

HOUSE BILL NO. 448

INTRODUCED BY REAM, T. BECK, GROSFIELD, WEEDING,  
WILLIAMS, KOEHNKE  
BY REQUEST OF THE GOVERNOR

IN THE HOUSE

JANUARY 30, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                      FIRST READING.

FEBRUARY 9, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 11, 1991                  PRINTING REPORT.

FEBRUARY 12, 1991                  ON MOTION, CONSIDERATION PASSED.

FEBRUARY 13, 1991                  ON MOTION, CONSIDERATION PASSED.

                                      ON MOTION, ADDITIONAL SPONSORS ADDED.

FEBRUARY 14, 1991                  SECOND READING, DO PASS.

FEBRUARY 15, 1991                  ENGROSSING REPORT.

FEBRUARY 16, 1991                  THIRD READING, PASSED.  
AYES, 97; NOES, 0.

                                      TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 18, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON NATURAL RESOURCES.

                                      FIRST READING.

APRIL 11, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

APRIL 16, 1991                    SECOND READING, CONCURRED IN.

APRIL 17, 1991                    THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

                                      RETURNED TO HOUSE.

IN THE HOUSE

APRIL 17, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 448  
 2 INTRODUCED BY Ream T. Bell  
 3 Williams BY REQUEST OF THE GOVERNOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE METAL MINE  
 6 RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE  
 7 GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL;  
 8 ALLOCATING RESOURCE INDEMNITY TRUST INTEREST INCOME TO THE  
 9 HARD-ROCK ENVIRONMENTAL EMERGENCY ACCOUNT FOR ABATEMENT OF  
 10 ENVIRONMENTAL EMERGENCIES; PROVIDING A STATUTORY  
 11 APPROPRIATION; AMENDING SECTIONS 15-38-202, 17-7-502,  
 12 82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338,  
 13 82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE  
 14 DATE."

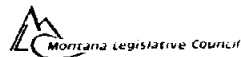
15 STATEMENT OF INTENT

16  
 17 A statement of intent is required for this bill to  
 18 provide guidance to the department of state lands concerning  
 19 the adoption of rules to define the types of department  
 20 expenses that applicants for hard-rock mine operating  
 21 permits will be required to pay through increased permit  
 22 application fees. Section 82-4-335(3) of the bill allows the  
 23 department to increase the permit application review fee to  
 24 fund expenses that are beyond the department's normal  
 25 operating expenses and that are reasonably necessary in

1 order for the department to provide a timely and adequate  
 2 review, including any environmental review that is conducted  
 3 pursuant to the requirements of the Montana Environmental  
 4 Policy Act. The department's rules should authorize the use  
 5 of the money collected from increased permit application  
 6 fees for expenses, such as the hiring of temporary employees  
 7 and contracted consultants and data collection and analysis  
 8 when, due to workload considerations and statutory  
 9 deadlines, the department cannot otherwise perform an  
 10 adequate review.

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

- 12 **Section 1.** Section 82-4-303, MCA, is amended to read:  
 13  
 14 "82-4-303. Definitions. As used in this part, unless  
 15 the context indicates otherwise, the following definitions  
 16 apply:  
 17 (1) "Abandonment of surface or underground mining" may  
 18 be presumed when it is shown that continued operation will  
 19 not resume.  
 20 (2) "Board" means the board of land commissioners or a  
 21 state employee or state agency as may succeed to its powers  
 22 and duties under this part.  
 23 (3) "Commissioner" means the commissioner of state  
 24 lands provided for in 2-15-3202.  
 25 (4) "Cyanide ore-processing reagent" means cyanide or a



1 cyanide compound used as a reagent in leaching operations.

2 ~~4~~5 "Department" means the department of state  
3 lands.

4 ~~5~~6 "Disturbed land" means that area of land or  
5 surface water disturbed, beginning at the date of the  
6 issuance of the permit, and it comprises that area from  
7 which the overburden, tailings, waste materials, or minerals  
8 have been removed and tailings ponds, waste dumps, roads,  
9 conveyor systems, leach dumps, and all similar excavations  
10 or covering resulting from the operation and which have not  
11 been previously reclaimed under the reclamation plan.

12 ~~6~~7 "Exploration" means all activities conducted on  
13 or beneath the surface of lands resulting in material  
14 disturbance of the surface for the purpose of determining  
15 the presence, location, extent, depth, grade, and economic  
16 viability of mineralization in those lands, if any, other  
17 than mining for production and economic exploitation, as  
18 well as all roads made for the purpose of facilitating  
19 exploration, except as noted in 82-4-310.

20 ~~7~~8 "Mineral" means any ore, rock, or substance,  
21 other than oil, gas, bentonite, clay, coal, sand, gravel,  
22 phosphate rock, or uranium, taken from below the surface or  
23 from the surface of the earth for the purpose of milling,  
24 concentration, refinement, smelting, manufacturing, or other  
25 subsequent use or processing or for stockpiling for future

1 use, refinement, or smelting.

2 ~~8~~9 "Mining" commences when the operator first mines  
3 ores or minerals in commercial quantities for sale,  
4 beneficiation, refining, or other processing or disposition  
5 or first takes bulk samples for metallurgical testing in  
6 excess of aggregate of 10,000 short tons.

7 ~~9~~10 "Ore processing" means milling, heap leaching,  
8 flotation, vat leaching, or other standard hard-rock mineral  
9 concentration processes.

10 ~~10~~11 "Person" means any person, corporation, firm,  
11 association, partnership, or other legal entity engaged in  
12 exploration for or mining of minerals on or below the  
13 surface of the earth, reprocessing of tailings or waste  
14 materials, or operation of a hard-rock mill.

15 ~~11~~12 "Placer deposit" means naturally occurring,  
16 scattered or unconsolidated valuable minerals in gravel or  
17 alluvium lying above bedrock.

18 ~~12~~13 "Placer or dredge mining" means the mining of  
19 minerals from a placer deposit by a person or persons.

20 ~~13~~14 "Reclamation plan" means the operator's written  
21 proposal, as required and approved by the board, for  
22 reclamation of the land that will be disturbed. The proposal  
23 shall include, to the extent practical at the time of  
24 application for an operating permit:

25 (a) a statement of the proposed subsequent use of the

1 land after reclamation;

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

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

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

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

13 (f) the method of diverting surface waters around the  
14 disturbed areas where necessary to prevent pollution of  
15 those waters or unnecessary erosion;

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

18 (h) maps and other supporting documents as may be  
19 reasonably required by the department; and

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

22 ~~(14)~~(15) (a) "Small miner" means a person, firm, or  
23 corporation that engages in the business of mining or  
24 reprocessing of tailings or waste materials that does not  
25 remove from the earth during any calendar year material in

1 excess of 36,500 tons in the aggregate, that does not hold  
2 an operating permit under 82-4-335 except for a permit  
3 issued under 82-4-335(2), and that conducts:

4 (i) an operation resulting in not more than 5 acres of  
5 the earth's surface being disturbed and unreclaimed; or

6 (ii) two operations which disturb and leave unreclaimed  
7 less than 5 acres per operation if the respective mining  
8 properties are:

9 (A) the only operations engaged in by the person, firm,  
10 or corporation;

11 (B) at least 1 mile apart at their closest point; and

12 (C) not operated simultaneously except during seasonal  
13 transitional periods not to exceed 30 days.

14 (b) For the purpose of this definition only, the  
15 department shall, in computing the area covered by the  
16 operation, exclude access or haulage roads that are required  
17 by a local, state, or federal agency having jurisdiction  
18 over that road to be constructed to certain specifications  
19 if that public agency notifies the department in writing  
20 that it desires to have the road remain in use and will  
21 maintain it after mining ceases.

22 ~~(15)~~(16) "Surface mining" means all or any part of the  
23 process involved in mining of minerals by removing the  
24 overburden and mining directly from the mineral deposits  
25 exposed, including but not limited to open-pit mining of

1 minerals naturally exposed at the surface of the earth,  
 2 mining by the auger method, and all similar methods by which  
 3 earth or minerals exposed at the surface are removed in the  
 4 course of mining. Surface mining does not include the  
 5 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 6 phosphate rock, or uranium or excavation or grading  
 7 conducted for on-site farming, on-site road construction, or  
 8 other on-site building construction.

9 ~~†6†~~(17) "Underground mining" means all methods of  
 10 mining other than surface mining.

11 ~~†7†~~(18) "Unit of surface-mined area" means that area of  
 12 land and surface water included within an operating permit  
 13 actually disturbed by surface mining during each 12-month  
 14 period of time, beginning at the date of the issuance of the  
 15 permit, and it comprises and includes the area from which  
 16 overburden or minerals have been removed, the area covered  
 17 by mining debris, and all additional areas used in surface  
 18 mining or underground mining operations which by virtue of  
 19 mining use are susceptible to erosion in excess of the  
 20 surrounding undisturbed portions of land.

21 ~~†8†~~(19) "Vegetative cover" means the type of  
 22 vegetation, grass, shrubs, trees, or any other form of  
 23 natural cover considered suitable at time of reclamation."

24 **Section 2.** Section 82-4-305, MCA, is amended to read:

25 "82-4-305. Exemption -- small miners -- written

1 agreement. (1) Except as provided in subsections (3) through  
 2 ~~†7†~~(9), the provisions of this part do not apply to any  
 3 small miner if the small miner annually agrees in writing:

4 (a) that he will not pollute or contaminate any stream;  
 5 (b) that he will provide protection for human and  
 6 animal life through the installation of bulkheads installed  
 7 over safety collars and the installation of doors on tunnel  
 8 portals;

9 (c) that he will provide a map locating his mining  
 10 operations. The map must be of a size and scale determined  
 11 by the department.

12 (d) if the small miner's operations are placer or  
 13 dredge mining, that he shall reclaim all land disturbed by  
 14 the operations to comparable utility and stability as that  
 15 of adjacent areas.

16 (2) For small-miner exemptions obtained after September  
 17 30, 1985, a small miner may not obtain or continue an  
 18 exemption under subsection (1) unless he annually certifies  
 19 in writing:

20 (a) if the small miner is a natural person, that:  
 21 (i) no business association or partnership of which he  
 22 is a member or partner has a small-miner exemption; and  
 23 (ii) no corporation of which he is an officer, director,  
 24 or owner of record of 25% or more of any class of voting  
 25 stock has a small-miner exemption; or

1 (b) if the small miner is a partnership or business  
2 association, that:

3 (i) none of the associates or partners holds a  
4 small-miner exemption; and

5 (ii) none of the associates or partners is an officer,  
6 director, or owner of 25% or more of any class of voting  
7 stock of a corporation that has a small-miner exemption; or

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

11 (i) holds a small-miner exemption;

12 (ii) is a member or partner in a business association or  
13 partnership that holds a small-miner exemption;

14 (iii) is an officer, director, or owner of record of 25%  
15 or more of any class of voting stock of another corporation  
16 that holds a small-miner exemption.

17 (3) A small miner whose operations are placer or dredge  
18 mining shall post a performance bond equal to the state's  
19 actual cost of reclaiming the disturbed land, although the  
20 bond may not exceed \$5,000 per operation. However, if the  
21 small miner has posted a bond for reclamation with another  
22 government agency, he is exempt from the requirement of this  
23 subsection.

24 (4) If a small miner who conducts a placer or dredge  
25 mining operation fails to reclaim the operation, he is

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

9 (5) If a small miner who conducts a placer or dredge  
10 mining operation fails to commence reclamation of the  
11 operation within 6 months after cessation of mining or  
12 within an extended period allowed by the department for good  
13 cause shown or if the small miner fails to diligently  
14 complete reclamation, the department shall notify the small  
15 miner by certified mail that it intends to reclaim the  
16 operation unless the small miner commences reclamation  
17 within 30 days and diligently completes the reclamation. The  
18 notice must be mailed to the address stated on the small  
19 miner exclusion statement or, if the small miner has  
20 notified the department of a different address by letter or  
21 in the annual certification form, to the most recent address  
22 given to the department. If the small miner fails to  
23 commence reclamation within 30 days or to diligently  
24 complete reclamation, the department may revoke the small  
25 miner exclusion statement, forfeit any bond that has been

1 posted with the department, and enter and reclaim the  
 2 operation. If the small miner has not posted a bond with the  
 3 department or if the reasonable costs of reclamation exceed  
 4 the amount of the bond, the department may also collect  
 5 additional reclamation costs, as set forth in subsection  
 6 (6), before or after it incurs those costs.

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

23 (7) A small miner who intends to use a cyanide  
 24 ore-processing reagent shall obtain an operating permit for  
 25 that part of his operation where the cyanide ore-processing

1 reagent will be used or disposed of.

2 (8) The exemption provided in this section does not  
 3 apply to a person whose failure to comply with the  
 4 provisions of this part, the rules adopted under this part,  
 5 or a permit or license issued under this part has resulted  
 6 in the forfeiture of a bond unless that person meets the  
 7 conditions described under 82-4-360.

8 (9) The exemption provided in this section does not  
 9 apply to an area under permit pursuant to 82-4-335 or to an  
 10 area that has been permitted pursuant to 82-4-335 and  
 11 reclaimed by the permittee, the department, or any other  
 12 state or federal agency."

13 **Section 3.** Section 82-4-306, MCA, is amended to read:

14 **"82-4-306. Confidentiality of application information.**  
 15 (1) Any--and--all Except as provided in subsections (2) and  
 16 (3), any information obtained by the board or by the  
 17 director or his staff by virtue of applications for  
 18 exploration licenses and all information obtained from small  
 19 miners is confidential between the board and the applicant,  
 20 except as to the name of the applicant and the county of  
 21 proposed operation; provided that all activities conducted  
 22 subsequent to exploration and other associated facilities  
 23 shall be public information and conducted under an operating  
 24 permit.

25 (2) it-is-further-provided--that--any Any information



1 ~~obtained--by--the--board--or--by--the--director--or--his--staff--by~~  
 2 ~~virtue-of-such-applications~~ referenced in subsection (1) is  
 3 properly admissible in any hearing conducted by the  
 4 director, the board, appeals board, or in any judicial  
 5 proceeding to which the director and the applicant are  
 6 parties and is not confidential when a violation of the this  
 7 part or rules adopted under this part has been determined by  
 8 the department or by judicial order.

9 (3) The department may disclose information obtained by  
 10 the board, the commissioner, or department staff from  
 11 exploration license applications and from small miners for  
 12 exploration or mining on state and federal lands that  
 13 identifies the location of exploration and mining activities  
 14 and that describes the surface disturbance that is occurring  
 15 or projected to occur. The department may not disclose a  
 16 licensee's or small miner's proprietary geological  
 17 information.

18 (4) Failure to comply with the secrecy provisions of  
 19 this part shall be is punishable by a fine of up to \$1,000."

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

21 **"82-4-335. Operating permit -- limitation -- fees. (1)**  
 22 A person may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material, construct or  
 24 operate a hard-rock mill, use cyanide ore-processing  
 25 reagents, or disturb land in anticipation of those

1 activities in the state without first obtaining an operating  
 2 permit from the board. A separate operating permit is  
 3 required for each complex.

4 (2) A small miner who intends to use a cyanide  
 5 ore-processing reagent shall obtain an operating permit for  
 6 that part of his operation where the cyanide ore-processing  
 7 reagent will be used or disposed of.

8 (3) Prior to receiving an operating permit from the  
 9 board, a person shall pay the basic permit fee of \$25. The  
 10 department may require a person who is applying for a permit  
 11 pursuant to subsection (1) to pay an additional fee not to  
 12 exceed the actual amount of contractor and employee expenses  
 13 beyond the normal operating expenses of the department  
 14 whenever those expenses are reasonably necessary to provide  
 15 for timely and adequate review of the application, including  
 16 any environmental review conducted under Title 75, chapter  
 17 1, parts 1 and 2. The department may further define these  
 18 expenses by rule. Whenever the department determines that an  
 19 additional fee is necessary and the additional fee will  
 20 exceed \$5,000, the department shall notify the applicant  
 21 that a fee must be paid and submit to the applicant an  
 22 itemized estimate of the proposed expenses. The department  
 23 shall provide the applicant an opportunity to review the  
 24 department's estimated expenses. The applicant may indicate  
 25 which proposed expenses the applicant considers duplicative

1 or excessive, if any.

