HOUSE BILL NO. 460

INTRODUCED BY KEANE, MENDENHALL, GEBHARDT, OLSON, GALLUS, HEINERT, ANKNEY, GROESBECK, NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METAL MINE RECLAMATION LAWS; ~~CLARIFYING APPLICATION INFORMATION REQUIREMENTS;~~ CLARIFYING RECLAMATION PLAN REQUIREMENTS; REQUIRING A TEMPORARY RECLAMATION BOND FOR CERTAIN UNANTICIPATED ~~AND EXTRAORDINARY~~ CIRCUMSTANCES; PROVIDING A PROCESS FOR DETERMINING THE TEMPORARY BOND AMOUNT; AMENDING ~~SECTIONS 82-4-335, 82-4-336, AND~~ SECTION 82-4-338, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY 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. Except as provided in subsection (2), a separate operating permit is required for each complex.~~

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

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

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

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

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

~~(v) impact significant historic or archaeological features.~~

~~(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all~~

~~mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.~~

~~(3) 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.~~

~~(4) 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.~~

~~(5) 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;~~

~~(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; and~~

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

~~(p) sufficient geological, hydrological, and geochemical information to evaluate the potential water discharges that would exceed applicable effluent limitations WATER QUALITY STANDARDS at the point of compliance~~.

~~(6) Except as provided in subsection (8), 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.~~

~~(7) 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.~~

~~(8) 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.~~

~~(9) 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.~~

~~(10) 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 (5)(a) and:~~

~~(a) (i) 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) 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) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%~~

~~or more of any class of voting stock, and business association members."~~

~~**Section 2.** Section 82-4-336, MCA, is amended to read:~~

~~**"82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.~~

~~(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.~~

~~(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.~~

~~(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.~~

~~(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.~~

~~(6) All final grading must be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the department for a supervised sanitary fill.~~

~~(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:~~

~~(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;~~

~~(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;~~

~~(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the department before release from the settling basin; or~~

~~(d) absorption or evaporation of objectionable effluents in the open pit itself; and~~

~~(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.~~

~~(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.~~

~~(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:~~

~~(i) The postmining use of the mine-related facilities must be approved by the department.~~

~~(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.~~

~~(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:~~

~~(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;~~

~~(ii) that affords some utility to humans or the environment;~~

~~(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and~~

~~(iv) that mitigates or prevents undesirable offsite environmental impacts.~~

~~(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).~~

~~(10) If the application information provided for in 82-4-335(5) indicates that untreated mined or processed waste materials would be acid-forming~~ RELATED TO THE MINING OPERATION HAVE A REASONABLE PROBABILITY OF CAUSING VIOLATIONS OF WATER QUALITY STANDARDS UPON CONTACT WITH SURFACE WATER OR GROUND WATER, the reclamation plan must provide for the placement of those materials in a location that minimizes impacts to surface

~~water or ground water OR THE MANAGEMENT OF THOSE MATERIALS IN A MANNER THAT COMPLIES WITH THE REQUIREMENTS OF TITLE 75, CHAPTER 5.~~

~~(10)~~(11) ~~The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.~~

~~(11)~~(12) ~~A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.~~

~~(12)~~(13) ~~The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges."~~

Section 1. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) (a) An applicant for an exploration license or operating permit shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 for each acre or fraction of an acre of the disturbed land, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the department a cash deposit, an assignment of a certificate of deposit, an irrevocable letter of credit, or other surety acceptable to the department. The bond may not be less than the estimated cost to the state to ensure compliance with Title 75, chapters 2 and 5, this part, the rules, and the permit, including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.

(b) A public or governmental agency may not be required to post a bond under the provisions of this part.

(c) A blanket performance bond covering two or more operations may be accepted by the department. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(d) (i) For an exploration license or operating permit authorizing activities on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(ii) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the

department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(iii) The department may not enter into an agreement or memorandum of understanding with a federal land management agency that would require the department to impose requirements on an operator that are more stringent than state law and rules.

(2) (a) The department may calculate one or more reclamation plan components within its jurisdiction with the assistance of one or more third-party contractors selected jointly by the department and the applicant and compensated by the applicant when, based on relevant past experience, the department determines that additional expertise is necessary to calculate the bond amount for reclamation plan components. The department may contract for assistance pursuant to this subsection in determining bond amounts for the initial bond and for any subsequent bond review and adjustment. The mine owner is responsible for the first $5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over $5,000.

