

HOUSE BILL 131

IN THE HOUSE

January 12, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill, as amended, do not pass.
January 19, 1979	Report adopted.

House BILL NO. 131

1 INTRODUCED BY Hayes Sull
2 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN OPENCUT
5 MINING AND RECLAMATION ACCOUNT AND PROVIDE FOR THE
6 ALLOCATION OF FINES, FEES, AND PENALTIES; TO DEFINE THE TFRM
7 DEPARTMENT; TO DELETE THE UPPER DOLLAR LIMIT ON THE PER ACRE
8 BOND REQUIREMENT IN THE OPENCUT MINING LAWS; TO REVISE THE
9 TIME PERIOD FOR APPLICATION REVIEW; TO PROVIDE FOR
10 SUBMISSION OF AN OPENCUT MINING PLAN TO THE MONTANA
11 HISTORICAL SOCIETY; TO CLARIFY THE REVEGETATION
12 REQUIREMENTS; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT
13 OF THE OPENCUT MINING LAWS BY THE ATTORNEY GENERAL; AMENDING
14 SECTIONS 82-4-403 AND 82-4-433 THROUGH 82-4-435; AND
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Opencut mining and
19 reclamation account. All fees, fines, penalties, and other
20 money paid to the department of state lands under the
21 provisions of [Title 82, chapter 4, part 4] shall be
22 deposited in the agency fund and credited to a special
23 account to be designated as the opencut mining and
24 reclamation account. The money in the account is available

1 to the department by appropriation and shall be expended for
2 the administration and enforcement of [Title 82, chapter 4,
3 part 4] and for the reclamation and revegetation of land and
4 the rehabilitation of water affected by any mining
5 operations. Any unencumbered and unexpended balance of this
6 account remaining at the end of a fiscal year does not lapse
7 but carries forward in the account until expended or until
8 appropriated by the legislature.

9 Section 2. Section 82-4-403, MCA, is amended to read:
10 "82-4-403. Definitions. When used in this part, unless
11 a different meaning clearly appears from the context, the
12 following definitions apply:

13 (1) "Affected land" means the area of land from which
14 overburden is to be or has been removed and upon which the
15 overburden is to be or has been deposited.

16 (2) "Board" means the state board of land
17 commissioners.

18 (3) "Contract" means a mined land reclamation contract
19 prepared by the board to meet the requirements of this part.

20 (4) "Department" means the department of state lands.
21 (5) "Final cut" means the last pit created in an
22 opencut-mined area.

23 (6) "Highwall" means that side of the pit adjacent
24 to unmined land.

25 (7) "Landowner" means the owner of land directly or

1 indirectly affected by an opencut-mining operation.

2 ~~77181~~ "Opencut mining" means the mining of bentonite,
 3 clay, scoria, phosphate rock, sand, or gravel by removing
 4 the overburden lying upon natural deposits thereof and
 5 mining directly from the natural deposits thereby exposed,
 6 including the removal of overburden for the purpose of
 7 determining the location, quality, or quantity of any
 8 natural deposit of bentonite, clay, scoria, phosphate rock,
 9 sand, or gravel.

10 ~~78191~~ "Operator" means a person engaged in and
 11 controlling an opencut-mining operation.

12 ~~79110~~ "Overburden" means all of the earth and other
 13 materials which lie above a natural deposit of bentonite,
 14 clay, scoria, phosphate rock, sand, or gravel. "Spoil" is
 15 the overburden disturbed from its natural state in the
 16 process of opencut mining.

17 ~~70111~~ "Person" means a natural person or a firm,
 18 association, partnership, cooperative, or corporation or any
 19 department, agency, or instrumentality of the state or any
 20 governmental subdivision or any other entity whatever.

21 ~~771121~~ "Progress report" means a report showing the
 22 land which the operator has affected by opencut mining
 23 during the year. The report shall show the number of acres
 24 of affected land and all reclamation accomplished.

25 ~~721131~~ "Public notice" means notice given by

1 publication in a newspaper in the general area where the
 2 affected land is located. The notice shall be given once a
 3 week for 3 successive weeks.

4 ~~731141~~ "Reclamation" means the reconditioning of the
 5 area of land affected by opencut-mining operations to make
 6 the area suitable for productive use, including but not
 7 limited to forestry, agriculture, grazing, wildlife,
 8 recreation, or residential and industrial sites.

9 ~~741151~~ "Reclamation plan" means the description of
 10 current land use, topographical data, water data, soils
 11 data, leased areas, intended mine areas, and an explanation
 12 of proposed reclamation of the land with appropriate maps.

13 ~~751161~~ "Refuse" means all waste material directly
 14 connected with the opencut-mining operations.

15 ~~761171~~ "Soils materials" are those horizons
 16 containing topsoil or other soils leached free of
 17 deleterious salts and capable of sustaining plant growth and
 18 recognized as such by standard authorities."