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

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

10 (b) minerals expected to be mined;

11 (c) a proposed reclamation plan;

12 (d) expected starting date of operations;

13 (e) a map showing the specific area to be mined and the  
14 boundaries of the land which will be disturbed, topographic  
15 detail, the location and names of all streams, roads,  
16 railroads, and utility lines on or immediately adjacent to  
17 the area, location of proposed access roads to be built, and  
18 the names and addresses of the surface and mineral owners of  
19 all lands within the mining area, to the extent known to the  
20 applicant;

21 (f) types of access roads to be built and manner of  
22 reclamation of road sites on abandonment;

23 (g) a plan which will provide, within limits of normal  
24 operating procedures of the industry, for completion of the  
25 operation;

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

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

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

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

16 ~~(4)~~(5) Except as provided in subsection ~~(6)~~(7), the  
17 permit provided for in subsection (1) for a large-scale  
18 mineral development as defined in 90-6-302 must be  
19 conditioned to provide that activities under the permit may  
20 not commence until the impact plan is approved under  
21 90-6-307 and until the permittee has provided a written  
22 guarantee to the department and to the hard-rock mining  
23 impact board of compliance within the time schedule with the  
24 commitment made in the approved impact plan, as provided in  
25 90-6-307. If the permittee does not comply with that

1 commitment within the time scheduled, the board, upon  
 2 receipt of written notice from the hard-rock mining impact  
 3 board, shall suspend the permit until it receives written  
 4 notice from the hard-rock mining impact board that the  
 5 permittee is in compliance.

6 {5}(6) When the department determines that a permittee  
 7 has become or will become a large-scale mineral developer  
 8 pursuant to 82-4-339 and 90-6-302(4) and provides notice as  
 9 required under 82-4-339, within 6 months of receiving the  
 10 notice, the permittee shall provide the board with proof  
 11 that he has obtained a waiver of the impact plan requirement  
 12 from the hard-rock mining impact board or that he has filed  
 13 an impact plan with the hard-rock mining impact board and  
 14 the appropriate county or counties. If the permittee does  
 15 not file the required proof or if the hard-rock mining  
 16 impact board certifies to the board that the permittee has  
 17 failed to comply with the hard-rock mining impact review and  
 18 implementation requirements in Title 90, chapter 6, parts 3  
 19 and 4, the board shall suspend the permit until the  
 20 permittee files the required proof or until the hard-rock  
 21 mining impact board certifies that the permittee has  
 22 complied with the hard-rock mining impact review and  
 23 implementation requirements.

24 {6}(7) Compliance with 90-6-307 is not required for  
 25 exploration and bulk sampling for metallurgical testing when

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

2 {7}(8) A person may not be issued an operating permit  
 3 if that person's failure to comply with the provisions of  
 4 this part, the rules adopted under this part, or a permit or  
 5 license issued under this part has resulted in the  
 6 forfeiture of a bond unless that person meets the conditions  
 7 described in 82-4-360.

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

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

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

20 (b) if the person is a partnership, corporation, or  
 21 other business association, provides the certification  
 22 required by subsection (9)(a)(i) or (9)(a)(ii), as  
 23 applicable, for any partners, officers, directors, owners of  
 24 10% or more of any class of voting stock, and business  
 25 association members."

1       **Section 5.** Section 82-4-337, MCA, is amended to read:

2       "82-4-337. Inspection -- issuance of operating permit

3 -- modification. (1) (a) The board shall cause all

4 applications for operating permits to be reviewed for

5 completeness within 30 days of receipt. The board shall

6 notify the applicant concerning completeness as soon as

7 possible. An application is considered complete unless the

8 applicant is notified of any deficiencies within 30 days of

9 receipt.

10       (b) Unless the review period is extended as provided in

11 this section, the board shall review the adequacy of the

12 proposed reclamation plan and plan of operation within 30

13 days of the determination that the application is complete

14 or within 60 days of receipt of the application if the board

15 does not notify the applicant of any deficiencies in the

16 application. If the applicant is not notified of

17 deficiencies or inadequacies in the proposed reclamation

18 plan and plan of operation within such time period, the

19 operating permit shall be issued upon receipt of the bond as

20 required in 82-4-338 and pursuant to the requirements of

21 subsection (1)(c). The department shall promptly notify the

22 applicant of the form and amount of bond which will be

23 required.

24       (c) No permit may be issued until:

25       (i) sufficient bond has been submitted pursuant to

1       82-4-338;

2       (ii) the information and certification have been

3 submitted pursuant to 82-4-335(9); and

4       (iii) the department has found that permit issuance is

5 not prohibited by 82-4-335(8) or 82-4-341(6).

6       ~~(c)~~(d) (i) Prior to issuance of a permit, the

7 department shall inspect the site unless the department has

8 failed to act on the application within the time prescribed

9 in subsection (1)(b). If the site is not accessible due to

10 extended adverse weather conditions, the department may

11 extend the time period prescribed in subsection (1)(b) by

12 not more than 180 days to allow inspection of the site and

13 reasonable review. The department must serve written notice

14 of extension upon the applicant in person or by certified

15 mail, and any such extension is subject to appeal to the

16 board in accordance with the Montana Administrative

17 Procedure Act.

18       (ii) If the department determines that additional time

19 is needed to review the application and reclamation plan for

20 a major operation, the department and the applicant shall

21 negotiate to extend the period prescribed in subsection

22 (1)(b) by not more than 365 days in order to permit

23 reasonable review.

24       (iii) Failure of the board to act upon a complete

25 application within the extension period constitutes approval

1 of the application, and the permit shall be issued promptly  
2 upon receipt of the bond as required in 82-4-338.

3 (2) The operating permit shall be granted for the  
4 period required to complete the operation and shall be valid  
5 until the operation authorized by the permit is completed or  
6 abandoned unless the permit is suspended or revoked by the  
7 board as provided in this part.

8 (3) The operating permit shall provide that the  
9 reclamation plan may be modified by the board, upon proper  
10 application of the permittee or department, after timely  
11 notice and opportunity for hearing, at any time during the  
12 term of the permit and for any of the following reasons:

13 (a) to modify the requirements so they will not  
14 conflict with existing laws;

15 (b) when the previously adopted reclamation plan is  
16 impossible or impracticable to implement and maintain;

17 (c) when significant environmental problem situations  
18 are revealed by field inspection."

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

20 "82-4-338. Performance bond. (1) The applicant shall  
21 file with the department a bond payable to the state of  
22 Montana with surety satisfactory to the department in the  
23 ~~penal~~ sum to be determined by the department of not less  
24 than \$200 or more than \$2,500 for each acre or fraction  
25 thereof of the disturbed area, conditioned upon the faithful

1 performance of the requirements of this part and the rules  
2 of the board. In lieu of such bond, the applicant may file  
3 with the board a cash deposit, an assignment of a  
4 certificate of deposit, or other surety acceptable to the  
5 board. Regardless of the above limits, the bond shall not be  
6 less than the estimated cost to the state to complete the  
7 reclamation of the disturbed land. A public or governmental  
8 agency shall not be required to post a bond under the  
9 provisions of this part. A blanket performance bond covering  
10 two or more operations may be accepted by the board. Such  
11 blanket bond shall adequately secure the estimated total  
12 number of acres of disturbed land.

13 (2) The department shall review the amount of each bond  
14 at least every 5 years and shall consult with the licensee  
15 or permittee if the review indicates that the bond level  
16 should be adjusted. When determined by the department that  
17 the set bonding level of a permit or license does not  
18 represent the present costs of reclamation, the department  
19 may modify the bonding requirements of that permit or  
20 license. The department shall make written findings, give  
21 the licensee or permittee a copy of the findings, and, for  
22 operating permits, publish notice of the findings in a  
23 newspaper of general circulation in the county in which the  
24 operation is located. The permittee or any person with an  
25 interest that may be adversely affected may obtain a

1 contested case hearing under the provisions of the Montana  
 2 Administrative Procedure Act on the adjusted bond level by  
 3 filing with the department within 30 days of the notice a  
 4 written request for hearing.

5 ~~†2†~~(3) No A bond filed in accordance with the  
 6 provisions of this part shall may not be released by the  
 7 department until the provisions of this part, the rules  
 8 adopted pursuant ~~thereto~~ to this part, and this reclamation  
 9 plan have been fulfilled.

10 ~~†3†~~(4) No bond filed for an operating permit obtained  
 11 under 82-4-335 may be released until the public has been  
 12 provided an opportunity for a hearing."

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

14 **"82-4-339. Annual report of activities by permittee --**  
 15 **fee -- notice of large-scale mineral developer status. (1)**  
 16 **Within 30 days after completion or abandonment of operations**  
 17 **on an area under permit or within 30 days after each**  
 18 **anniversary date of the permit, whichever is earlier, or at**  
 19 **such later date as may be provided by rules of the board and**  
 20 **each year thereafter until reclamation is completed and**  
 21 **approved, the permittee shall pay the annual fee of \$25 and**  
 22 **shall file a report of activities completed during the**  
 23 **preceding year on a form prescribed by the board which**  
 24 **report shall:**

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

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

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

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

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

13 (f) update any maps previously submitted or  
 14 specifically requested by the board. Such maps shall show:

15 (i) the permit area;

16 (ii) the unit of disturbed land;

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

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

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

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

25 (2) Whenever the department determines that the

1 permittee has become or will, during the next permit year,  
2 become a large-scale mineral developer, it shall immediately  
3 serve written notice of that fact on the permittee, the  
4 hard-rock mining impact board, and the county or counties in  
5 which the operation is located."

6 **Section 8.** Section 82-4-355, MCA, is amended to read:

7 "82-4-355. Action for damages to water supply --  
8 replacement. (1) An owner of an interest in real property  
9 who obtains all or part of his supply of water for  
10 beneficial uses, as defined in 85-2-102, from an underground  
11 source other than a subterranean stream having a permanent,  
12 distinct, and known channel may sue the operator engaged in  
13 a mining or exploration an operation for which a license is  
14 required pursuant to 82-4-332 or for which a permit is  
15 required pursuant to 82-4-335 to recover damages for loss in  
16 quality or quantity of the water supply resulting from  
17 mining or exploration. The owner is required to exhaust the  
18 administrative remedy under subsection (2) prior to filing  
19 suit.

20 (2) (a) An owner described in subsection (1) may file a  
21 complaint with the department detailing the loss in quality  
22 or quantity of water. Upon receipt of a valid complaint, the  
23 department:

24 (i) shall investigate the statements and charges in the  
25 complaint, using all available information, including

1 monitoring data gathered at the exploration or mine site;

2 (ii) may require the operator, if necessary, to install  
3 monitoring wells or other practices that may be needed to  
4 determine the cause of water loss, if there is a loss, in  
5 terms of quantity and quality;

6 (iii) shall issue a written finding specifying the cause  
7 of the water loss, if there is a loss, in terms of quantity  
8 and quality;

9 (iv) shall, if it determines that the preponderance of  
10 evidence indicates that the loss is caused by an exploration  
11 or mining operation, order the operator, in compliance with  
12 Title 85, chapter 2, to provide the needed water immediately  
13 on a temporary basis and within a reasonable time replace  
14 the water in like quality, quantity, and duration. If the  
15 water is not replaced, the department shall order the  
16 suspension of the operator's exploration or operating permit  
17 until such time as the operator provides substitute water,  
18 except that nothing in this section preempts Title 85,  
19 chapter 2. The operator may not be required to replace a  
20 junior right if the operator's withdrawal or dewatering is  
21 not in excess of his senior right.

22 (b) If the department determines that there is a great  
23 potential that surface or subsurface water quality and  
24 quantity may be adversely affected by a mining or  
25 exploration operation, the operator shall install a water

1 quality monitoring program, water quantity monitoring  
2 program, or both, which must be approved by the department  
3 prior to the commencement of exploration or mining."

4 NEW SECTION. Section 9. Hard-rock environmental  
5 emergency account -- statutory appropriation -- abatement of  
6 environmental emergencies. (1) There is a hard-rock  
7 environmental emergency account within the state special  
8 revenue fund established in 17-2-102.

9 (2) On July 1, 1991, and at the beginning of each  
10 succeeding biennium, there is statutorily appropriated, as  
11 provided in 17-7-502, to the hard-rock environmental  
12 emergency account \$200,000 from the interest income of the  
13 resource indemnity trust fund, except that if at the  
14 beginning of a biennium the unobligated cash balance in the  
15 hard-rock environmental emergency account:

16 (a) equals or exceeds \$200,000, no allocation may be  
17 made; or

18 (b) is less than \$200,000, then an amount equal to the  
19 difference between the unobligated cash balance and \$200,000  
20 must be allocated to the hard-rock environmental emergency  
21 account from the interest income of the resource indemnity  
22 trust fund.

23 (3) Whenever an environmental emergency exists, as  
24 determined by the department, at an active, temporarily  
25 abandoned, or permanently abandoned exploration, mining, ore

1 processing, or hard-rock mill site, the department may enter  
2 the site and may use the funds in the hard-rock  
3 environmental emergency account to abate the situation on  
4 either a temporary or a permanent basis, or both.

5 (4) The department may bring an action against the  
6 operator to recover the abatement costs in the district  
7 court of the first judicial district in Lewis and Clark  
8 County. Nothing in this section affects the right of the  
9 department to retain or pursue forfeiture of any bond posted  
10 pursuant to 82-4-338. Expenditures from the hard-rock  
11 environmental emergency account that are recovered under  
12 this subsection must be deposited in the resource indemnity  
13 trust fund.

14 **Section 10.** Section 15-38-202, MCA, is amended to read:  
15 **"15-38-202. Investment of resource indemnity trust fund**  
16 **-- expenditure -- minimum balance.** (1) All money paid into  
17 the resource indemnity trust fund, including money payable  
18 into the fund under the provisions of 15-37-117 and money  
19 recovered by the department of state lands pursuant to  
20 [section 9], shall be invested at the discretion of the  
21 board of investments. All the net earnings accruing to the  
22 resource indemnity trust fund shall annually be added to the  
23 trust fund until it has reached the sum of \$10 million.  
24 Thereafter, only the net earnings may be appropriated and  
25 expended until the fund reaches \$100 million. Thereafter,



1 all net earnings and all receipts shall be appropriated by  
2 the legislature and expended, provided that the balance in  
3 the fund may never be less than \$100 million.

4 (2) (a) At the beginning of each biennium, there is  
5 allocated from the interest income of the resource indemnity  
6 trust fund:

7 (i) an amount not to exceed \$175,000 to the  
8 environmental contingency account pursuant to the conditions  
9 of 75-1-1101; and

10 (ii) beginning in fiscal year 1992, an amount not to  
11 exceed \$50,000 to the oil and gas production damage  
12 mitigation account pursuant to the conditions of 82-11-161;  
13 and

14 (iii) an amount not to exceed \$200,000 to the hard-rock  
15 environmental emergency account pursuant to the conditions  
16 of [section 9].

17 (b) The remainder of the interest income is allocated  
18 as follows:

19 (i) Beginning in fiscal year 1982, provided the amount  
20 in the resource indemnity trust fund is greater than \$10  
21 million, 30% of the interest income of the resource  
22 indemnity trust fund must be allocated to the water  
23 development state special revenue account created by  
24 85-1-604.

25 (ii) Beginning in fiscal year 1988, 12% of the interest

1 income of the resource indemnity trust fund must be  
2 allocated to the hazardous waste/CERCLA special revenue  
3 account provided for in 75-10-621.

4 (iii) Beginning in fiscal year 1990, 8% of the interest  
5 income from the resource indemnity trust fund must be  
6 allocated to the renewable resource development account  
7 provided for in Title 90, chapter 2.

8 (iv) Beginning in fiscal year 1990, 46% of the interest  
9 income from the resource indemnity trust fund must be  
10 allocated to the reclamation and development grants account  
11 provided for in 90-2-1104.

12 (v) Beginning in fiscal year 1990, 4% of the interest  
13 income of the resource indemnity trust fund must be  
14 allocated to the environmental quality protection fund  
15 provided for in 75-10-704.

16 (3) Any formal budget document prepared by the  
17 legislature or the executive branch that proposes to  
18 appropriate funds from the resource indemnity trust interest  
19 account other than as provided for by the allocations in  
20 subsection (2) must specify the amount of money from each  
21 allocation that is proposed to be diverted and the proposed  
22 use of the diverted funds. A formal budget document includes  
23 a printed and publicly distributed budget proposal or  
24 recommendation, an introduced bill, or a bill developed  
25 during the legislative appropriation process or otherwise

1 during a legislative session."

2 **Section 11.** Section 17-7-502, MCA, is amended to read:

3 **"17-7-502. Statutory appropriations -- definition --**  
4 **requisites for validity.** (1) A statutory appropriation is an  
5 appropriation made by permanent law that authorizes spending  
6 by a state agency without the need for a biennial  
7 legislative appropriation or budget amendment.

8 (2) Except as provided in subsection (4), to be  
9 effective, a statutory appropriation must comply with both  
10 of the following provisions:

11 (a) The law containing the statutory authority must be  
12 listed in subsection (3).

13 (b) The law or portion of the law making a statutory  
14 appropriation must specifically state that a statutory  
15 appropriation is made as provided in this section.

