEPARTMENT MAY THEREAFTER INSTITUTE PROCEEDINGS TO REVOKE THE
8 LICENSE OR PERMIT, DECLARE THE PERMITTEE OR LICENSEE IN DEFAULT, AND FORFEIT A PORTION OF THE BOND, NOT TO
9 EXCEED \$150,000 OR 10% OF THE BOND, WHICHEVER IS LESS, TO BE USED TO ABATE THE DANGER. THE DEPARTMENT
10 SHALL NOTIFY THE SURETY OF THE FORFEITURE AND THE FORFEITURE AMOUNT BY CERTIFIED MAIL, AND THE SURETY SHALL
11 PAY THE FORFEITURE AMOUNT TO THE DEPARTMENT WITHIN 30 DAYS OF RECEIPT OF THE NOTICE. THE DEPARTMENT
12 SHALL, AS A CONDITION OF ANY TERMINATION OF THE SUSPENSION AND REVOCATION PROCEEDINGS, REQUIRE THAT THE
13 PERMITTEE OR LICENSEE REIMBURSE THE SURETY, WITH INTEREST, FOR ANY AMOUNT PAID TO AND EXPENDED BY THE
14 DEPARTMENT PURSUANT TO THIS SUBSECTION (8) AND FOR THE ACTUAL COST OF THE SURETY'S EXPENSES IN RESPONDING
15 TO THE DEPARTMENT'S FORFEITURE DEMAND.

16 (B) IF THE DEPARTMENT IS UNABLE TO PERMANENTLY ABATE THE IMMINENT DANGER USING THE AMOUNT
17 FORFEITED UNDER SUBSECTION (8)(A), THE DEPARTMENT MAY FORFEIT ADDITIONAL AMOUNTS UNDER THE PROCEDURE
18 PROVIDED IN SUBSECTION (8)(A).

19 (C) THE DEPARTMENT SHALL RETURN TO THE SURETY ANY MONEY RECEIVED FROM THE SURETY PURSUANT TO
20 THIS SUBSECTION AND NOT USED BY THE DEPARTMENT TO ABATE THE IMMINENT DANGER. THE AMOUNT NOT RETURNED
21 TO THE SURETY MUST BE CREDITED TO THE SURETY AND REDUCES THE PENAL AMOUNT OF THE BOND ON A
22 DOLLAR-FOR-DOLLAR BASIS.

23 (D) ANY INTEREST ACCRUED ON BOND PROCEEDS THAT IS NOT REQUIRED TO ABATE THE IMMINENT DANGER
24 DETERMINED IN SUBSECTION (8)(A) MUST BE RETURNED TO THE SURETY, UNLESS OTHERWISE AGREED TO IN WRITING BY
25 THE SURETY.

26 (9) IF A BOND IS TERMINATED AS A RESULT OF THE ACTION OR INACTION OF A LICENSEE OR PERMITTEE OR IS
27 CANCELED OR OTHERWISE TERMINATED BY THE SURETY ISSUING THE BOND AND THE LICENSEE OR PERMITTEE FAILS TO POST
28 A NEW BOND FOR THE ENTIRE AMOUNT OF THE TERMINATED BOND WITHIN 30 DAYS FOLLOWING THE NOTICE OF
29 TERMINATION PROVIDED TO THE DEPARTMENT, THEN THE LICENSE OR PERMIT MUST BE IMMEDIATELY SUSPENDED WITHOUT
30 FURTHER ACTION BY THE DEPARTMENT."

1

2 **Section 7.** Section 82-4-339, MCA, is amended to read:

3 **"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer**
 4 **status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or
 5 within 30 days after each anniversary date of the permit, whichever is earlier, or at ~~such a~~ later date ~~as~~
 6 ~~that~~ may be provided by rules of the board and each year ~~thereafter~~ after that date until reclamation is
 7 completed and approved, the permittee shall pay the annual fee of ~~\$25~~ \$100 and shall file a report of
 8 activities completed during the preceding year on a form prescribed by the department, ~~which~~ The report
 9 ~~shall~~ must:

10 (a) identify the permittee and the permit number;

11 (b) locate the operation by subdivision, section, township, and range and with relation to the
 12 nearest town or other well-known geographic feature;

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

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

17 (e) update the information required in 82-4-335(4)(a); and

18 (f) update any maps previously submitted or specifically requested by the department. ~~Such~~ The
 19 maps ~~shall~~ must show:

20 (i) the permit area;

21 (ii) the unit of disturbed land;

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

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

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

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

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

1 is located."