(b) To select a third-party contractor as authorized in subsection (2)(a), the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(3) (a) The department shall conduct an overview of the amount of each bond annually and shall conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of a reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall consult with the licensee or permittee if a review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department shall modify the bonding requirements of that permit or license. The licensee or permittee must have 60 days to negotiate the preliminary bond determination with the department, at the end of which time period the department shall issue the proposed bond determination. The department shall give the licensee or permittee a copy of the bond calculations that form the basis for the proposed bond determination and, for operating permits, publish notice of the proposed bond determination in a newspaper of general circulation in the county in which the operation is located. The

department shall issue a final bond determination in 30 days. Unless the licensee or permittee requests a hearing under subsection (3)(b), the licensee or permittee shall post bond with the department in the amount represented by the final bond determination no later than 30 days after issuance of the final bond determination. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a 30-day extension of the deadline.

(b) The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing before the board under the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, on the final bond determination by filing with the department, within 30 days of the issuance of the final bond determination, a written request for hearing stating the reason for the request. The request for hearing must specify the amount of bond increase, if any, that the licensee or permittee considers appropriate and state the reasons that the licensee or permittee considers the department's final bond determination to be excessive. As a condition precedent to any right to request a hearing, the licensee or permittee shall post bond with the department in the amount of the bond increase that the licensee or permittee has stated is appropriate in the request for hearing or the amount that is one-half of the increase contained in the department's final bond determination, whichever amount is greater. If the board determines that additional bond is necessary, the licensee or permittee shall post bond in the amount determined by the board within 30 days of receipt of the board's decision. If the licensee or permittee demonstrates that, through the exercise of reasonable diligence, the licensee or permittee will not be able to post the bond within 30 days, the department shall grant a reasonable extension of the deadline.

(c) If a licensee or permittee fails to post bond in accordance with subsection (3)(a) or (3)(b) in the required amounts by the required deadlines, the license or permit is suspended by operation of law and the licensee or permittee shall immediately cease mining and exploration operations until the required bond is posted with and approved by the department.

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

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

(6) ~~All~~ Except as provided in subsection (7), all bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply

with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded. Bond calculations, including calculations for the initial bond or for subsequent bond reviews and adjustments, may not include amounts for any occurrence or contingency that is not a reasonably forseeable result of any activity conducted by the applicant.

(7) (a) If the department determines, based on unanticipated ~~and extraordinary~~ circumstances that are discovered following the issuance of a mining permit, that a substantial and imminent danger to public health, public safety, or the environment exists OR THAT THERE IS A REASONABLE PROBABILITY THAT A VIOLATION OF WATER QUALITY STANDARDS WILL OCCUR, the department may require an operator to submit an amended reclamation plan to address the danger and to post a temporary bond to guarantee the performance of the amended portion of the reclamation plan. The temporary bond~~, not to exceed a period of 2 years,~~ may only be required if the anticipated costs associated with the plan amendment would increase the total bond amount for the current plan by more than 10%, as determined in subsection (7)(b).

(b) (i) In determining the need for the temporary bond and the amount of the temporary bond under subsection (7)(a), the department shall select a third-party contractor in consultation with the operator pursuant to subsection (7)(b)(ii) to provide:

(A) a technical engineering analysis and report on the substantial and imminent danger to public health, public safety, or the environment identified in subsection (7)(a); and

(B) the estimated costs of addressing the potential danger in order to establish the amount of the temporary bond.

(ii) The department shall provide the operator with a list of at least four qualified third-party contractors. The operator shall select two qualified third-party contractors from that list. The department shall select its contractor from the list provided by the operator. The operator shall reimburse the department for the reasonable costs of the third-party contractor.

(C) AN APPROVED INTERIM AMENDED RECLAMATION PLAN AND INTERIM BOND MUST REMAIN IN EFFECT UNTIL THE EARLIER OF:

(I) THE DATE THAT A REVISED RECLAMATION PLAN IS APPROVED PURSUANT TO 82-4-337 AND A PERMANENT BOND FOR THE REVISED RECLAMATION PLAN IS SUBMITTED AND ACCEPTED PURSUANT TO THIS SECTION; OR

(II) 2 YEARS FOLLOWING THE DATE OF SUBMISSION OF A COMPLETE APPLICATION PURSUANT TO 82-4-337 TO MODIFY THE RECLAMATION PLAN PROVISION OR REMEDY THE CONDITIONS THAT CREATED THE NEED TO AMEND THE RECLAMATION PLAN UNLESS THE DEPARTMENT APPROVES OR DENIES THE COMPLETE APPLICATION WITHIN 2 YEARS OF

SUBMISSION. THE APPLICANT MAY AGREE TO AN EXTENSION OF THIS DEADLINE.