16 (3) The following laws are the only laws containing  
17 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
18 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
19 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
20 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
21 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
22 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
23 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
24 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
25 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;

1 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
2 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
3 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
4 and section 13, House Bill No. 861, Laws of 1985; and  
5 [section 9].

6 (4) There is a statutory appropriation to pay the  
7 principal, interest, premiums, and costs of issuing, paying,  
8 and securing all bonds, notes, or other obligations, as due,  
9 that have been authorized and issued pursuant to the laws of  
10 Montana. Agencies that have entered into agreements  
11 authorized by the laws of Montana to pay the state  
12 treasurer, for deposit in accordance with 17-2-101 through  
13 17-2-107, as determined by the state treasurer, an amount  
14 sufficient to pay the principal and interest as due on the  
15 bonds or notes have statutory appropriation authority for  
16 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
17 664, L. 1987, the inclusion of 39-71-2504 terminates June  
18 30, 1991.)"

19 NEW SECTION. **Section 12.** Codification instruction.  
20 [Section 9] is intended to be codified as an integral part  
21 of Title 82, chapter 4, part 3, and the provisions of Title  
22 82, chapter 4, part 3, apply to [section 9].

23 NEW SECTION. **Section 13.** Effective date. [This act] is  
24 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0448, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) implements the recommendations of the Governor's Mine Permitting Improvement Advisory Council; 2) allocates resource indemnity trust interest income to the hard-rock environmental emergency account for abatement of environmental emergencies; and 3) provides statutory appropriation authority to the hard-rock environmental emergency account.

The bill also allows the department to charge firms applying for mining permits "actual costs 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". This provision allows the department to charge mining companies for specialized analysis of complex technical mining issues and for environmental analysis.


ASSUMPTIONS:

Department of State Lands:

1. The department will receive 20 mining permit applications per year. The average cost to process the applications will be approximately \$5,000; therefore, the total potential income is \$100,000. However, each application is evaluated as to the need for highly technical analysis and some applications will require \$0 in permit fees, while others will be billed actual costs for complex mining studies.
2. The department has 3 permanent staff coordinating environmental compliance activities. These positions are currently funded by MEPA fees. This bill would enable the department to use these positions for coordinating environmental assessments (EAs) and to fund EA costs through the fees established by this bill. However, at this point in time there is no estimate of the time these positions would be working on EAs as compared to EISs. Therefore, there is no estimate of the proportion of costs attributable to each funding source (EAs vs EISs).
3. Environmental analysis coordination activities assigned to these positions are employee expenses beyond the normal operating expenses of the department.

RIT Assumptions:

4. Assume the Executive Budget revenue estimates.
5. The statutory distribution of RIT interest will not be changed by the 1991 Legislature.

  
ROD SUNDESTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

26-91  
DATE

  
ROBERT REAM, PRIMARY SPONSOR

2-8-91  
DATE

Fiscal Note for HB0448, as introduced

**HB 448**

Fiscal Note Request, HBO448, as introduced  
 Form BD-15  
 Page 2

FISCAL IMPACT:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Mining Studies	0	100,000	100,000	0	100,000	100,000
Hard-rock Env. Emgy Acct	0	200,000	200,000	0	0	0
Water Develop Grants	993,431	933,431	(60,000)	0	0	0
Renewable Res Grants	577,496	561,496	(16,000)	0	0	0
Reclamation and Dev. Grants	2,675,797	2,583,797	(92,000)	0	0	0
Hazardous Waste CERCLA Prgm	3,234,511	3,210,511	(24,000)	0	0	0
Environmental Qual. Prt.	<u>2,298,224</u>	<u>2,290,224</u>	<u>(8,000)</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	9,779,459	9,879,459	100,000	0	100,000	100,000
<u>Funding:</u>						
Mining Permit Fees (02)	0	100,000	100,000	0	100,000	100,000
RIT Interest* (02)	16,557,676	16,357,676	(200,000)	0	0	0
Hard-rock Env. Emgy (02)	<u>0</u>	<u>200,000</u>	<u>200,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	16,557,676	16,657,676	100,000	0	100,000	100,000

\* The RIT interest reflects the amount of interest distributed to the five state special revenue accounts.

TECHNICAL NOTES:

It should be noted that, since this bill was introduced, the Governor's Office has requested that the \$200,000 allocation of trust interest be removed from the bill and be replaced with provisions to be submitted for deposit of reclamation payments to the emergency account.

**HB 448**

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HBO448, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill implements the recommendations of the Governor's Mine Permitting Improvement Advisory Council; and permits the Department of State Lands to utilize the environmental contingency account, if approved by the Governor, for abatement of environmental emergencies. The bill also allows the department to charge firms applying for mining permits "actual costs 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". This provision allows the department to charge mining companies for specialized analysis of complex technical mining issues and for environmental analysis.

ASSUMPTIONS:


Department of State Lands:


1. The department will receive 20 mining permit applications per year. The average cost to process the applications will be approximately \$5,000; therefore, the total potential income is \$100,000. However, each application is evaluated as to the need for highly technical analysis and some applications will require \$0 in permit fees, while others will be billed actual costs for complex mining studies.
2. The department has 3 permanent staff coordinating environmental compliance activities. These positions are currently funded by MEPA fees. This bill would enable the department to use these positions for coordinating environmental assessments (EAs) and to fund EA costs through the fees established by this bill. However, at this point in time there is no estimate of the time these positions would be working on EAs as compared to EISs. Therefore, there is no estimate of the proportion of costs attributable to each funding source (EAs vs EISs).
3. Environmental analysis coordination activities assigned to these positions are employee expenses beyond the normal operating expenses of the department.

FISCAL IMPACT:

Dept. of State Lands:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	0	100,000	100,000	0	100,000	100,000
<u>Funding:</u>						
Mining Permit Fees (02)	0	100,000	100,000	0	100,000	100,000

  
ROD SUNDSTED, BUDGET DIRECTOR      2-13-91  
 DATE  
 Office of Budget and Program Planning

  
ROBERT REAM, PRIMARY SPONSOR      2/14/91  
 DATE

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 448

INTRODUCED BY REAM, T. BECK, GROSFIELD, WEEDING, WILLIAMS  
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE METAL MINE  
RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE  
GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL;  
~~ALLOCATING-RESOURCE-INDEMNITY-TRUST-INTEREST-INCOME--TO--THE~~  
~~HARD-ROCK--ENVIRONMENTAL--EMERGENCY-ACCOUNT--FOR-ABATEMENT-OF~~  
~~ENVIRONMENTAL----EMERGENCIES;----PROVIDING----A----STATUTORY~~  
APPROPRIATION; AMENDING SECTIONS ~~15-38-202,---17-7-502,~~  
82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338,  
82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE  
DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to  
provide guidance to the department of state lands concerning  
the adoption of rules to define the types of department  
expenses that applicants for hard-rock mine operating  
permits will be required to pay through increased permit  
application fees. Section 82-4-335(3) of the bill allows the  
department to increase the permit application review fee to  
fund expenses that are beyond the department's normal  
operating expenses and that are reasonably necessary in

order for the department to provide a timely and adequate  
review, including any environmental review that is conducted  
pursuant to the requirements of the Montana Environmental  
Policy Act. The department's rules should authorize the use  
of the money collected from increased permit application  
fees for expenses, such as the hiring of temporary employees  
and contracted consultants and data collection and analysis  
when, due to workload considerations and statutory  
deadlines, the department cannot otherwise perform an  
adequate review.

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) "Board" means the board of land commissioners or a  
state employee or state agency as may succeed to its powers  
and duties under this part.

(3) "Commissioner" means the commissioner of state  
lands provided for in 2-15-3202.

(4) "Cyanide ore-processing reagent" means cyanide or a

**SECOND READING**

1 cyanide compound used as a reagent in leaching operations.

2 ~~(4)~~(5) "Department" means the department of state  
3 lands.

4 ~~(5)~~(6) "Disturbed land" means that area of land or  
5 surface water disturbed, beginning at the date of the  
6 issuance of the permit, and it comprises that area from  
7 which the overburden, tailings, waste materials, or minerals  
8 have been removed and tailings ponds, waste dumps, roads,  
9 conveyor systems, leach dumps, and all similar excavations  
10 or covering resulting from the operation and which have not  
11 been previously reclaimed under the reclamation plan.

12 ~~(6)~~(7) "Exploration" means all activities conducted on  
13 or beneath the surface of lands resulting in material  
14 disturbance of the surface for the purpose of determining  
15 the presence, location, extent, depth, grade, and economic  
16 viability of mineralization in those lands, if any, other  
17 than mining for production and economic exploitation, as  
18 well as all roads made for the purpose of facilitating  
19 exploration, except as noted in 82-4-310.

20 ~~(7)~~(8) "Mineral" means any ore, rock, or substance,  
21 other than oil, gas, bentonite, clay, coal, sand, gravel,  
22 phosphate rock, or uranium, taken from below the surface or  
23 from the surface of the earth for the purpose of milling,  
24 concentration, refinement, smelting, manufacturing, or other  
25 subsequent use or processing or for stockpiling for future

1 use, refinement, or smelting.

2 ~~(8)~~(9) "Mining" commences when the operator first mines  
3 ores or minerals in commercial quantities for sale,  
4 beneficiation, refining, or other processing or disposition  
5 or first takes bulk samples for metallurgical testing in  
6 excess of aggregate of 10,000 short tons.

7 ~~(9)~~(10) "Ore processing" means milling, heap leaching,  
8 flotation, vat leaching, or other standard hard-rock mineral  
9 concentration processes.

10 ~~(10)~~(11) "Person" means any person, corporation, firm,  
11 association, partnership, or other legal entity engaged in  
12 exploration for or mining of minerals on or below the  
13 surface of the earth, reprocessing of tailings or waste  
14 materials, or operation of a hard-rock mill.

15 ~~(11)~~(12) "Placer deposit" means naturally occurring,  
16 scattered or unconsolidated valuable minerals in gravel or  
17 alluvium lying above bedrock.

18 ~~(12)~~(13) "Placer or dredge mining" means the mining of  
19 minerals from a placer deposit by a person or persons.

20 ~~(13)~~(14) "Reclamation plan" means the operator's written  
21 proposal, as required and approved by the board, for  
22 reclamation of the land that will be disturbed. The proposal  
23 shall include, to the extent practical at the time of  
24 application for an operating permit:

25 (a) a statement of the proposed subsequent use of the

1 land after reclamation;

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

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

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

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

13 (f) the method of diverting surface waters around the  
14 disturbed areas where necessary to prevent pollution of  
15 those waters or unnecessary erosion;

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

18 (h) maps and other supporting documents as may be  
19 reasonably required by the department; and

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

22 ~~†14†~~(15) (a) "Small miner" means a person, firm, or  
23 corporation that engages in the business of mining or  
24 reprocessing of tailings or waste materials that does not  
25 remove from the earth during any calendar year material in

1 excess of 36,500 tons in the aggregate, that does not hold  
2 an operating permit under 82-4-335 except for a permit  
3 issued under 82-4-335(2), and that conducts:

4 (i) an operation resulting in not more than 5 acres of  
5 the earth's surface being disturbed and unreclaimed; or

6 (ii) two operations which disturb and leave unreclaimed  
7 less than 5 acres per operation if the respective mining  
8 properties are:

9 (A) the only operations engaged in by the person, firm,  
10 or corporation;

11 (B) at least 1 mile apart at their closest point; and

12 (C) not operated simultaneously except during seasonal  
13 transitional periods not to exceed 30 days.

14 (b) For the purpose of this definition only, the  
15 department shall, in computing the area covered by the  
16 operation, exclude access or haulage roads that are required  
17 by a local, state, or federal agency having jurisdiction  
18 over that road to be constructed to certain specifications  
19 if that public agency notifies the department in writing  
20 that it desires to have the road remain in use and will  
21 maintain it after mining ceases.

22 ~~†15†~~(16) "Surface mining" means all or any part of the  
23 process involved in mining of minerals by removing the  
24 overburden and mining directly from the mineral deposits  
25 exposed, including but not limited to open-pit mining of



1 minerals naturally exposed at the surface of the earth,  
2 mining by the auger method, and all similar methods by which  
3 earth or minerals exposed at the surface are removed in the  
4 course of mining. Surface mining does not include the  
5 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
6 phosphate rock, or uranium or excavation or grading  
7 conducted for on-site farming, on-site road construction, or  
8 other on-site building construction.

9 ~~†16†~~(17) "Underground mining" means all methods of  
10 mining other than surface mining.

11 ~~†17†~~(18) "Unit of surface-mined area" means that area of  
12 land and surface water included within an operating permit  
13 actually disturbed by surface mining during each 12-month  
14 period of time, beginning at the date of the issuance of the  
15 permit, and it comprises and includes the area from which  
16 overburden or minerals have been removed, the area covered  
17 by mining debris, and all additional areas used in surface  
18 mining or underground mining operations which by virtue of  
19 mining use are susceptible to erosion in excess of the  
20 surrounding undisturbed portions of land.

21 ~~†18†~~(19) "Vegetative cover" means the type of  
22 vegetation, grass, shrubs, trees, or any other form of  
23 natural cover considered suitable at time of reclamation."

24 **Section 2.** Section 82-4-305, MCA, is amended to read:

25 "82-4-305. Exemption -- small miners -- written

1 agreement. (1) Except as provided in subsections (3) through  
2 ~~†7†~~(9), the provisions of this part do not apply to any  
3 small miner if the small miner annually agrees in writing:

4 (a) that he will not pollute or contaminate any stream;

5 (b) that he will provide protection for human and  
6 animal life through the installation of bulkheads installed  
7 over safety collars and the installation of doors on tunnel  
8 portals;

9 (c) that he will provide a map locating his mining  
10 operations. The map must be of a size and scale determined  
11 by the department.

12 (d) if the small miner's operations are placer or  
13 dredge mining, that he shall reclaim all land disturbed by  
14 the operations to comparable utility and stability as that  
15 of adjacent areas.

16 (2) For small-miner exemptions obtained after September  
17 30, 1985, a small miner may not obtain or continue an  
18 exemption under subsection (1) unless he annually certifies  
19 in writing:

20 (a) if the small miner is a natural person, that:

21 (i) no business association or partnership of which he  
22 is a member or partner has a small-miner exemption; and

23 (ii) no corporation of which he is an officer, director,  
24 or owner of record of 25% or more of any class of voting  
25 stock has a small-miner exemption; or

1 (b) if the small miner is a partnership or business  
2 association, that:

3 (i) none of the associates or partners holds a  
4 small-miner exemption; and

5 (ii) none of the associates or partners is an officer,  
6 director, or owner of 25% or more of any class of voting  
7 stock of a corporation that has a small-miner exemption; or

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

11 (i) holds a small-miner exemption;

12 (ii) is a member or partner in a business association or  
13 partnership that holds a small-miner exemption;

14 (iii) is an officer, director, or owner of record of 25%  
15 or more of any class of voting stock of another corporation  
16 that holds a small-miner exemption.

17 (3) A small miner whose operations are placer or dredge  
18 mining shall post a performance bond equal to the state's  
19 actual cost of reclaiming the disturbed land, although the  
20 bond may not exceed \$5,000 per operation. However, if the  
21 small miner has posted a bond for reclamation with another  
22 government agency, he is exempt from the requirement of this  
23 subsection.

24 (4) If a small miner who conducts a placer or dredge  
25 mining operation fails to reclaim the operation, he is

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

9 (5) If a small miner who conducts a placer or dredge  
10 mining operation fails to commence reclamation of the  
11 operation within 6 months after cessation of mining or  
12 within an extended period allowed by the department for good  
13 cause shown or if the small miner fails to diligently  
14 complete reclamation, the department shall notify the small  
15 miner by certified mail that it intends to reclaim the  
16 operation unless the small miner commences reclamation  
17 within 30 days and diligently completes the reclamation. The  
18 notice must be mailed to the address stated on the small  
19 miner exclusion statement or, if the small miner has  
20 notified the department of a different address by letter or  
21 in the annual certification form, to the most recent address  
22 given to the department. If the small miner fails to  
23 commence reclamation within 30 days or to diligently  
24 complete reclamation, the department may revoke the small  
25 miner exclusion statement, forfeit any bond that has been

1 posted with the department, and enter and reclaim the  
2 operation. If the small miner has not posted a bond with the  
3 department or if the reasonable costs of reclamation exceed  
4 the amount of the bond, the department may also collect  
5 additional reclamation costs, as set forth in subsection  
6 (6), before or after it incurs those costs.

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

23 (7) A small miner who intends to use a cyanide  
24 ore-processing reagent shall obtain an operating permit for  
25 that part of his operation where the cyanide ore-processing

1 reagent will be used or disposed of.