19 Section 3. Section 82-4-433, MCA, is amended to read:
 20 "82-4-433. Bond. (1) A bond required to be filed in
 21 this part by the operator shall be in such form as the board
 22 prescribes, payable to the state of Montana and conditioned
 23 upon the operator's full compliance with all requirements of
 24 this part and all rules of the board. The bond shall be
 25 signed by the landowner or operator, as appropriate, as

1 principals, and by a good and sufficient corporate surety
 2 licensed to do business in the state of Montana, as surety.
 3 The penalty of the bond shall be in an amount not to exceed
 4 the costs of restoration required by this part as determined
 5 by the board but may not be less than \$200 or--more--than
 6 \$1000 per acre.

7 (2) In lieu of the bond, the operator may deposit with
 8 the board cash and government securities or a bond with
 9 property sureties in an amount equal to that of the required
 10 bond on conditions as above prescribed. In the discretion of
 11 the board, surety bond requirements may be fulfilled by the
 12 operator's posting a bond with land and improvements and
 13 facilities thereon as security, in which event no surety may
 14 be required. The penalty of the bond or amount of cash and
 15 securities shall be increased or reduced from time to time
 16 as provided in this part. The bond or security remains in
 17 effect until the mined acreages have been reclaimed as
 18 provided under the contract and the reclamation has been
 19 approved and the bond or security has been released by the
 20 board. The bond or security shall cover only actual mined
 21 acreages and may be increased or reduced to cover only such
 22 acreages as remain unreclaimed.

23 (3) If the license of a surety upon a bond filed with
 24 the board pursuant to this part is suspended or revoked, the
 25 operator, within 30 days after receiving notice thereof from

1 the board, shall substitute for that surety a good and
 2 sufficient surety licensed to do business in the state. Upon
 3 failure of the operator to make substitution of surety, the
 4 board may suspend the contract of the operator to conduct
 5 operations upon the land described in the contract until the
 6 substitution has been made.

7 (4) The board shall cause the reclamation of any
 8 affected land with respect to which a bond has been
 9 forfeited.

10 (5) Whenever an operator has completed all of the
 11 requirements under the provisions of this part as to any
 12 affected land, he shall notify the board thereof. If the
 13 board releases the operator from further obligation
 14 regarding such affected land, the penalty of the bond shall
 15 be reduced proportionately.

16 Section 4. Section 82-4-434, MCA, is amended to read:
 17 "82-4-434. Reclamation plan part of contract --
 18 requirements. The contract shall meet the following
 19 requirements:

20 (1) ~~1a~~ The operator shall submit a reclamation plan
 21 to the board before commencing any opencut mining and may
 22 not commence mining before the plan receives approval from
 23 the board. The operator may request and receive a meeting
 24 with the board prior to submission of the plan. ~~If the board~~
 25 ~~does not notify the operator that it has approved or~~

1 disapproved--a--plan--within--30--days--after--the--board--has
 2 received--the--plan--the--board--is--considered--to--have--approved
 3 the--plan----The--board----however--for--sufficient--cause--may
 4 extend--its--period--of--consideration--for--an--additional--30--days
 5 if--it--notifies--the--operator--prior--to--the--end--of--the--original
 6 30--day--period. The board shall submit each reclamation plan
 7 or amendments to the reclamation plan to the landowner for
 8 his recommendations and shall consider those recommendations
 9 in deciding whether to approve or disapprove any plan or
 10 amendments. The board may seek technical help from any state
 11 or federal agency. The board shall submit the plan
 12 immediately to the director of--the--university--of--Montana
 13 statewide--archaeological--survey Montana historical society
 14 for evaluation of possible archaeological or historical
 15 values in the area to be mined. The board may approve a
 16 reclamation plan only if the board has found that the plan
 17 provides for the best possible reclamation procedures
 18 available under the circumstances at the time, so that after
 19 mining operations are completed the affected land will be
 20 reclaimed to a productive use. Once the reclamation plan is
 21 accepted in writing by the board, it shall become a part of
 22 the contract but is subject to annual review and
 23 modification by the board.

24 (b) The department shall inspect the site prior to
 25 issuance of a contract. Unless the time period is extended

1 under the provisions of this subsection, the board shall
 2 either issue an operating permit to the applicant or return
 3 any deficient or inadequate application, along with a
 4 description of the deficiencies, within 60 days of receipt
 5 of the complete application and complete reclamation plan
 6 and receipt of the application fee. If the site is not
 7 accessible due to extended adverse weather conditions, the
 8 department may extend the 60-day period by not more than 180
 9 days to allow inspection of the site and reasonable review.
 10 The department must serve written notice of extension upon
 11 the applicant in person or by certified mail, and any such
 12 extension is subject to appeal to the board in accordance
 13 with the Montana Administrative Procedure Act. If the
 14 department determines that additional time is needed to
 15 review the application and reclamation plan for a major
 16 operation, the department and applicant shall negotiate to
 17 extend the 60-day period by not more than 365 days. Failure
 18 of the board to act upon a complete application and complete
 19 reclamation plan within the period prescribed or any
 20 extension thereof constitutes approval of the application,
 21 and the permit shall be issued promptly thereafter, upon
 22 receipt of the required bond.