(D) EXCEPT AS PROVIDED IN SUBSECTION (8), THE PROCESS PROVIDED FOR IN THIS SUBSECTION (7) IS NOT SUBJECT TO THE PROVISIONS OF TITLE 75, CHAPTER 1.

(8) (A) IN DETERMINING WHETHER TO REQUIRE AMENDMENT OF A RECLAMATION PLAN UNDER SUBSECTION (7)(A), THE DEPARTMENT SHALL PREPARE OR REQUIRE THE PERMITTEE TO PREPARE A WRITTEN ANALYSIS OF CHANGES IN THE RECLAMATION PLAN THAT MAY ELIMINATE OR MITIGATE TO AN ACCEPTABLE LEVEL THE ENVIRONMENTAL CONDITION. THE ANALYSIS MUST INCLUDE AN ASSESSMENT OF THE EFFECTIVENESS OF THE CHANGES AND ANY POTENTIAL NEGATIVE ENVIRONMENTAL IMPACTS OF THE CHANGES. THE DEPARTMENT SHALL PREPARE AN ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO TITLE 75, CHAPTER 1, ONLY IF THE DEPARTMENT DETERMINES THAT THE CHANGES WOULD NOT MITIGATE THE CONDITION TO AN ACCEPTABLE LEVEL OR MAY HAVE POTENTIALLY SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS.

(B) IF THE DEPARTMENT DETERMINES THAT PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT IS NECESSARY, THE PERMITTEE SHALL PAY THE DEPARTMENT'S COSTS PURSUANT TO 75-1-205.

~~(7)~~~~(8)~~(9) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section.

~~(8)~~~~(9)~~(10) (a) If the department determines that there exists at an area permitted or licensed under this part an imminent danger to public health, public safety, or the environment caused by a violation of this part, the rules adopted pursuant to this part, or the permit or license and if the permittee or licensee fails or refuses to expeditiously abate the danger, the department may immediately suspend the permit or license, enter the site, and abate the danger. The department may thereafter institute proceedings to revoke the license or permit, declare the permittee or licensee in default, and forfeit a portion of the bond, not to exceed $150,000 or 10% of the bond, whichever is less, to be used to abate the danger. The department shall notify the surety of the forfeiture and the forfeiture amount by certified mail, and the surety shall pay the forfeiture amount to the department within 30 days of receipt of the notice. The department shall, as a condition of any termination of the suspension and revocation proceedings, require that the permittee or licensee reimburse the surety, with interest, for any amount paid to and expended by the department pursuant to this subsection ~~(8)~~ ~~(9)~~ (10) and for the actual cost of the surety's expenses in responding to the department's forfeiture demand.

(b) If the department is unable to permanently abate the imminent danger using the amount forfeited under subsection ~~(8)(a)~~ ~~(9)(a)~~ (10)(A), the department may forfeit additional amounts under the procedure provided in subsection ~~(8)(a)~~ ~~(9)(a)~~ (10)(A).

(c) The department shall return to the surety any money received from the surety pursuant to this subsection ~~(9)~~ (10) and not used by the department to abate the imminent danger. The amount not returned to

the surety must be credited to the surety and reduces the penal amount of the bond on a dollar-for-dollar basis.

(d) Any interest accrued on bond proceeds that is not required to abate the imminent danger determined in subsection ~~(8)(a)~~ ~~(9)(a)~~ (10)(A) must be returned to the surety, unless otherwise agreed to in writing by the surety.

~~(9)(10)~~(11) If a bond is terminated as a result of the action or inaction of a licensee or permittee or is canceled or otherwise terminated by the surety issuing the bond and the licensee or permittee fails to post a new bond for the entire amount of the terminated bond within 30 days following the notice of termination provided to the department, then the license or permit must be immediately suspended without further action by the department."

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

NEW SECTION. **Section 3. Applicability.** [This act] does not apply to a reclamation plan amendment for backfill of a pit required by or as a result of a court judgment entered prior to January 1, 2007, or by a subsequent judgment requiring backfill of the same pit at the same facility.

- END -