2 (8) The exemption provided in this section does not  
3 apply to a person whose failure to comply with the  
4 provisions of this part, the rules adopted under this part,  
5 or a permit or license issued under this part has resulted  
6 in the forfeiture of a bond unless that person meets the  
7 conditions described under 82-4-360.

8 (9) The exemption provided in this section does not  
9 apply to an area under permit pursuant to 82-4-335 or to an  
10 area that has been permitted pursuant to 82-4-335 and  
11 reclaimed by the permittee, the department, or any other  
12 state or federal agency."

13 **Section 3.** Section 82-4-306, MCA, is amended to read:

14 **"82-4-306. Confidentiality of application information.**

15 (1) Any--and--~~all~~ Except as provided in subsections (2) and  
16 (3), any information obtained by the board or by the  
17 director or his staff by virtue of applications for  
18 exploration licenses and all information obtained from small  
19 miners is confidential between the board and the applicant,  
20 except as to the name of the applicant and the county of  
21 proposed operation; provided that all activities conducted  
22 subsequent to exploration and other associated facilities  
23 shall be public information and conducted under an operating  
24 permit.

25 (2) ~~It is further provided that any~~ Any information

1 ~~obtained--by--the--board--or--by--the--director--or--his--staff--by~~  
 2 ~~virtue-of-such-applications~~ referenced in subsection (1) is  
 3 properly admissible in any hearing conducted by the  
 4 director, the board, appeals board, or in any judicial  
 5 proceeding to which the director and the applicant are  
 6 parties and is not confidential when a violation of ~~the~~ this  
 7 part or rules adopted under this part has been determined by  
 8 the department or by judicial order.

9 (3) The department may disclose information obtained by  
 10 the board, the commissioner, or department staff from  
 11 exploration license applications and from small miners for  
 12 exploration or mining on state and federal lands that  
 13 identifies the location of exploration and mining activities  
 14 and that describes the surface disturbance that is occurring  
 15 or projected to occur. The department may not disclose a  
 16 licensee's or small miner's proprietary geological  
 17 information.

18 (4) Failure to comply with the secrecy provisions of  
 19 this part shall be is punishable by a fine of up to \$1,000."

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

21 **"82-4-335. Operating permit -- limitation -- fees.** (1)  
 22 A person may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material, construct or  
 24 operate a hard-rock mill, use cyanide ore-processing  
 25 reagents, or disturb land in anticipation of those

1 activities in the state without first obtaining an operating  
 2 permit from the board. A separate operating permit is  
 3 required for each complex.

4 (2) A small miner who intends to use a cyanide  
 5 ore-processing reagent shall obtain an operating permit for  
 6 that part of his operation where the cyanide ore-processing  
 7 reagent will be used or disposed of.

8 (3) Prior to receiving an operating permit from the  
 9 board, a person shall pay the basic permit fee of \$25. The  
 10 department may require a person who is applying for a permit  
 11 pursuant to subsection (1) to pay an additional fee not to  
 12 exceed the actual amount of contractor and employee expenses  
 13 beyond the normal operating expenses of the department  
 14 whenever those expenses are reasonably necessary to provide  
 15 for timely and adequate review of the application, including  
 16 any environmental review conducted under Title 75, chapter  
 17 1, parts 1 and 2. The department may further define these  
 18 expenses by rule. Whenever the department determines that an  
 19 additional fee is necessary and the additional fee will  
 20 exceed \$5,000, the department shall notify the applicant  
 21 that a fee must be paid and submit to the applicant an  
 22 itemized estimate of the proposed expenses. The department  
 23 shall provide the applicant an opportunity to review the  
 24 department's estimated expenses. The applicant may indicate  
 25 which proposed expenses the applicant considers duplicative

1 or excessive, if any.

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

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

10 (b) minerals expected to be mined;

11 (c) a proposed reclamation plan;

12 (d) expected starting date of operations;

13 (e) a map showing the specific area to be mined and the  
14 boundaries of the land which will be disturbed, topographic  
15 detail, the location and names of all streams, roads,  
16 railroads, and utility lines on or immediately adjacent to  
17 the area, location of proposed access roads to be built, and  
18 the names and addresses of the surface and mineral owners of  
19 all lands within the mining area, to the extent known to the  
20 applicant;

21 (f) types of access roads to be built and manner of  
22 reclamation of road sites on abandonment;

23 (g) a plan which will provide, within limits of normal  
24 operating procedures of the industry, for completion of the  
25 operation;

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

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

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

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

16 ~~(4)~~(5) Except as provided in subsection ~~(6)~~(7), the  
17 permit provided for in subsection (1) for a large-scale  
18 mineral development as defined in 90-6-302 must be  
19 conditioned to provide that activities under the permit may  
20 not commence until the impact plan is approved under  
21 90-6-307 and until the permittee has provided a written  
22 guarantee to the department and to the hard-rock mining  
23 impact board of compliance within the time schedule with the  
24 commitment made in the approved impact plan, as provided in  
25 90-6-307. If the permittee does not comply with that

1 commitment within the time scheduled, the board, upon  
 2 receipt of written notice from the hard-rock mining impact  
 3 board, shall suspend the permit until it receives written  
 4 notice from the hard-rock mining impact board that the  
 5 permittee is in compliance.

6 ~~(5)~~(6) When the department determines that a permittee  
 7 has become or will become a large-scale mineral developer  
 8 pursuant to 82-4-339 and 90-6-302(4) and provides notice as  
 9 required under 82-4-339, within 6 months of receiving the  
 10 notice, the permittee shall provide the board with proof  
 11 that he has obtained a waiver of the impact plan requirement  
 12 from the hard-rock mining impact board or that he has filed  
 13 an impact plan with the hard-rock mining impact board and  
 14 the appropriate county or counties. If the permittee does  
 15 not file the required proof or if the hard-rock mining  
 16 impact board certifies to the board that the permittee has  
 17 failed to comply with the hard-rock mining impact review and  
 18 implementation requirements in Title 90, chapter 6, parts 3  
 19 and 4, the board shall suspend the permit until the  
 20 permittee files the required proof or until the hard-rock  
 21 mining impact board certifies that the permittee has  
 22 complied with the hard-rock mining impact review and  
 23 implementation requirements.

24 ~~(6)~~(7) Compliance with 90-6-307 is not required for  
 25 exploration and bulk sampling for metallurgical testing when

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

2 ~~(7)~~(8) A person may not be issued an operating permit  
 3 if that person's failure to comply with the provisions of  
 4 this part, the rules adopted under this part, or a permit or  
 5 license issued under this part has resulted in the  
 6 forfeiture of a bond unless that person meets the conditions  
 7 described in 82-4-360.

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

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

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

20 (b) if the person is a partnership, corporation, or  
 21 other business association, provides the certification  
 22 required by subsection (9)(a)(i) or (9)(a)(ii), as  
 23 applicable, for any partners, officers, directors, owners of  
 24 10% or more of any class of voting stock, and business  
 25 association members."

1 **Section 5.** Section 82-4-337, MCA, is amended to read:

2 **"82-4-337. Inspection -- issuance of operating permit**  
3 **-- modification.** (1) (a) The board shall cause all  
4 applications for operating permits to be reviewed for  
5 completeness within 30 days of receipt. The board shall  
6 notify the applicant concerning completeness as soon as  
7 possible. An application is considered complete unless the  
8 applicant is notified of any deficiencies within 30 days of  
9 receipt.

10 (b) Unless the review period is extended as provided in  
11 this section, the board shall review the adequacy of the  
12 proposed reclamation plan and plan of operation within 30  
13 days of the determination that the application is complete  
14 or within 60 days of receipt of the application if the board  
15 does not notify the applicant of any deficiencies in the  
16 application. If the applicant is not notified of  
17 deficiencies or inadequacies in the proposed reclamation  
18 plan and plan of operation within such time period, the  
19 operating permit shall be issued upon receipt of the bond as  
20 required in 82-4-338 and pursuant to the requirements of  
21 subsection (1)(c). The department shall promptly notify the  
22 applicant of the form and amount of bond which will be  
23 required.

24 (c) No permit may be issued until:

25 (i) sufficient bond has been submitted pursuant to

1 82-4-338;

2 (ii) the information and certification have been  
3 submitted pursuant to 82-4-335(9); and

4 (iii) the department has found that permit issuance is  
5 not prohibited by 82-4-335(8) or 82-4-341(6).

6 ~~(c)~~(d) (i) Prior to issuance of a permit, the  
7 department shall inspect the site unless the department has  
8 failed to act on the application within the time prescribed  
9 in subsection (1)(b). If the site is not accessible due to  
10 extended adverse weather conditions, the department may  
11 extend the time period prescribed in subsection (1)(b) by  
12 not more than 180 days to allow inspection of the site and  
13 reasonable review. The department must serve written notice  
14 of extension upon the applicant in person or by certified  
15 mail, and any such extension is subject to appeal to the  
16 board in accordance with the Montana Administrative  
17 Procedure Act.

18 (ii) If the department determines that additional time  
19 is needed to review the application and reclamation plan for  
20 a major operation, the department and the applicant shall  
21 negotiate to extend the period prescribed in subsection  
22 (1)(b) by not more than 365 days in order to permit  
23 reasonable review.

24 (iii) Failure of the board to act upon a complete  
25 application within the extension period constitutes approval

1 of the application, and the permit shall be issued promptly  
2 upon receipt of the bond as required in 82-4-338.

3 (2) The operating permit shall be granted for the  
4 period required to complete the operation and shall be valid  
5 until the operation authorized by the permit is completed or  
6 abandoned unless the permit is suspended or revoked by the  
7 board as provided in this part.

8 (3) The operating permit shall provide that the  
9 reclamation plan may be modified by the board, upon proper  
10 application of the permittee or department, after timely  
11 notice and opportunity for hearing, at any time during the  
12 term of the permit and for any of the following reasons:

13 (a) to modify the requirements so they will not  
14 conflict with existing laws;

15 (b) when the previously adopted reclamation plan is  
16 impossible or impracticable to implement and maintain;

17 (c) when significant environmental problem situations  
18 are revealed by field inspection."

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

20 "82-4-338. Performance bond. (1) The applicant shall  
21 file with the department a bond payable to the state of  
22 Montana with surety satisfactory to the department in the  
23 ~~penal~~ sum to be determined by the department of not less  
24 than \$200 or more than \$2,500 for each acre or fraction  
25 thereof of the disturbed area, conditioned upon the faithful

1 performance of the requirements of this part and the rules  
2 of the board. In lieu of such bond, the applicant may file  
3 with the board a cash deposit, an assignment of a  
4 certificate of deposit, or other surety acceptable to the  
5 board. Regardless of the above limits, the bond shall not be  
6 less than the estimated cost to the state to complete the  
7 reclamation of the disturbed land. A public or governmental  
8 agency shall not be required to post a bond under the  
9 provisions of this part. A blanket performance bond covering  
10 two or more operations may be accepted by the board. Such  
11 blanket bond shall adequately secure the estimated total  
12 number of acres of disturbed land.

13 (2) The department shall review the amount of each bond  
14 at least every 5 years and shall consult with the licensee  
15 or permittee if the review indicates that the bond level  
16 should be adjusted. When determined by the department that  
17 the set bonding level of a permit or license does not  
18 represent the present costs of reclamation, the department  
19 may modify the bonding requirements of that permit or  
20 license. The department shall make written findings, give  
21 the licensee or permittee a copy of the findings, and, for  
22 operating permits, publish notice of the findings in a  
23 newspaper of general circulation in the county in which the  
24 operation is located. The permittee or any person with an  
25 interest that may be adversely affected may obtain a



1 contested case hearing under the provisions of the Montana  
 2 Administrative Procedure Act on the adjusted bond level by  
 3 filing with the department within 30 days of the notice a  
 4 written request for hearing.

5 ~~(2)~~(3) No A bond filed in accordance with the  
 6 provisions of this part ~~shall~~ may not be released by the  
 7 department until the provisions of this part, the rules  
 8 adopted pursuant thereto to this part, and this reclamation  
 9 plan have been fulfilled.

10 ~~(3)~~(4) No bond filed for an operating permit obtained  
 11 under 82-4-335 may be released until the public has been  
 12 provided an opportunity for a hearing."

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

14 "82-4-339. Annual report of activities by permittee --  
 15 fee -- notice of large-scale mineral developer status. (1)  
 16 Within 30 days after completion or abandonment of operations  
 17 on an area under permit or within 30 days after each  
 18 anniversary date of the permit, whichever is earlier, or at  
 19 such later date as may be provided by rules of the board and  
 20 each year thereafter until reclamation is completed and  
 21 approved, the permittee shall pay the annual fee of \$25 and  
 22 shall file a report of activities completed during the  
 23 preceding year on a form prescribed by the board which  
 24 report shall:

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

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

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

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

10 and

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

13 (f) update any maps previously submitted or  
 14 specifically requested by the board. Such maps shall show:

15 (i) the permit area;

16 (ii) the unit of disturbed land;

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

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

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

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

25 (2) Whenever the department determines that the

1 permittee has become or will, during the next permit year,  
 2 become a large-scale mineral developer, it shall immediately  
 3 serve written notice of that fact on the permittee, the  
 4 hard-rock mining impact board, and the county or counties in  
 5 which the operation is located."

6 **Section 8.** Section 82-4-355, MCA, is amended to read:

7 "82-4-355. Action for damages to water supply --  
 8 replacement. (1) An owner of an interest in real property  
 9 who obtains all or part of his supply of water for  
 10 beneficial uses, as defined in 85-2-102, from an underground  
 11 source other than a subterranean stream having a permanent,  
 12 distinct, and known channel may sue the operator engaged in  
 13 a-mining-or-exploration an operation for which a license is  
 14 required pursuant to 82-4-332 or for which a permit is  
 15 required pursuant to 82-4-335 to recover damages for loss in  
 16 quality or quantity of the water supply resulting from  
 17 mining or exploration. The owner is required to exhaust the  
 18 administrative remedy under subsection (2) prior to filing  
 19 suit.

20 (2) (a) An owner described in subsection (1) may file a  
 21 complaint with the department detailing the loss in quality  
 22 or quantity of water. Upon receipt of a valid complaint, the  
 23 department:

24 (i) shall investigate the statements and charges in the  
 25 complaint, using all available information, including

1 monitoring data gathered at the exploration or mine site;

2 (ii) may require the operator, if necessary, to install  
 3 monitoring wells or other practices that may be needed to  
 4 determine the cause of water loss, if there is a loss, in  
 5 terms of quantity and quality;

6 (iii) shall issue a written finding specifying the cause  
 7 of the water loss, if there is a loss, in terms of quantity  
 8 and quality;

9 (iv) shall, if it determines that the preponderance of  
 10 evidence indicates that the loss is caused by an exploration  
 11 or mining operation, order the operator, in compliance with  
 12 Title 85, chapter 2, to provide the needed water immediately  
 13 on a temporary basis and within a reasonable time replace  
 14 the water in like quality, quantity, and duration. If the  
 15 water is not replaced, the department shall order the  
 16 suspension of the operator's exploration or operating permit  
 17 until such time as the operator provides substitute water,  
 18 except that nothing in this section preempts Title 85,  
 19 chapter 2. The operator may not be required to replace a  
 20 junior right if the operator's withdrawal or dewatering is  
 21 not in excess of his senior right.

22 (b) If the department determines that there is a great  
 23 potential that surface or subsurface water quality and  
 24 quantity may be adversely affected by a mining or  
 25 exploration operation, the operator shall install a water

1 quality monitoring program, water quantity monitoring  
2 program, or both, which must be approved by the department  
3 prior to the commencement of exploration or mining."

4 NEW SECTION. Section 9. ~~HARD-ROCK~~ ~~ENVIRONMENTAL~~  
5 ~~EMERGENCY ACCOUNT~~ ~~STATUTORY APPROPRIATION~~ ~~ABATEMENT~~  
6 ABATEMENT of environmental emergencies. ~~(1) There is a~~  
7 ~~hard-rock environmental emergency account within the state~~  
8 ~~special revenue fund established in 17-2-102.~~

9 ~~(2) On July 1, 1991, and at the beginning of each~~  
10 ~~succeeding biennium, there is statutorily appropriated, as~~  
11 ~~provided in 17-7-502, to the hard-rock environmental~~  
12 ~~emergency account \$200,000 from the interest income of the~~  
13 ~~resource indemnity trust fund, except that if at the~~  
14 ~~beginning of a biennium the unobligated cash balance in the~~  
15 ~~hard-rock environmental emergency account:~~

16 ~~(a) equals or exceeds \$200,000, no allocation may be~~  
17 ~~made; or~~

18 ~~(b) is less than \$200,000, then an amount equal to the~~  
19 ~~difference between the unobligated cash balance and \$200,000~~  
20 ~~must be allocated to the hard-rock environmental emergency~~  
21 ~~account from the interest income of the resource indemnity~~  
22 ~~trust fund.~~

23 ~~(3)(1) Whenever an environmental emergency exists, as~~  
24 ~~determined by the department, at an active, temporarily~~  
25 ~~abandoned, or permanently abandoned exploration, mining, ore~~

1 processing, or hard-rock mill site, the department may enter  
2 the site and may APPLY FOR AND, IF APPROVED BY THE GOVERNOR,  
3 use the funds in the hard-rock environmental emergency  
4 CONTINGENCY account CREATED IN 75-1-1101 to abate the  
5 situation on either a temporary or a permanent basis, or  
6 both.

