

HOUSE BILL NO. 432
INTRODUCED BY P. CLARK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METAL MINE RECLAMATION LAWS; REQUIRING A SWORN CERTIFICATION OF COMPLIANCE WITH ENVIRONMENTAL LAWS; PROHIBITING MINE ACTIVITIES FOR FAILURE TO RECLAIM; AMENDING SECTIONS 82-4-335 AND 82-4-360, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

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

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

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

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

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

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

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

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

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

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

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

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

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

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may

not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

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

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

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

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

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

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

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

(9) (a) A person may not be issued a permit under this part unless, at the time of submission of a bond,

the person provides the current information required in subsection (4)(a) and:

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

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

~~(b)~~ (ii) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i)(A) or ~~(9)(a)(ii)~~ (9)(a)(i)(B), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members.

(b) The certification required by this subsection (9) must be provided by affidavit attesting to the facts in the certification. Knowingly making false statements in the affidavit subjects the affiant to the penalties prescribed for false swearing, as provided in 45-7-202."

Section 2. Section 82-4-360, MCA, is amended to read:

"82-4-360. When activity prohibited -- exception. (1) (a) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member:

(i) had a bond forfeited under this part, if the department otherwise received proceeds from a surety to perform reclamation on that person's behalf; or if the person's surety completed reclamation on the person's behalf; or

(ii) had a bond forfeited under any law, rule, or regulation of the United States or of any other state pertaining to mined land reclamation that resulted in the administering agency receiving proceeds from a surety to perform reclamation on that person's behalf or if the person's surety completed reclamation on the person's behalf.

(b) The department may initiate action under this part to suspend or revoke any license or permit issued under this part to a person described in subsection (1)(a).

(2) A person described in subsection (1) may apply for an operating permit or an exploration license or may conclude a written agreement under 82-4-305 if:

(a) that person pays to the department:

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

(ii) the full amount of any penalties assessed under this part; and

- (iii) interest on the expenses incurred and penalties assessed at the rate of 6% a year; and
- (b) the person demonstrates and the department determines that the person has remedied the conditions that led to the bond forfeiture or receipt of the bond proceeds and that those conditions no longer exist; or
- (c) for situations described in subsection (1)(a)(ii), the administering agency of the United States or other state certifies to the department, in writing, that the person's financial obligation and the conditions that led to the receipt of bond proceeds or the completion of reclamation by the administering agency or by the person's surety have been resolved to the satisfaction of the administering agency."

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

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

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