23 (2) The board may not approve any reclamation plan
 24 unless the plan provides:

25 (a) that the land will be reclaimed for one or more

1 specified uses, including but not limited to forest,
 2 pasture, orchard, cropland, residence, recreation, industry,
 3 habitat for wildlife, including food, cover, or water, or
 4 other uses;

5 (b) that to the extent reasonable and practicable, the
 6 operator will establish vegetative cover commensurate with
 7 the proposed land use;

8 (c) whenever operations result in a need to prevent
 9 acid drainage or sedimentation on or in adjoining lands or
 10 streams, for the construction of earth dams or other
 11 reasonable devices to control water drainage, provided the
 12 formation of such impoundments or devices will not interfere
 13 with other landowners' rights or contribute to water
 14 pollution;

15 (d) that to accomplish practical utilization of soil
 16 materials, such material will be utilized for placement on
 17 affected areas, if required by the reclamation plan after
 18 completion or termination of that particular phase of the
 19 mining operations, at a depth sufficient for plant growth on
 20 slopes of 3:1 or less;

21 (e) that grading will be commensurate with the
 22 topography sought and land use designated;

23 (f) that metal and other waste will be removed or
 24 buried;

25 (g) that all access, haul, and other support roads

1 will be located, constructed, and maintained in such a
 2 manner as to control and minimize channeling and other
 3 erosion;

4 (h) that the operator will submit a progress report
 5 annually to the board;

6 (i) that all operations will be conducted so as to
 7 avoid range and forest fires and spontaneous combustion and
 8 that open burning of carbonaceous materials will be in
 9 accordance with suitable practices for fire prevention and
 10 control;

11 (j) that archaeological and historical values in areas
 12 to be mined will be given appropriate protection;

13 (k) that except for rock faces, bench faces, and
 14 excavations used for water impoundments, each surface area
 15 of the mined premises which will be disturbed will be
 16 revegetated, if commensurate with the proposed land use,
 17 when its use for extractive purposes is no longer required;

18 (l) that when the proposed land use is pasture or
 19 habitat for wildlife, seeding and planting will be done in a
 20 manner to achieve a permanent suitable vegetative cover for
 21 wildlife, livestock, and retardation of erosion and that all
 22 seed will be drilled unless otherwise provided in the plan;

23 (m) that reclamation will be as concurrent with mining
 24 operations as feasible and will be completed within a
 25 specified length of time.

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1 (3) If reclamation according to the plan has not been
2 completed in the time specified, the board after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

8 (4) (a) At any time during the period of reclamation
9 the operator may for good reason submit to the board a new
10 reclamation plan or amendment to the existing plan,
11 including extensions of time.

12 (b) The board may approve the proposed new reclamation
13 plan or amendments to the existing plan if:

14 (i) the operator has in good faith carried on
15 reclamation according to the existing plan and the proposed
16 new plan or amendments to the existing plan will result in
17 reclamation as or more desirable than the reclamation
18 proposed under the existing plan; or

19 (ii) it is highly improbable reclamation will be
20 successful unless the existing plan is replaced or amended.

21 (c) When accepted, the proposed new reclamation plan
22 or the proposed amendments to the existing plan become a
23 part of the contract.

24 (5) The operator shall provide a performance bond or
25 an alternative acceptable to the board in an amount

1 commensurate with the estimated cost of reclamation, but in
2 no case may the bond be less than \$200 per acre. The
3 estimated cost of reclamation shall be set forth in the
4 reclamation plan.

5 (6) The contract, reclamation plan, and amendments
6 accepted by the board shall be a public record and open to
7 inspection.

8 (7) The contract shall become effective when signed by
9 the board and the operator and shall remain in force until
10 terminated by mutual consent or by the board upon 6 months'
11 notice."

12 Section 5. Section 82-4-435, MCA, is amended to read:
13 "82-4-435. Operation--without--contract----penalty
14 Penalty -- enforcement. Anyone required by this part to have
15 a contract and who engages in an open cut mining without
16 previously securing a contract to do so as prescribed by
17 this part is guilty of a misdemeanor and upon conviction
18 thereof shall be fined not less than \$500 and not more than
19 \$1,000. Each day of operation without a contract required by
20 this part is a separate violation. (1) A person who violates
21 any of the provisions of this part or rules adopted
22 thereunder shall pay a civil penalty of not less than \$100
23 or more than \$1,000 for the violations and an additional
24 civil penalty of not less than \$100 or more than \$1,000 for
25 each day during which a violation continues and the person

1 may be enjoined from continuing such violations as provided
2 in this section. These penalties are recoverable in an
3 action brought in the name of the state of Montana by the
4 attorney general in the district court of the first judicial
5 district of this state, in and for the county of Lewis and
6 Clark, or in the district court having jurisdiction of the
7 defendant.

8 (2) The attorney general shall, upon the request of
9 the department, sue for the recovery of the penalties
10 provided for in this section and bring an action for a
11 restraining order or a temporary or permanent injunction
12 against an operator or other person violating or threatening
13 to violate an order adopted under this part."

14 Section 6. Codification. It is intended that section 1
15 be codified as an integral part of Title 82, chapter 4, part
16 4, and the provisions of Title 82, chapter 4, part 4, apply
17 to section 1.

18 Section 7. Effective date. This act is effective upon
19 passage and approval.

-End-