7 ~~(4)(2)~~ (2) The department may bring an action against the  
8 operator to recover the abatement costs in the district  
9 court of the first judicial district in Lewis and Clark  
10 County. Nothing in this section affects the right of the  
11 department to retain or pursue forfeiture of any bond posted  
12 pursuant to 82-4-338. Expenditures from the hard-rock  
13 environmental emergency CONTINGENCY account that are  
14 recovered under this subsection must be deposited in the  
15 resource indemnity trust fund ENVIRONMENTAL CONTINGENCY  
16 ACCOUNT.

17 ~~Section 10, Section 15-38-202, MEA, is amended to read:~~

18 ~~"15-38-202. Investment of resource indemnity trust fund~~  
19 ~~expenditure minimum balance. (1) All money paid into~~  
20 ~~the resource indemnity trust fund, including money payable~~  
21 ~~into the fund under the provisions of 15-37-117 and money~~  
22 ~~recovered by the department of state lands pursuant to~~  
23 ~~(section 9), shall be invested at the discretion of the~~  
24 ~~board of investments. All the net earnings accruing to the~~  
25 ~~resource indemnity trust fund shall annually be added to the~~

1 trust--fund--until--it--has--reached--the--sum--of--\$10--million.  
 2 Thereafter, only the net earnings may be appropriated and  
 3 expended--until--the--fund--reaches--\$100--million. Thereafter,  
 4 all net earnings and all receipts shall be appropriated by  
 5 the legislature and expended, provided that the balance in  
 6 the fund may never be less than \$100 million.  
 7 (2)--(a)--At the beginning of each biennium, there is  
 8 allocated from the interest income of the resource indemnity  
 9 trust fund:  
 10 (i)--an amount not to exceed \$175,000 to the  
 11 environmental contingency account pursuant to the conditions  
 12 of 75-1-1101; and  
 13 (ii)--beginning in fiscal year 1992, an amount not to  
 14 exceed \$50,000 to the oil and gas production damage  
 15 mitigation account pursuant to the conditions of 82-11-161;  
 16 and  
 17 (iii)--an amount not to exceed \$200,000 to the hard rock  
 18 environmental emergency account pursuant to the conditions  
 19 of section 9;  
 20 (b)--The remainder of the interest income is allocated  
 21 as follows:  
 22 (i)--Beginning in fiscal year 1982, provided the amount  
 23 in the resource indemnity trust fund is greater than \$10  
 24 million, 30% of the interest income of the resource  
 25 indemnity trust fund must be allocated to the water

1 development state special revenue account created by  
 2 85-1-604.  
 3 (ii)--Beginning in fiscal year 1980, 12% of the interest  
 4 income of the resource indemnity trust fund must be  
 5 allocated to the hazardous waste/CERCLA special revenue  
 6 account provided for in 75-10-621.  
 7 (iii)--Beginning in fiscal year 1990, 8% of the interest  
 8 income from the resource indemnity trust fund must be  
 9 allocated to the renewable resource development account  
 10 provided for in Title 90, chapter 2.  
 11 (iv)--Beginning in fiscal year 1990, 46% of the interest  
 12 income from the resource indemnity trust fund must be  
 13 allocated to the reclamation and development grants account  
 14 provided for in 90-2-1104.  
 15 (v)--Beginning in fiscal year 1990, 4% of the interest  
 16 income of the resource indemnity trust fund must be  
 17 allocated to the environmental quality protection fund  
 18 provided for in 75-10-704.  
 19 (3)--Any formal budget document prepared by the  
 20 legislature or the executive branch that proposes to  
 21 appropriate funds from the resource indemnity trust interest  
 22 account other than as provided for by the allocations in  
 23 subsection (2) must specify the amount of money from each  
 24 allocation that is proposed to be diverted and the proposed  
 25 use of the diverted funds. A formal budget document includes

1 a--printed--and--publicly--distributed--budget--proposal--or  
2 recommendation,--an--introduced--bill,--or--a--bill--developed  
3 during--the--legislative--appropriation--process--or--otherwise  
4 during--a--legislative--session;"

5 Section--11,--Section--17-7-502,--MCA,--is--amended--to--read:

6 "17-7-502,--Statutory--appropriations-----definition---  
7 requisites--for--validity--(1)--A--statutory--appropriation--is--an  
8 appropriation--made--by--permanent--law--that--authorizes--spending  
9 by--a--state--agency--without--the--need--for--a--biennial  
10 legislative--appropriation--or--budget--amendment.

11 (2)--Except--as--provided--in--subsection--(4)--to--be  
12 effective,--a--statutory--appropriation--must--comply--with--both  
13 of--the--following--provisions:

14 (a)--The--law--containing--the--statutory--authority--must--be  
15 listed--in--subsection--(3);

16 (b)--The--law--or--portion--of--the--law--making--a--statutory  
17 appropriation--must--specifically--state--that--a--statutory  
18 appropriation--is--made--as--provided--in--this--section;

19 (3)--The--following--laws--are--the--only--laws--containing  
20 statutory--appropriations:--2-9-202,--2-17-105,--2-18-812,  
21 10-3-203,--10-3-312,--10-3-314,--10-4-301,--13-37-304,--15-1-111,  
22 15-25-123,--15-31-702,--15-36-112,--15-37-117,--15-65-121,  
23 15-70-101,--16-1-404,--16-1-410,--16-1-411,--17-3-212,--17-5-404,  
24 17-5-424,--17-5-804,--19-8-504,--19-9-702,--19-9-1007,  
25 19-10-205,--19-10-305,--19-10-506,--19-11-512,--19-11-513

1 19-11-606,--19-12-301,--19-13-604,--20-6-406,--20-8-111,  
2 20-9-361,--23-5-306,--23-5-409,--23-5-610,--23-5-612,--23-5-1016,  
3 23-5-1027,--27-12-206,--37-51-501,--39-71-2504,--53-6-150,  
4 53-24-206,--61-2-406,--61-5-121,--67-3-205,--75-1-1101,  
5 75-5-1100,--75-11-313,--76-12-123,--80-2-103,--82-11-136,  
6 82-11-161,--90-3-301,--90-4-215,--90-4-613,--90-6-331,--90-9-306,  
7 and--section--13,--House--Bill--No,--861,--Laws--of--1985,--and  
8 section--9;

9 (4)--There--is--a--statutory--appropriation--to--pay--the  
10 principal,--interest,--premiums,--and--costs--of--issuing,--paying,  
11 and--securing--all--bonds,--notes,--or--other--obligations,--as--due,  
12 that--have--been--authorized--and--issued--pursuant--to--the--laws--of  
13 Montana,--Agencies--that--have--entered--into--agreements  
14 authorized--by--the--laws--of--Montana--to--pay--the--state  
15 treasurer,--for--deposit--in--accordance--with--17-2-101--through  
16 17-2-107,--as--determined--by--the--state--treasurer,--an--amount  
17 sufficient--to--pay--the--principal--and--interest--as--due--on--the  
18 bonds--or--notes--have--statutory--appropriation--authority--for  
19 such--payments,--(In--subsection--(3)--pursuant--to--sec--10,--Ch,  
20 664,--Lr--1987,--the--inclusion--of--39-71-2504--terminates--June  
21 30,--1991;)"

22 NEW SECTION. Section 10. Codification instruction.  
23 [Section 9] is intended to be codified as an integral part  
24 of Title 82, chapter 4, part 3, and the provisions of Title  
25 82, chapter 4, part 3, apply to [section 9].

HB 0448/02

1        NEW SECTION.    **Section 11.**    **Effective date.**    [This act] is  
2    effective July 1, 1991.

-End-

## 1 HOUSE BILL NO. 448

2 INTRODUCED BY REAM, T. BECK, GROSFIELD, WEEDING, WILLIAMS

3 BY REQUEST OF THE GOVERNOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE METAL MINE  
 6 RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE  
 7 GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL;  
 8 ~~ALLOCATING-RESOURCE-INDEMNITY-TRUST-INTEREST-INCOME--TO--THE~~  
 9 ~~HARD-ROCK--ENVIRONMENTAL--EMERGENCY-ACCOUNT-FOR-ABATEMENT-OF~~  
 10 ~~ENVIRONMENTAL---EMERGENCIES;---PROVIDING---A---STATUTORY~~  
 11 ~~APPROPRIATION;~~ AMENDING SECTIONS ~~15-38-202,---17-7-502,~~  
 12 82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338,  
 13 82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE  
 14 DATE."

15  
16 STATEMENT OF INTENT

17 A statement of intent is required for this bill to  
 18 provide guidance to the department of state lands concerning  
 19 the adoption of rules to define the types of department  
 20 expenses that applicants for hard-rock mine operating  
 21 permits will be required to pay through increased permit  
 22 application fees. Section 82-4-335(3) of the bill allows the  
 23 department to increase the permit application review fee to  
 24 fund expenses that are beyond the department's normal  
 25 operating expenses and that are reasonably necessary in

1 order for the department to provide a timely and adequate  
 2 review, including any environmental review that is conducted  
 3 pursuant to the requirements of the Montana Environmental  
 4 Policy Act. The department's rules should authorize the use  
 5 of the money collected from increased permit application  
 6 fees for expenses, such as the hiring of temporary employees  
 7 and contracted consultants and data collection and analysis  
 8 when, due to workload considerations and statutory  
 9 deadlines, the department cannot otherwise perform an  
 10 adequate review.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:13 **Section 1.** Section 82-4-303, MCA, is amended to read:14 **"82-4-303. Definitions.** As used in this part, unless  
15 the context indicates otherwise, the following definitions  
16 apply:17 (1) "Abandonment of surface or underground mining" may  
18 be presumed when it is shown that continued operation will  
19 not resume.20 (2) "Board" means the board of land commissioners or a  
21 state employee or state agency as may succeed to its powers  
22 and duties under this part.23 (3) "Commissioner" means the commissioner of state  
24 lands provided for in 2-15-3202.

25 (4) "Cyanide ore-processing reagent" means cyanide or a

THIRD READING

1 cyanide compound used as a reagent in leaching operations.

2 ~~(4)~~(5) "Department" means the department of state  
3 lands.

4 ~~(5)~~(6) "Disturbed land" means that area of land or  
5 surface water disturbed, beginning at the date of the  
6 issuance of the permit, and it comprises that area from  
7 which the overburden, tailings, waste materials, or minerals  
8 have been removed and tailings ponds, waste dumps, roads,  
9 conveyor systems, leach dumps, and all similar excavations  
10 or covering resulting from the operation and which have not  
11 been previously reclaimed under the reclamation plan.

12 ~~(6)~~(7) "Exploration" means all activities conducted on  
13 or beneath the surface of lands resulting in material  
14 disturbance of the surface for the purpose of determining  
15 the presence, location, extent, depth, grade, and economic  
16 viability of mineralization in those lands, if any, other  
17 than mining for production and economic exploitation, as  
18 well as all roads made for the purpose of facilitating  
19 exploration, except as noted in 82-4-310.

20 ~~(7)~~(8) "Mineral" means any ore, rock, or substance,  
21 other than oil, gas, bentonite, clay, coal, sand, gravel,  
22 phosphate rock, or uranium, taken from below the surface or  
23 from the surface of the earth for the purpose of milling,  
24 concentration, refinement, smelting, manufacturing, or other  
25 subsequent use or processing or for stockpiling for future

1 use, refinement, or smelting.

2 ~~(8)~~(9) "Mining" commences when the operator first mines  
3 ores or minerals in commercial quantities for sale,  
4 beneficiation, refining, or other processing or disposition  
5 or first takes bulk samples for metallurgical testing in  
6 excess of aggregate of 10,000 short tons.

7 ~~(9)~~(10) "Ore processing" means milling, heap leaching,  
8 flotation, vat leaching, or other standard hard-rock mineral  
9 concentration processes.

10 ~~(10)~~(11) "Person" means any person, corporation, firm,  
11 association, partnership, or other legal entity engaged in  
12 exploration for or mining of minerals on or below the  
13 surface of the earth, reprocessing of tailings or waste  
14 materials, or operation of a hard-rock mill.

15 ~~(11)~~(12) "Placer deposit" means naturally occurring,  
16 scattered or unconsolidated valuable minerals in gravel or  
17 alluvium lying above bedrock.

18 ~~(12)~~(13) "Placer or dredge mining" means the mining of  
19 minerals from a placer deposit by a person or persons.

20 ~~(13)~~(14) "Reclamation plan" means the operator's written  
21 proposal, as required and approved by the board, for  
22 reclamation of the land that will be disturbed. The proposal  
23 shall include, to the extent practical at the time of  
24 application for an operating permit:

25 (a) a statement of the proposed subsequent use of the



1 land after reclamation;

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

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

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

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

13 (f) the method of diverting surface waters around the  
14 disturbed areas where necessary to prevent pollution of  
15 those waters or unnecessary erosion;

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

18 (h) maps and other supporting documents as may be  
19 reasonably required by the department; and

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

22 ~~(14)~~(15) (a) "Small miner" means a person, firm, or  
23 corporation that engages in the business of mining or  
24 reprocessing of tailings or waste materials that does not  
25 remove from the earth during any calendar year material in

1 excess of 36,500 tons in the aggregate, that does not hold  
2 an operating permit under 82-4-335 except for a permit  
3 issued under 82-4-335(2), and that conducts:

4 (i) an operation resulting in not more than 5 acres of  
5 the earth's surface being disturbed and unreclaimed; or

6 (ii) two operations which disturb and leave unreclaimed  
7 less than 5 acres per operation if the respective mining  
8 properties are:

9 (A) the only operations engaged in by the person, firm,  
10 or corporation;

11 (B) at least 1 mile apart at their closest point; and

12 (C) not operated simultaneously except during seasonal  
13 transitional periods not to exceed 30 days.

14 (b) For the purpose of this definition only, the  
15 department shall, in computing the area covered by the  
16 operation, exclude access or haulage roads that are required  
17 by a local, state, or federal agency having jurisdiction  
18 over that road to be constructed to certain specifications  
19 if that public agency notifies the department in writing  
20 that it desires to have the road remain in use and will  
21 maintain it after mining ceases.

22 ~~(15)~~(16) "Surface mining" means all or any part of the  
23 process involved in mining of minerals by removing the  
24 overburden and mining directly from the mineral deposits  
25 exposed, including but not limited to open-pit mining of

1 minerals naturally exposed at the surface of the earth,  
 2 mining by the auger method, and all similar methods by which  
 3 earth or minerals exposed at the surface are removed in the  
 4 course of mining. Surface mining does not include the  
 5 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 6 phosphate rock, or uranium or excavation or grading  
 7 conducted for on-site farming, on-site road construction, or  
 8 other on-site building construction.

9 ~~(16)~~(17) "Underground mining" means all methods of  
 10 mining other than surface mining.

11 ~~(17)~~(18) "Unit of surface-mined area" means that area of  
 12 land and surface water included within an operating permit  
 13 actually disturbed by surface mining during each 12-month  
 14 period of time, beginning at the date of the issuance of the  
 15 permit, and it comprises and includes the area from which  
 16 overburden or minerals have been removed, the area covered  
 17 by mining debris, and all additional areas used in surface  
 18 mining or underground mining operations which by virtue of  
 19 mining use are susceptible to erosion in excess of the  
 20 surrounding undisturbed portions of land.

21 ~~(18)~~(19) "Vegetative cover" means the type of  
 22 vegetation, grass, shrubs, trees, or any other form of  
 23 natural cover considered suitable at time of reclamation."

24 **Section 2.** Section 82-4-305, MCA, is amended to read:

25 **"82-4-305. Exemption -- small miners -- written**

1 agreement. (1) Except as provided in subsections (3) through  
 2 ~~(7)~~(9), the provisions of this part do not apply to any  
 3 small miner if the small miner annually agrees in writing:

4 (a) that he will not pollute or contaminate any stream;

5 (b) that he will provide protection for human and  
 6 animal life through the installation of bulkheads installed  
 7 over safety collars and the installation of doors on tunnel  
 8 portals;

9 (c) that he will provide a map locating his mining  
 10 operations. The map must be of a size and scale determined  
 11 by the department.