2

3 **Section 8.** Section 82-4-341, MCA, is amended to read:

4 **"82-4-341. Compliance -- reclamation by department.** (1) The department shall cause the permit
5 area to be inspected at least annually to determine whether the permittee has complied with this part, the
6 rules adopted under this part, or the permit.

7 (2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan
8 or as required pursuant to subsection (8). Following written notice by the department noting deficiencies,
9 the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently
10 proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier
11 rectification must be corrected in accordance with the applicable time provisions of those laws. The
12 department may extend performance periods referred to in ~~this section and in 82-4-336~~ and in this section
13 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the
14 department, making every reasonable effort to comply.

15 (3) Within 30 days after notification by the permittee and when, in the judgment of the
16 department, reclamation of a unit of disturbed land area is properly completed, the department shall
17 provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable
18 ~~thereafter~~ after notice and hearing, the permittee must be notified in writing and the bond on the area must
19 be released or decreased proportionately to the acreage included within the bond coverage. ~~However, the~~
20 ~~department shall retain the unforeseen contingency portion of the bond for 10 years after it has released~~
21 ~~the remainder of the bond. The department may forfeit all or a portion of the bond to remedy actual or~~
22 ~~potential air or water quality violations or actual or potential reclamation failures that arise at or from the~~
23 ~~permit area during the 10-year period.~~

24 (4) The department shall cause the bond to be forfeited if:

25 (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the
26 permittee has not commenced action to rectify deficiencies within 30 days after notification by the
27 department;

28 (b) reclamation is not properly completed in conformance with the reclamation plan within 2 years
29 after completion or abandonment of operation on any fraction of the permit area or within a longer period
30 that may have been authorized under this part; or

1 (c) after default by the permittee, the surety either refuses or fails to perform the work to the
2 satisfaction of the department within the time required.

3 (5) The department shall notify the permittee and the surety ~~by order as provided in 82-4-338(7)~~
4 BY CERTIFIED MAIL. If the bond is not paid within 30 days after receipt of the notice, the attorney general,
5 upon request of the department, shall bring an action on behalf of the state in district court.

6 (6) The department may, with the staff, equipment, and material under its control or by contract
7 with others, take any necessary actions for required reclamation of the disturbed lands ACCORDING TO THE
8 EXISTING RECLAMATION PLAN OR A MODIFIED RECLAMATION PLAN IF THE DEPARTMENT MAKES A WRITTEN FINDING THAT
9 THE MODIFICATIONS ARE NECESSARY TO PREVENT A VIOLATION OF TITLE 75, CHAPTER 2 OR 5, OR TO PREVENT A
10 SUBSTANTIAL RECLAMATION FAILURE. Except in an environmental emergency, work provided for in this section
11 must be let on the basis of competitive bidding. The department shall keep a record of all necessary
12 expenses incurred in carrying out the work or activity authorized under this section, including a reasonable
13 charge for the services performed by the state's personnel and the state's equipment and materials used.
14 The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the
15 cost. Upon completion of the reclamation, the department shall return TO THE SURETY any amount not
16 expended, INCLUDING ANY UNEXPENDED INTEREST ACCRUED ON BOND PROCEEDS, UNLESS OTHERWISE AGREED TO IN
17 WRITING BY THE SURETY.

18 (7) In addition to the other liabilities imposed by this part, failure to commence an action to remedy
19 specific deficiencies in reclamation within 30 days after notification by the department or failure to
20 satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a
21 longer period that the department may permit on the permittee's application or on the department's own
22 motion, after completion or abandonment of operations on any segment of the permit area, constitutes
23 sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to
24 the applicant. A cancellation action may not be effected while an appeal is pending from any ruling
25 requiring the cancellation of a permit or license.

26 (8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing
27 has occurred on a mine permit area for the past 5 years, the department shall determine whether further
28 suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or
29 significantly impair reclamation of disturbed areas. If the department determines in writing that violations
30 of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify

1 the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions
 2 or commence reclamation. The department may grant reasonable extensions of time for good cause
 3 shown. If the permittee does not abate the conditions or commence reclamation within the time specified
 4 in the notice and any extensions, the department shall order either that the condition be abated or that
 5 reclamation be commenced.

6 (b) The permittee may request a hearing on the order by submitting a written request for hearing
 7 within 30 days of receipt of the order. A request for hearing stays the order pending a final decision,
 8 unless the department determines in writing that the stay will create an imminent threat of significant
 9 environmental harm or will significantly impair reclamation."