12 (d) if the small miner's operations are placer or  
 13 dredge mining, that he shall reclaim all land disturbed by  
 14 the operations to comparable utility and stability as that  
 15 of adjacent areas.

16 (2) For small-miner exemptions obtained after September  
 17 30, 1985, a small miner may not obtain or continue an  
 18 exemption under subsection (1) unless he annually certifies  
 19 in writing:

20 (a) if the small miner is a natural person, that:

21 (i) no business association or partnership of which he  
 22 is a member or partner has a small-miner exemption; and

23 (ii) no corporation of which he is an officer, director,  
 24 or owner of record of 25% or more of any class of voting  
 25 stock has a small-miner exemption; or

1 (b) if the small miner is a partnership or business  
2 association, that:

3 (i) none of the associates or partners holds a  
4 small-miner exemption; and

5 (ii) none of the associates or partners is an officer,  
6 director, or owner of 25% or more of any class of voting  
7 stock of a corporation that has a small-miner exemption; or

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

11 (i) holds a small-miner exemption;

12 (ii) is a member or partner in a business association or  
13 partnership that holds a small-miner exemption;

14 (iii) is an officer, director, or owner of record of 25%  
15 or more of any class of voting stock of another corporation  
16 that holds a small-miner exemption.

17 (3) A small miner whose operations are placer or dredge  
18 mining shall post a performance bond equal to the state's  
19 actual cost of reclaiming the disturbed land, although the  
20 bond may not exceed \$5,000 per operation. However, if the  
21 small miner has posted a bond for reclamation with another  
22 government agency, he is exempt from the requirement of this  
23 subsection.

24 (4) If a small miner who conducts a placer or dredge  
25 mining operation fails to reclaim the operation, he is

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

9 (5) If a small miner who conducts a placer or dredge  
10 mining operation fails to commence reclamation of the  
11 operation within 6 months after cessation of mining or  
12 within an extended period allowed by the department for good  
13 cause shown or if the small miner fails to diligently  
14 complete reclamation, the department shall notify the small  
15 miner by certified mail that it intends to reclaim the  
16 operation unless the small miner commences reclamation  
17 within 30 days and diligently completes the reclamation. The  
18 notice must be mailed to the address stated on the small  
19 miner exclusion statement or, if the small miner has  
20 notified the department of a different address by letter or  
21 in the annual certification form, to the most recent address  
22 given to the department. If the small miner fails to  
23 commence reclamation within 30 days or to diligently  
24 complete reclamation, the department may revoke the small  
25 miner exclusion statement, forfeit any bond that has been

1 posted with the department, and enter and reclaim the  
2 operation. If the small miner has not posted a bond with the  
3 department or if the reasonable costs of reclamation exceed  
4 the amount of the bond, the department may also collect  
5 additional reclamation costs, as set forth in subsection  
6 (6), before or after it incurs those costs.

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

23 (7) A small miner who intends to use a cyanide  
24 ore-processing reagent shall obtain an operating permit for  
25 that part of his operation where the cyanide ore-processing

1 reagent will be used or disposed of.

2 (8) The exemption provided in this section does not  
3 apply to a person whose failure to comply with the  
4 provisions of this part, the rules adopted under this part,  
5 or a permit or license issued under this part has resulted  
6 in the forfeiture of a bond unless that person meets the  
7 conditions described under 82-4-360.

8 (9) The exemption provided in this section does not  
9 apply to an area under permit pursuant to 82-4-335 or to an  
10 area that has been permitted pursuant to 82-4-335 and  
11 reclaimed by the permittee, the department, or any other  
12 state or federal agency."

13 **Section 3.** Section 82-4-306, MCA, is amended to read:

14 **"82-4-306. Confidentiality of application information.**

15 (1) Any--and--all Except as provided in subsections (2) and  
16 (3), any information obtained by the board or by the  
17 director or his staff by virtue of applications for  
18 exploration licenses and all information obtained from small  
19 miners is confidential between the board and the applicant,  
20 except as to the name of the applicant and the county of  
21 proposed operation; provided that all activities conducted  
22 subsequent to exploration and other associated facilities  
23 shall be public information and conducted under an operating  
24 permit.

25 (2) It-is-further-provided--that--any Any information

1 obtained--by--the--board--or--by--the--director--or--his--staff--by  
 2 virtue-of-such-applications referenced in subsection (1) is  
 3 properly admissible in any hearing conducted by the  
 4 director, the board, appeals board, or in any judicial  
 5 proceeding to which the director and the applicant are  
 6 parties and is not confidential when a violation of the this  
 7 part or rules adopted under this part has been determined by  
 8 the department or by judicial order.

9 (3) The department may disclose information obtained by  
 10 the board, the commissioner, or department staff from  
 11 exploration license applications and from small miners for  
 12 exploration or mining on state and federal lands that  
 13 identifies the location of exploration and mining activities  
 14 and that describes the surface disturbance that is occurring  
 15 or projected to occur. The department may not disclose a  
 16 licensee's or small miner's proprietary geological  
 17 information.

18 (4) Failure to comply with the secrecy provisions of  
 19 this part shall-be is punishable by a fine of up to \$1,000."

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

21 **"82-4-335. Operating permit -- limitation -- fees. (1)**  
 22 A person may not engage in mining, ore processing, or  
 23 reprocessing of tailings or waste material, construct or  
 24 operate a hard-rock mill, use cyanide ore-processing  
 25 reagents, or disturb land in anticipation of those

1 activities in the state without first obtaining an operating  
 2 permit from the board. A separate operating permit is  
 3 required for each complex.

4 (2) A small miner who intends to use a cyanide  
 5 ore-processing reagent shall obtain an operating permit for  
 6 that part of his operation where the cyanide ore-processing  
 7 reagent will be used or disposed of.

8 (3) Prior to receiving an operating permit from the  
 9 board, a person shall pay the basic permit fee of \$25. The  
 10 department may require a person who is applying for a permit  
 11 pursuant to subsection (1) to pay an additional fee not to  
 12 exceed the actual amount of contractor and employee expenses  
 13 beyond the normal operating expenses of the department  
 14 whenever those expenses are reasonably necessary to provide  
 15 for timely and adequate review of the application, including  
 16 any environmental review conducted under Title 75, chapter  
 17 1, parts 1 and 2. The department may further define these  
 18 expenses by rule. Whenever the department determines that an  
 19 additional fee is necessary and the additional fee will  
 20 exceed \$5,000, the department shall notify the applicant  
 21 that a fee must be paid and submit to the applicant an  
 22 itemized estimate of the proposed expenses. The department  
 23 shall provide the applicant an opportunity to review the  
 24 department's estimated expenses. The applicant may indicate  
 25 which proposed expenses the applicant considers duplicative

1 or excessive, if any.

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

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

10 (b) minerals expected to be mined;

11 (c) a proposed reclamation plan;

12 (d) expected starting date of operations;

13 (e) a map showing the specific area to be mined and the  
14 boundaries of the land which will be disturbed, topographic  
15 detail, the location and names of all streams, roads,  
16 railroads, and utility lines on or immediately adjacent to  
17 the area, location of proposed access roads to be built, and  
18 the names and addresses of the surface and mineral owners of  
19 all lands within the mining area, to the extent known to the  
20 applicant;

21 (f) types of access roads to be built and manner of  
22 reclamation of road sites on abandonment;

23 (g) a plan which will provide, within limits of normal  
24 operating procedures of the industry, for completion of the  
25 operation;

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

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

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

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

16 ~~(4)~~(5) Except as provided in subsection ~~(6)~~(7), the  
17 permit provided for in subsection (1) for a large-scale  
18 mineral development as defined in 90-6-302 must be  
19 conditioned to provide that activities under the permit may  
20 not commence until the impact plan is approved under  
21 90-6-307 and until the permittee has provided a written  
22 guarantee to the department and to the hard-rock mining  
23 impact board of compliance within the time schedule with the  
24 commitment made in the approved impact plan, as provided in  
25 90-6-307. If the permittee does not comply with that

1 commitment within the time scheduled, the board, upon  
 2 receipt of written notice from the hard-rock mining impact  
 3 board, shall suspend the permit until it receives written  
 4 notice from the hard-rock mining impact board that the  
 5 permittee is in compliance.

6 ~~(5)~~(6) When the department determines that a permittee  
 7 has become or will become a large-scale mineral developer  
 8 pursuant to 82-4-339 and 90-6-302(4) and provides notice as  
 9 required under 82-4-339, within 6 months of receiving the  
 10 notice, the permittee shall provide the board with proof  
 11 that he has obtained a waiver of the impact plan requirement  
 12 from the hard-rock mining impact board or that he has filed  
 13 an impact plan with the hard-rock mining impact board and  
 14 the appropriate county or counties. If the permittee does  
 15 not file the required proof or if the hard-rock mining  
 16 impact board certifies to the board that the permittee has  
 17 failed to comply with the hard-rock mining impact review and  
 18 implementation requirements in Title 90, chapter 6, parts 3  
 19 and 4, the board shall suspend the permit until the  
 20 permittee files the required proof or until the hard-rock  
 21 mining impact board certifies that the permittee has  
 22 complied with the hard-rock mining impact review and  
 23 implementation requirements.

24 ~~(6)~~(7) Compliance with 90-6-307 is not required for  
 25 exploration and bulk sampling for metallurgical testing when

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

2 ~~(7)~~(8) A person may not be issued an operating permit  
 3 if that person's failure to comply with the provisions of  
 4 this part, the rules adopted under this part, or a permit or  
 5 license issued under this part has resulted in the  
 6 forfeiture of a bond unless that person meets the conditions  
 7 described in 82-4-360.

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

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

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

20 (b) if the person is a partnership, corporation, or  
 21 other business association, provides the certification  
 22 required by subsection (9)(a)(i) or (9)(a)(ii), as  
 23 applicable, for any partners, officers, directors, owners of  
 24 10% or more of any class of voting stock, and business  
 25 association members."

1 **Section 5.** Section 82-4-337, MCA, is amended to read:

2 \*82-4-337. **Inspection -- issuance of operating permit**  
3 -- **modification.** (1) (a) The board shall cause all  
4 applications for operating permits to be reviewed for  
5 completeness within 30 days of receipt. The board shall  
6 notify the applicant concerning completeness as soon as  
7 possible. An application is considered complete unless the  
8 applicant is notified of any deficiencies within 30 days of  
9 receipt.

10 (b) Unless the review period is extended as provided in  
11 this section, the board shall review the adequacy of the  
12 proposed reclamation plan and plan of operation within 30  
13 days of the determination that the application is complete  
14 or within 60 days of receipt of the application if the board  
15 does not notify the applicant of any deficiencies in the  
16 application. If the applicant is not notified of  
17 deficiencies or inadequacies in the proposed reclamation  
18 plan and plan of operation within such time period, the  
19 operating permit shall be issued upon receipt of the bond as  
20 required in 82-4-338 and pursuant to the requirements of  
21 subsection (1)(c). The department shall promptly notify the  
22 applicant of the form and amount of bond which will be  
23 required.

24 (c) No permit may be issued until:  
25 (i) sufficient bond has been submitted pursuant to

1 82-4-338;

2 (ii) the information and certification have been  
3 submitted pursuant to 82-4-335(9); and

4 (iii) the department has found that permit issuance is  
5 not prohibited by 82-4-335(8) or 82-4-341(6).

6 ~~(c)~~(d) (i) Prior to issuance of a permit, the  
7 department shall inspect the site unless the department has  
8 failed to act on the application within the time prescribed  
9 in subsection (1)(b). If the site is not accessible due to  
10 extended adverse weather conditions, the department may  
11 extend the time period prescribed in subsection (1)(b) by  
12 not more than 180 days to allow inspection of the site and  
13 reasonable review. The department must serve written notice  
14 of extension upon the applicant in person or by certified  
15 mail, and any such extension is subject to appeal to the  
16 board in accordance with the Montana Administrative  
17 Procedure Act.

18 (ii) If the department determines that additional time  
19 is needed to review the application and reclamation plan for  
20 a major operation, the department and the applicant shall  
21 negotiate to extend the period prescribed in subsection  
22 (1)(b) by not more than 365 days in order to permit  
23 reasonable review.

24 (iii) Failure of the board to act upon a complete  
25 application within the extension period constitutes approval



1 of the application, and the permit shall be issued promptly  
 2 upon receipt of the bond as required in 82-4-338.

3 (2) The operating permit shall be granted for the  
 4 period required to complete the operation and shall be valid  
 5 until the operation authorized by the permit is completed or  
 6 abandoned unless the permit is suspended or revoked by the  
 7 board as provided in this part.

8 (3) The operating permit shall provide that the  
 9 reclamation plan may be modified by the board, upon proper  
 10 application of the permittee or department, after timely  
 11 notice and opportunity for hearing, at any time during the  
 12 term of the permit and for any of the following reasons:

13 (a) to modify the requirements so they will not  
 14 conflict with existing laws;

15 (b) when the previously adopted reclamation plan is  
 16 impossible or impracticable to implement and maintain;

17 (c) when significant environmental problem situations  
 18 are revealed by field inspection."

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

20 "82-4-338. **Performance bond.** (1) The applicant shall  
 21 file with the department a bond payable to the state of  
 22 Montana with surety satisfactory to the department in the  
 23 ~~penal~~ sum to be determined by the department of not less  
 24 than \$200 or more than \$2,500 for each acre or fraction  
 25 thereof of the disturbed area, conditioned upon the faithful

1 performance of the requirements of this part and the rules  
 2 of the board. In lieu of such bond, the applicant may file  
 3 with the board a cash deposit, an assignment of a  
 4 certificate of deposit, or other surety acceptable to the  
 5 board. Regardless of the above limits, the bond shall not be  
 6 less than the estimated cost to the state to complete the  
 7 reclamation of the disturbed land. A public or governmental  
 8 agency shall not be required to post a bond under the  
 9 provisions of this part. A blanket performance bond covering  
 10 two or more operations may be accepted by the board. Such  
 11 blanket bond shall adequately secure the estimated total  
 12 number of acres of disturbed land.

13 (2) The department shall review the amount of each bond  
 14 at least every 5 years and shall consult with the licensee  
 15 or permittee if the review indicates that the bond level  
 16 should be adjusted. When determined by the department that  
 17 the set bonding level of a permit or license does not  
 18 represent the present costs of reclamation, the department  
 19 may modify the bonding requirements of that permit or  
 20 license. The department shall make written findings, give  
 21 the licensee or permittee a copy of the findings, and, for  
 22 operating permits, publish notice of the findings in a  
 23 newspaper of general circulation in the county in which the  
 24 operation is located. The permittee or any person with an  
 25 interest that may be adversely affected may obtain a

1 contested case hearing under the provisions of the Montana  
 2 Administrative Procedure Act on the adjusted bond level by  
 3 filing with the department within 30 days of the notice a  
 4 written request for hearing.

5 ~~†2†~~(3) No A bond filed in accordance with the  
 6 provisions of this part ~~shall~~ may not be released by the  
 7 department until the provisions of this part, the rules  
 8 adopted pursuant thereto to this part, and this reclamation  
 9 plan have been fulfilled.

10 ~~†3†~~(4) No bond filed for an operating permit obtained  
 11 under 82-4-335 may be released until the public has been  
 12 provided an opportunity for a hearing."

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

14 **"82-4-339. Annual report of activities by permittee --**  
 15 **fee -- notice of large-scale mineral developer status. (1)**  
 16 Within 30 days after completion or abandonment of operations  
 17 on an area under permit or within 30 days after each  
 18 anniversary date of the permit, whichever is earlier, or at  
 19 such later date as may be provided by rules of the board and  
 20 each year thereafter until reclamation is completed and  
 21 approved, the permittee shall pay the annual fee of \$25 and  
 22 shall file a report of activities completed during the  
 23 preceding year on a form prescribed by the board which  
 24 report shall:

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

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

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

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

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

13 (f) update any maps previously submitted or  
 14 specifically requested by the board. Such maps shall show:

15 (i) the permit area;

16 (ii) the unit of disturbed land;

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

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

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

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

25 (2) Whenever the department determines that the

1 permittee has become or will, during the next permit year,  
 2 become a large-scale mineral developer, it shall immediately  
 3 serve written notice of that fact on the permittee, the  
 4 hard-rock mining impact board, and the county or counties in  
 5 which the operation is located."

6 **Section 8.** Section 82-4-355, MCA, is amended to read:

7 "82-4-355. Action for damages to water supply --  
 8 replacement. (1) An owner of an interest in real property  
 9 who obtains all or part of his supply of water for  
 10 beneficial uses, as defined in 85-2-102, from an underground  
 11 source other than a subterranean stream having a permanent,  
 12 distinct, and known channel may sue the operator engaged in  
 13 a mining or exploration an operation for which a license is  
 14 required pursuant to 82-4-332 or for which a permit is  
 15 required pursuant to 82-4-335 to recover damages for loss in  
 16 quality or quantity of the water supply resulting from  
 17 mining or exploration. The owner is required to exhaust the  
 18 administrative remedy under subsection (2) prior to filing  
 19 suit.

20 (2) (a) An owner described in subsection (1) may file a  
 21 complaint with the department detailing the loss in quality  
 22 or quantity of water. Upon receipt of a valid complaint, the  
 23 department:

24 (i) shall investigate the statements and charges in the  
 25 complaint, using all available information, including

1 monitoring data gathered at the exploration or mine site;

2 (ii) may require the operator, if necessary, to install  
 3 monitoring wells or other practices that may be needed to  
 4 determine the cause of water loss, if there is a loss, in  
 5 terms of quantity and quality;

6 (iii) shall issue a written finding specifying the cause  
 7 of the water loss, if there is a loss, in terms of quantity  
 8 and quality;

9 (iv) shall, if it determines that the preponderance of  
 10 evidence indicates that the loss is caused by an exploration  
 11 or mining operation, order the operator, in compliance with  
 12 Title 85, chapter 2, to provide the needed water immediately  
 13 on a temporary basis and within a reasonable time replace  
 14 the water in like quality, quantity, and duration. If the  
 15 water is not replaced, the department shall order the  
 16 suspension of the operator's exploration or operating permit  
 17 until such time as the operator provides substitute water,  
 18 except that nothing in this section preempts Title 85,  
 19 chapter 2. The operator may not be required to replace a  
 20 junior right if the operator's withdrawal or dewatering is  
 21 not in excess of his senior right.

22 (b) If the department determines that there is a great  
 23 potential that surface or subsurface water quality and  
 24 quantity may be adversely affected by a mining or  
 25 exploration operation, the operator shall install a water

1 quality monitoring program, water quantity monitoring  
 2 program, or both, which must be approved by the department  
 3 prior to the commencement of exploration or mining."

4 NEW SECTION. Section 9. ~~HARD-ROCK~~-----ENVIRONMENTAL  
 5 emergency-account---statutory--appropriation-----abatement  
 6 ABATEMENT of environmental emergencies. ~~{1}~~--There--is-a  
 7 ~~hard-rock-environmental-emergency-account-within--the--state~~  
 8 ~~special-revenue-fund-established-in-17-2-102.~~

9 ~~{2}--On--July--17--1991,--and--at--the--beginning--of--each~~  
 10 ~~succeeding-biennium,--there--is--statutorily--appropriated,--as~~  
 11 ~~provided---in---17-7-502,--to--the--hard-rock--environmental~~  
 12 ~~emergency-account-\$200,000--from--the--interest--income--of--the~~  
 13 ~~resource--indemnity--trust--fund,--except--that--if--at--the~~  
 14 ~~beginning--of--a--biennium--the--unobligated--cash--balance--in--the~~  
 15 ~~hard-rock-environmental-emergency-account:~~

16 ~~{a)--equals--or--exceeds--\$200,000,--no--allocation--may--be~~  
 17 ~~made,--or~~

18 ~~{b)--is--less--than--\$200,000,--then--an--amount--equal--to--the~~  
 19 ~~difference--between--the--unobligated--cash--balance--and--\$200,000~~  
 20 ~~must--be--allocated--to--the--hard-rock--environmental--emergency~~  
 21 ~~account--from--the--interest--income--of--the--resource--indemnity~~  
 22 ~~trust--fund.~~

23 ~~{3}{1}~~ Whenever an environmental emergency exists, as  
 24 determined by the department, at an active, temporarily  
 25 abandoned, or permanently abandoned exploration, mining, ore

1 processing, or hard-rock mill site, the department may enter  
 2 the site and may APPLY FOR AND, IF APPROVED BY THE GOVERNOR,  
 3 use the funds in the hard-rock environmental emergency  
 4 CONTINGENCY account CREATED IN 75-1-1101 to abate the  
 5 situation on either a temporary or a permanent basis, or  
 6 both.

7 ~~{4}{2}~~ The department may bring an action against the  
 8 operator to recover the abatement costs in the district  
 9 court of the first judicial district in Lewis and Clark  
 10 County. Nothing in this section affects the right of the  
 11 department to retain or pursue forfeiture of any bond posted  
 12 pursuant to 82-4-338. Expenditures from the hard-rock  
 13 environmental emergency CONTINGENCY account that are  
 14 recovered under this subsection must be deposited in the  
 15 resource--indemnity--trust--fund ENVIRONMENTAL CONTINGENCY  
 16 ACCOUNT.

17 ~~Section-10--Section-15-30-202,--MEA,--is--amended--to--read:~~  
 18 ~~"15-30-202,--investment--of--resource--indemnity--trust--fund~~  
 19 ~~---expenditure---minimum--balance,--{1}--All--money--paid--into~~  
 20 ~~the--resource--indemnity--trust--fund,--including--money--payable~~  
 21 ~~into--the--fund--under--the--provisions--of--15-37-117--and--money~~  
 22 ~~recovered--by--the--department--of--state--lands--pursuant--to~~  
 23 ~~{section--9},--shall--be--invested--at--the--discretion--of--the~~  
 24 ~~board--of--investments,--All--the--net--earnings--accruing--to--the~~  
 25 ~~resource--indemnity--trust--fund--shall--annually--be--added--to--the~~

1 trust fund until it has reached the sum of \$10 million.  
 2 Thereafter, only the net earnings may be appropriated and  
 3 expended until the fund reaches \$100 million. Thereafter,  
 4 all net earnings and all receipts shall be appropriated by  
 5 the legislature and expended, provided that the balance in  
 6 the fund may never be less than \$100 million.

7 (2) (a) At the beginning of each biennium, there is  
 8 allocated from the interest income of the resource indemnity  
 9 trust fund:

10 (i) an amount not to exceed \$175,000 to the  
 11 environmental contingency account pursuant to the conditions  
 12 of 75-1-1101; and

13 (ii) beginning in fiscal year 1992, an amount not to  
 14 exceed \$50,000 to the oil and gas production damage  
 15 mitigation account pursuant to the conditions of 82-11-161;  
 16 and

17 (iii) an amount not to exceed \$200,000 to the hard rock  
 18 environmental emergency account pursuant to the conditions  
 19 of section 9.

20 (b) The remainder of the interest income is allocated  
 21 as follows:

22 (i) Beginning in fiscal year 1982, provided the amount  
 23 in the resource indemnity trust fund is greater than \$10  
 24 million, 30% of the interest income of the resource  
 25 indemnity trust fund must be allocated to the water

1 development state special revenue account created by  
 2 85-1-604.

3 (ii) Beginning in fiscal year 1988, 12% of the interest  
 4 income of the resource indemnity trust fund must be  
 5 allocated to the hazardous waste/ERCEBA special revenue  
 6 account provided for in 75-10-621.

7 (iii) Beginning in fiscal year 1990, 8% of the interest  
 8 income from the resource indemnity trust fund must be  
 9 allocated to the renewable resource development account  
 10 provided for in Title 90, chapter 2.

11 (iv) Beginning in fiscal year 1990, 46% of the interest  
 12 income from the resource indemnity trust fund must be  
 13 allocated to the reclamation and development grants account  
 14 provided for in 90-2-1104.

15 (v) Beginning in fiscal year 1990, 4% of the interest  
 16 income of the resource indemnity trust fund must be  
 17 allocated to the environmental quality protection fund  
 18 provided for in 75-10-704.

19 (3) Any formal budget document prepared by the  
 20 legislature or the executive branch that proposes to  
 21 appropriate funds from the resource indemnity trust interest  
 22 account other than as provided for by the allocations in  
 23 subsection (2) must specify the amount of money from each  
 24 allocation that is proposed to be diverted and the proposed  
 25 use of the diverted funds. A formal budget document includes

1 a--printed--and--publicly--distributed--budget--proposal--or  
2 recommendation--an--introduced--bill--or--a--bill--developed  
3 during--the--legislative--appropriation--process--or--otherwise  
4 during--a--legislative--session."

5 Section--11--Section--17-7-582--MCA--is--amended--to--read:

6 "17-7-502--Statutory--appropriations-----definition---  
7 requisites--for--validity--(1)--A--statutory--appropriation--is--an  
8 appropriation--made--by--permanent--law--that--authorizes--spending  
9 by--a--state--agency--without--the--need--for--a--biennial  
10 legislative--appropriation--or--budget--amendment.

11 (2)--Except--as--provided--in--subsection--(4)--to--be  
12 effective--a--statutory--appropriation--must--comply--with--both  
13 of--the--following--provisions:

14 (a)--The--law--containing--the--statutory--authority--must--be  
15 listed--in--subsection--(3).

16 (b)--The--law--or--portion--of--the--law--making--a--statutory  
17 appropriation--must--specifically--state--that--a--statutory  
18 appropriation--is--made--as--provided--in--this--section.

19 (3)--The--following--laws--are--the--only--laws--containing  
20 statutory--appropriations:--2-9-202--2-17-105--2-18-812  
21 10-3-203--10-3-312--10-3-314--10-4-301--13-37-304--15-1-111  
22 15-25-123--15-31-702--15-36-112--15-37-117--15-65-121  
23 15-70-101--16-1-404--16-1-410--16-1-411--17-3-212--17-5-404  
24 17-5-424--17-5-804--19-8-504--19-9-702--19-9-1007  
25 19-10-205--19-10-305--19-10-506--19-11-512--19-11-513

1 19-11-606--19-12-301--19-13-604--20-6-406--20-8-111  
2 20-9-361--23-5-306--23-5-409--23-5-610--23-5-612--23-5-1016  
3 23-5-1027--27-12-206--37-51-501--39-71-2504--53-6-1507  
4 53-24-206--61-2-406--61-5-121--67-3-205--75-1-1101  
5 75-5-1108--75-11-313--76-12-123--80-2-103--82-11-136  
6 82-11-161--90-3-301--90-4-215--90-4-613--90-6-331--90-9-306  
7 and--section--13--House--Bill--No--861--Laws--of--1985--and  
8 [section--9].

9 (4)--There--is--a--statutory--appropriation--to--pay--the  
10 principal--interest--premiums--and--costs--of--issuing--paying--  
11 and--securing--all--bonds--notes--or--other--obligations--as--due  
12 that--have--been--authorized--and--issued--pursuant--to--the--laws--of  
13 Montana--Agencies--that--have--entered--into--agreements  
14 authorized--by--the--laws--of--Montana--to--pay--the--state  
15 treasurer--for--deposit--in--accordance--with--17-2-101--through  
16 17-2-107--as--determined--by--the--state--treasurer--an--amount  
17 sufficient--to--pay--the--principal--and--interest--as--due--on--the  
18 bonds--or--notes--have--statutory--appropriation--authority--for  
19 such--payments--(in--subsection--(3))--pursuant--to--sec--107-2h-  
20 664--b--1987--the--inclusion--of--39-71-2504--terminates--June  
21 30--1991."#

22 NEW SECTION. Section 10. Codification instruction.  
23 [Section 9] is intended to be codified as an integral part  
24 of Title 82, chapter 4, part 3, and the provisions of Title  
25 82, chapter 4, part 3, apply to [section 9].

1        NEW SECTION.   **Section 11.**   Effective date. [This act] is  
2        effective July 1, 1991.

-End-

## 1 HOUSE BILL NO. 448

2 INTRODUCED BY REAM, T. BECK, GROSFIELD, WEEDING,

3 WILLIAMS, KOEHNKE

4 BY REQUEST OF THE GOVERNOR

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE METAL MINE  
7 RECLAMATION LAWS; IMPLEMENTING THE RECOMMENDATIONS OF THE  
8 GOVERNOR'S MINE PERMITTING IMPROVEMENT ADVISORY COUNCIL;  
9 ~~ALLOCATING-RESOURCE-INDEMNITY-TRUST-INTEREST-INCOME--TO--THE~~  
10 ~~HARD-ROCK--ENVIRONMENTAL--EMERGENCY-ACCOUNT-FOR-ABATEMENT-OF~~  
11 ~~ENVIRONMENTAL----EMERGENCIES;----PROVIDING----A----STATUTORY~~  
12 ~~APPROPRIATION;~~ AMENDING SECTIONS ~~15-38-202,--17-7-502,~~  
13 82-4-303, 82-4-305, 82-4-306, 82-4-335, 82-4-337, 82-4-338,  
14 82-4-339, AND 82-4-355, MCA; AND PROVIDING AN EFFECTIVE  
15 DATE."

16  
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill to  
19 provide guidance to the department of state lands concerning  
20 the adoption of rules to define the types of department  
21 expenses that applicants for hard-rock mine operating  
22 permits will be required to pay through increased permit  
23 application fees. Section 82-4-335(3) of the bill allows the  
24 department to increase the permit application review fee to  
25 fund expenses that are beyond the department's normal

1 operating expenses and that are reasonably necessary in  
2 order for the department to provide a timely and adequate  
3 review, including any environmental review that is conducted  
4 pursuant to the requirements of the Montana Environmental  
5 Policy Act. The department's rules should authorize the use  
6 of the money collected from increased permit application  
7 fees for expenses, such as the hiring of temporary employees  
8 and contracted consultants and data collection and analysis  
9 when, due to workload considerations and statutory  
10 deadlines, the department cannot otherwise perform an  
11 adequate review.

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 82-4-303, MCA, is amended to read:

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

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

21 (2) "Board" means the board of land commissioners or a  
22 state employee or state agency as may succeed to its powers  
23 and duties under this part.

24 (3) "Commissioner" means the commissioner of state  
25 lands provided for in 2-15-3202.



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

3        ~~(4)~~(5) "Department" means the department of state  
4 lands.

5        ~~(5)~~(6) "Disturbed land" means that area of land or  
6 surface water disturbed, beginning at the date of the  
7 issuance of the permit, and it comprises that area from  
8 which the overburden, tailings, waste materials, or minerals  
9 have been removed and tailings ponds, waste dumps, roads,  
10 conveyor systems, leach dumps, and all similar excavations  
11 or covering resulting from the operation and which have not  
12 been previously reclaimed under the reclamation plan.

13        ~~(6)~~(7) "Exploration" means all activities conducted on  
14 or beneath the surface of lands resulting in material  
15 disturbance of the surface for the purpose of determining  
16 the presence, location, extent, depth, grade, and economic  
17 viability of mineralization in those lands, if any, other  
18 than mining for production and economic exploitation, as  
19 well as all roads made for the purpose of facilitating  
20 exploration, except as noted in 82-4-310.

21        ~~(7)~~(8) "Mineral" means any ore, rock, or substance,  
22 other than oil, gas, bentonite, clay, coal, sand, gravel,  
23 phosphate rock, or uranium, taken from below the surface or  
24 from the surface of the earth for the purpose of milling,  
25 concentration, refinement, smelting, manufacturing, or other

1 subsequent use or processing or for stockpiling for future  
2 use, refinement, or smelting.

3        ~~(8)~~(9) "Mining" commences when the operator first mines  
4 ores or minerals in commercial quantities for sale,  
5 beneficiation, refining, or other processing or disposition  
6 or first takes bulk samples for metallurgical testing in  
7 excess of aggregate of 10,000 short tons.

8        ~~(9)~~(10) "Ore processing" means milling, heap leaching,  
9 flotation, vat leaching, or other standard hard-rock mineral  
10 concentration processes.

11        ~~(10)~~(11) "Person" means any person, corporation, firm,  
12 association, partnership, or other legal entity engaged in  
13 exploration for or mining of minerals on or below the  
14 surface of the earth, reprocessing of tailings or waste  
15 materials, or operation of a hard-rock mill.

16        ~~(11)~~(12) "Placer deposit" means naturally occurring,  
17 scattered or unconsolidated valuable minerals in gravel or  
18 alluvium lying above bedrock.

19        ~~(12)~~(13) "Placer or dredge mining" means the mining of  
20 minerals from a placer deposit by a person or persons.

21        ~~(13)~~(14) "Reclamation plan" means the operator's written  
22 proposal, as required and approved by the board, for  
23 reclamation of the land that will be disturbed. The proposal  
24 shall include, to the extent practical at the time of  
25 application for an operating permit:

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

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

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

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

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

14 (f) the method of diverting surface waters around the  
15 disturbed areas where necessary to prevent pollution of  
16 those waters or unnecessary erosion;

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

19 (h) maps and other supporting documents as may be  
20 reasonably required by the department; and

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

23 ~~(14)~~(15) (a) "Small miner" means a person, firm, or  
24 corporation that engages in the business of mining or  
25 reprocessing of tailings or waste materials that does not

1 remove from the earth during any calendar year material in  
2 excess of 36,500 tons in the aggregate, that does not hold  
3 an operating permit under 82-4-335 except for a permit  
4 issued under 82-4-335(2), and that conducts:

5 (i) an operation resulting in not more than 5 acres of  
6 the earth's surface being disturbed and unreclaimed; or

7 (ii) two operations which disturb and leave unreclaimed  
8 less than 5 acres per operation if the respective mining  
9 properties are:

10 (A) the only operations engaged in by the person, firm,  
11 or corporation;

12 (B) at least 1 mile apart at their closest point; and

13 (C) not operated simultaneously except during seasonal  
14 transitional periods not to exceed 30 days.