10

11 **Section 9.** Section 82-4-360, MCA, is amended to read:

12 **"82-4-360. Activity When activity prohibited if bond forfeited -- exception -- EXCEPTION.** ~~(1) Except~~
 13 ~~as provided in subsection (2), a~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A person may not conduct
 14 mining or exploration activities in this state if that person or any firm or business association of which that
 15 person was a principal or controlling member had a bond forfeited under this part, if the department
 16 otherwise received proceeds from a surety to perform reclamation on that person's behalf, or if the
 17 person's surety completed reclamation on the person's behalf.

18 ~~(2) A person described in subsection (1) may apply for an operations permit or an exploration~~
 19 ~~license or may conclude a written agreement under 82-4-305 if that person first pays to the department:~~

20 ~~—— (a) the full amount of the necessary expenses incurred by the department under 82-4-341(6) for~~
 21 ~~reclamation of the area for which the bond was forfeited;~~

22 ~~—— (b) the full amount of any penalties assessed under this part; and~~

23 ~~—— (c) interest on these amounts and penalties incurred at the rate of 6% per year.~~

24 (2) A PERSON DESCRIBED IN SUBSECTION (1) MAY APPLY FOR AN OPERATING PERMIT OR AN EXPLORATION LICENSE
 25 OR MAY CONCLUDE A WRITTEN AGREEMENT UNDER 82-4-305 IF:

26 (A) THAT PERSON PAYS TO THE DEPARTMENT:

27 (i) THE FULL AMOUNT OF THE NECESSARY EXPENSES INCURRED BY THE DEPARTMENT UNDER 82-4-341(6) FOR
 28 RECLAMATION OF THE AREA FOR WHICH THE BOND WAS FORFEITED;

29 (ii) THE FULL AMOUNT OF ANY PENALTIES ASSESSED UNDER THIS PART; AND

30 (iii) INTEREST ON THE EXPENSES INCURRED AND PENALTIES ASSESSED AT THE RATE OF 6% A YEAR; AND

1 (B) THE PERSON DEMONSTRATES AND THE DEPARTMENT DETERMINES THAT THE PERSON HAS REMEDIED THE
 2 CONDITIONS THAT LED TO THE BOND FORFEITURE OR RECEIPT OF THE BOND PROCEEDS AND THAT THOSE CONDITIONS NO
 3 LONGER EXIST."

4

5 **Section 10.** Section 82-4-424, MCA, is amended to read:

6 **"82-4-424. Receipt and expenditure of funds.** (1) The department may receive any federal funds,
 7 state funds, or any other funds for the reclamation of land affected by opencut mining. The department
 8 may cause the reclamation work to be done by its employees, by employees of other governmental
 9 agencies, by soil conservation districts, or through contracts with qualified persons.

10 (2) Any funds of any public works programs available to the department must be expended and
 11 used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been
 12 reclaimed and rehabilitated in accordance with the standards of this part.

13 (3) There is an opencut mining and reclamation account within the state special revenue fund
 14 established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money
 15 that have been or will be paid under the provisions of this part. All accrued interest on the account must
 16 be credited to the opencut mining and reclamation account. The money in the account is available to the
 17 department through appropriation and must be spent by the department for the reclamation and
 18 revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation
 19 of water affected by opencut mining operations and for administration of this part. Any unspent or
 20 unencumbered money in the account at the end of a fiscal year must remain in the account until spent or
 21 appropriated by the legislature."

22

23 NEW SECTION. Section 11. Coordination instruction. If ~~Bill No. [LC287]~~ SENATE BILL NO. 449
 24 and [this act] are both passed and approved and if both contain sections that amend 82-4-311 and
 25 82-4-424, then [sections ~~3 and 11~~ 2 AND 10 of this act] are void.

26

27 NEW SECTION. Section 12. Saving clause. [This act] does not affect rights and duties that
 28 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 29 act].

30

1 NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
3 applications, the part remains in effect in all valid applications that are severable from the invalid
4 applications.

5

6 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

7

8 NEW SECTION. SECTION 15. APPLICABILITY. SECTIONS 82-4-303(6) AND 82-4-338(8) APPLY TO LICENSES
9 AND PERMITS ISSUED AFTER [THE EFFECTIVE DATE OF THIS ACT] AND TO PERMITS ISSUED BEFORE [THE EFFECTIVE DATE
10 OF THIS ACT] THAT ARE IN EFFECT ON [1 YEAR AFTER THE EFFECTIVE DATE OF THIS ACT].

11

- END -