15 (b) For the purpose of this definition only, the  
16 department shall, in computing the area covered by the  
17 operation, exclude access or haulage roads that are required  
18 by a local, state, or federal agency having jurisdiction  
19 over that road to be constructed to certain specifications  
20 if that public agency notifies the department in writing  
21 that it desires to have the road remain in use and will  
22 maintain it after mining ceases.

23 ~~(15)~~(16) "Surface mining" means all or any part of the  
24 process involved in mining of minerals by removing the  
25 overburden and mining directly from the mineral deposits

1 exposed, including but not limited to open-pit mining of  
 2 minerals naturally exposed at the surface of the earth,  
 3 mining by the auger method, and all similar methods by which  
 4 earth or minerals exposed at the surface are removed in the  
 5 course of mining. Surface mining does not include the  
 6 extraction of oil, gas, bentonite, clay, coal, sand, gravel,  
 7 phosphate rock, or uranium or excavation or grading  
 8 conducted for on-site farming, on-site road construction, or  
 9 other on-site building construction.

10 ~~(16)~~(17) "Underground mining" means all methods of  
 11 mining other than surface mining.

12 ~~(17)~~(18) "Unit of surface-mined area" means that area of  
 13 land and surface water included within an operating permit  
 14 actually disturbed by surface mining during each 12-month  
 15 period of time, beginning at the date of the issuance of the  
 16 permit, and it comprises and includes the area from which  
 17 overburden or minerals have been removed, the area covered  
 18 by mining debris, and all additional areas used in surface  
 19 mining or underground mining operations which by virtue of  
 20 mining use are susceptible to erosion in excess of the  
 21 surrounding undisturbed portions of land.

22 ~~(18)~~(19) "Vegetative cover" means the type of  
 23 vegetation, grass, shrubs, trees, or any other form of  
 24 natural cover considered suitable at time of reclamation."

25 **Section 2.** Section 82-4-305, MCA, is amended to read:

1 **"82-4-305. Exemption -- small miners -- written**  
 2 **agreement.** (1) Except as provided in subsections (3) through  
 3 ~~(7)~~(9), the provisions of this part do not apply to any  
 4 small miner if the small miner annually agrees in writing:

5 (a) that he will not pollute or contaminate any stream;  
 6 (b) that he will provide protection for human and  
 7 animal life through the installation of bulkheads installed  
 8 over safety collars and the installation of doors on tunnel  
 9 portals;

10 (c) that he will provide a map locating his mining  
 11 operations. The map must be of a size and scale determined  
 12 by the department.

13 (d) if the small miner's operations are placer or  
 14 dredge mining, that he shall reclaim all land disturbed by  
 15 the operations to comparable utility and stability as that  
 16 of adjacent areas.

17 (2) For small-miner exemptions obtained after September  
 18 30, 1985, a small miner may not obtain or continue an  
 19 exemption under subsection (1) unless he annually certifies  
 20 in writing:

21 (a) if the small miner is a natural person, that:  
 22 (i) no business association or partnership of which he  
 23 is a member or partner has a small-miner exemption; and  
 24 (ii) no corporation of which he is an officer, director,  
 25 or owner of record of 25% or more of any class of voting

1 stock has a small-miner exemption; or  
 2 (b) if the small miner is a partnership or business  
 3 association, that:  
 4 (i) none of the associates or partners holds a  
 5 small-miner exemption; and  
 6 (ii) none of the associates or partners is an officer,  
 7 director, or owner of 25% or more of any class of voting  
 8 stock of a corporation that has a small-miner exemption; or  
 9 (c) if the small miner is a corporation, that no  
 10 officer, director, or owner of record of 25% or more of any  
 11 class of voting stock of the corporation:  
 12 (i) holds a small-miner exemption;  
 13 (ii) is a member or partner in a business association or  
 14 partnership that holds a small-miner exemption;  
 15 (iii) is an officer, director, or owner of record of 25%  
 16 or more of any class of voting stock of another corporation  
 17 that holds a small-miner exemption.  
 18 (3) A small miner whose operations are placer or dredge  
 19 mining shall post a performance bond equal to the state's  
 20 actual cost of reclaiming the disturbed land, although the  
 21 bond may not exceed \$5,000 per operation. However, if the  
 22 small miner has posted a bond for reclamation with another  
 23 government agency, he is exempt from the requirement of this  
 24 subsection.  
 25 (4) If a small miner who conducts a placer or dredge

1 mining operation fails to reclaim the operation, he is  
 2 liable to the department for all its reasonable costs of  
 3 reclamation, including a reasonable charge for services  
 4 performed by state personnel and state materials and  
 5 equipment used. If the small miner posts a surety bond, the  
 6 surety is liable to the state to the extent of the bond  
 7 amount and the small miner is liable for the remainder of  
 8 the reasonable costs to the state of reclaiming the  
 9 operation.

10 (5) If a small miner who conducts a placer or dredge  
 11 mining operation fails to commence reclamation of the  
 12 operation within 6 months after cessation of mining or  
 13 within an extended period allowed by the department for good  
 14 cause shown or if the small miner fails to diligently  
 15 complete reclamation, the department shall notify the small  
 16 miner by certified mail that it intends to reclaim the  
 17 operation unless the small miner commences reclamation  
 18 within 30 days and diligently completes the reclamation. The  
 19 notice must be mailed to the address stated on the small  
 20 miner exclusion statement or, if the small miner has  
 21 notified the department of a different address by letter or  
 22 in the annual certification form, to the most recent address  
 23 given to the department. If the small miner fails to  
 24 commence reclamation within 30 days or to diligently  
 25 complete reclamation, the department may revoke the small

1 miner exclusion statement, forfeit any bond that has been  
 2 posted with the department, and enter and reclaim the  
 3 operation. If the small miner has not posted a bond with the  
 4 department or if the reasonable costs of reclamation exceed  
 5 the amount of the bond, the department may also collect  
 6 additional reclamation costs, as set forth in subsection  
 7 (6), before or after it incurs those costs.

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

24 (7) A small miner who intends to use a cyanide  
 25 ore-processing reagent shall obtain an operating permit for

1 that part of his operation where the cyanide ore-processing  
 2 reagent will be used or disposed of.

3 (8) The exemption provided in this section does not  
 4 apply to a person whose failure to comply with the  
 5 provisions of this part, the rules adopted under this part,  
 6 or a permit or license issued under this part has resulted  
 7 in the forfeiture of a bond unless that person meets the  
 8 conditions described under 82-4-360.

9 (9) The exemption provided in this section does not  
 10 apply to an area under permit pursuant to 82-4-335 or to an  
 11 area that has been permitted pursuant to 82-4-335 and  
 12 reclaimed by the permittee, the department, or any other  
 13 state or federal agency."

14 **Section 3.** Section 82-4-306, MCA, is amended to read:

15 **"82-4-306. Confidentiality of application information.**

16 (1) Any--and--all Except as provided in subsections (2) and  
 17 (3), any information obtained by the board or by the  
 18 director or his staff by virtue of applications for  
 19 exploration licenses and all information obtained from small  
 20 miners is confidential between the board and the applicant,  
 21 except as to the name of the applicant and the county of  
 22 proposed operation; provided that all activities conducted  
 23 subsequent to exploration and other associated facilities  
 24 shall be public information and conducted under an operating  
 25 permit.

1 ~~(2) It is further provided that any~~ Any information  
 2 ~~obtained by the board or by the director or his staff by~~  
 3 ~~virtue of such applications~~ referenced in subsection (1) is  
 4 properly admissible in any hearing conducted by the  
 5 director, the board, appeals board, or in any judicial  
 6 proceeding to which the director and the applicant are  
 7 parties and is not confidential when a violation of the this  
 8 part or rules adopted under this part has been determined by  
 9 the department or by judicial order.

10 (3) The department may disclose information obtained by  
 11 the board, the commissioner, or department staff from  
 12 exploration license applications and from small miners for  
 13 exploration or mining on state and federal lands that  
 14 identifies the location of exploration and mining activities  
 15 and that describes the surface disturbance that is occurring  
 16 or projected to occur. The department may not disclose a  
 17 licensee's or small miner's proprietary geological  
 18 information.

19 (4) Failure to comply with the secrecy provisions of  
 20 this part shall be is punishable by a fine of up to \$1,000."

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

22 **"82-4-335. Operating permit -- limitation -- fees.** (1)

23 A person may not engage in mining, ore processing, or  
 24 reprocessing of tailings or waste material, construct or  
 25 operate a hard-rock mill, use cyanide ore-processing

1 reagents, or disturb land in anticipation of those  
 2 activities in the state without first obtaining an operating  
 3 permit from the board. A separate operating permit is  
 4 required for each complex.

5 (2) A small miner who intends to use a cyanide  
 6 ore-processing reagent shall obtain an operating permit for  
 7 that part of his operation where the cyanide ore-processing  
 8 reagent will be used or disposed of.

9 (3) Prior to receiving an operating permit from the  
 10 board, a person shall pay the basic permit fee of \$25. The  
 11 department may require a person who is applying for a permit  
 12 pursuant to subsection (1) to pay an additional fee not to  
 13 exceed the actual amount of contractor and employee expenses  
 14 beyond the normal operating expenses of the department  
 15 whenever those expenses are reasonably necessary to provide  
 16 for timely and adequate review of the application, including  
 17 any environmental review conducted under Title 75, chapter  
 18 1, parts 1 and 2. The department may further define these  
 19 expenses by rule. Whenever the department determines that an  
 20 additional fee is necessary and the additional fee will  
 21 exceed \$5,000, the department shall notify the applicant  
 22 that a fee must be paid and submit to the applicant an  
 23 itemized estimate of the proposed expenses. The department  
 24 shall provide the applicant an opportunity to review the  
 25 department's estimated expenses. The applicant may indicate

1 which proposed expenses the applicant considers duplicative  
2 or excessive, if any.

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

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

11 (b) minerals expected to be mined;

12 (c) a proposed reclamation plan;

13 (d) expected starting date of operations;

14 (e) a map showing the specific area to be mined and the  
15 boundaries of the land which will be disturbed, topographic  
16 detail, the location and names of all streams, roads,  
17 railroads, and utility lines on or immediately adjacent to  
18 the area, location of proposed access roads to be built, and  
19 the names and addresses of the surface and mineral owners of  
20 all lands within the mining area, to the extent known to the  
21 applicant;

22 (f) types of access roads to be built and manner of  
23 reclamation of road sites on abandonment;

24 (g) a plan which will provide, within limits of normal  
25 operating procedures of the industry, for completion of the

1 operation;

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

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

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

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

17 †\*†(5) Except as provided in subsection †\*†(7), the  
18 permit provided for in subsection (1) for a large-scale  
19 mineral development as defined in 90-6-302 must be  
20 conditioned to provide that activities under the permit may  
21 not commence until the impact plan is approved under  
22 90-6-307 and until the permittee has provided a written  
23 guarantee to the department and to the hard-rock mining  
24 impact board of compliance within the time schedule with the  
25 commitment made in the approved impact plan, as provided in

1 90-6-307. If the permittee does not comply with that  
 2 commitment within the time scheduled, the board, upon  
 3 receipt of written notice from the hard-rock mining impact  
 4 board, shall suspend the permit until it receives written  
 5 notice from the hard-rock mining impact board that the  
 6 permittee is in compliance.

7 ~~(5)~~(6) When the department determines that a permittee  
 8 has become or will become a large-scale mineral developer  
 9 pursuant to 82-4-339 and 90-6-302(4) and provides notice as  
 10 required under 82-4-339, within 6 months of receiving the  
 11 notice, the permittee shall provide the board with proof  
 12 that he has obtained a waiver of the impact plan requirement  
 13 from the hard-rock mining impact board or that he has filed  
 14 an impact plan with the hard-rock mining impact board and  
 15 the appropriate county or counties. If the permittee does  
 16 not file the required proof or if the hard-rock mining  
 17 impact board certifies to the board that the permittee has  
 18 failed to comply with the hard-rock mining impact review and  
 19 implementation requirements in Title 90, chapter 6, parts 3  
 20 and 4, the board shall suspend the permit until the  
 21 permittee files the required proof or until the hard-rock  
 22 mining impact board certifies that the permittee has  
 23 complied with the hard-rock mining impact review and  
 24 implementation requirements.

25 ~~(6)~~(7) Compliance with 90-6-307 is not required for

1 exploration and bulk sampling for metallurgical testing when  
 2 the aggregate samples are less than 10,000 tons.

3 ~~(7)~~(8) A person may not be issued an operating permit  
 4 if that person's failure to comply with the provisions of  
 5 this part, the rules adopted under this part, or a permit or  
 6 license issued under this part has resulted in the  
 7 forfeiture of a bond unless that person meets the conditions  
 8 described in 82-4-360.

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

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

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

21 (b) if the person is a partnership, corporation, or  
 22 other business association, provides the certification  
 23 required by subsection (9)(a)(i) or (9)(a)(ii), as  
 24 applicable, for any partners, officers, directors, owners of  
 25 10% or more of any class of voting stock, and business



1 association members."

2 **Section 5.** Section 82-4-337, MCA, is amended to read:

3 "82-4-337. Inspection -- issuance of operating permit  
4 -- modification. (1) (a) The board shall cause all  
5 applications for operating permits to be reviewed for  
6 completeness within 30 days of receipt. The board shall  
7 notify the applicant concerning completeness as soon as  
8 possible. An application is considered complete unless the  
9 applicant is notified of any deficiencies within 30 days of  
10 receipt.

11 (b) Unless the review period is extended as provided in  
12 this section, the board shall review the adequacy of the  
13 proposed reclamation plan and plan of operation within 30  
14 days of the determination that the application is complete  
15 or within 60 days of receipt of the application if the board  
16 does not notify the applicant of any deficiencies in the  
17 application. If the applicant is not notified of  
18 deficiencies or inadequacies in the proposed reclamation  
19 plan and plan of operation within such time period, the  
20 operating permit shall be issued upon receipt of the bond as  
21 required in 82-4-338 and pursuant to the requirements of  
22 subsection (1)(c). The department shall promptly notify the  
23 applicant of the form and amount of bond which will be  
24 required.

25 (c) No permit may be issued until:

1 (i) sufficient bond has been submitted pursuant to  
2 82-4-338;

3 (ii) the information and certification have been  
4 submitted pursuant to 82-4-335(9); and

5 (iii) the department has found that permit issuance is  
6 not prohibited by 82-4-335(8) or 82-4-341(6).

7 ~~(c)~~(d) (i) Prior to issuance of a permit, the  
8 department shall inspect the site unless the department has  
9 failed to act on the application within the time prescribed  
10 in subsection (1)(b). If the site is not accessible due to  
11 extended adverse weather conditions, the department may  
12 extend the time period prescribed in subsection (1)(b) by  
13 not more than 180 days to allow inspection of the site and  
14 reasonable review. The department must serve written notice  
15 of extension upon the applicant in person or by certified  
16 mail, and any such extension is subject to appeal to the  
17 board in accordance with the Montana Administrative  
18 Procedure Act.

19 (ii) If the department determines that additional time  
20 is needed to review the application and reclamation plan for  
21 a major operation, the department and the applicant shall  
22 negotiate to extend the period prescribed in subsection  
23 (1)(b) by not more than 365 days in order to permit  
24 reasonable review.

25 (iii) Failure of the board to act upon a complete

1 application within the extension period constitutes approval  
2 of the application, and the permit shall be issued promptly  
3 upon receipt of the bond as required in 82-4-338.

4 (2) The operating permit shall be granted for the  
5 period required to complete the operation and shall be valid  
6 until the operation authorized by the permit is completed or  
7 abandoned unless the permit is suspended or revoked by the  
8 board as provided in this part.

9 (3) The operating permit shall provide that the  
10 reclamation plan may be modified by the board, upon proper  
11 application of the permittee or department, after timely  
12 notice and opportunity for hearing, at any time during the  
13 term of the permit and for any of the following reasons:

14 (a) to modify the requirements so they will not  
15 conflict with existing laws;

16 (b) when the previously adopted reclamation plan is  
17 impossible or impracticable to implement and maintain;

18 (c) when significant environmental problem situations  
19 are revealed by field inspection."

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

21 **"82-4-338. Performance bond.** (1) The applicant shall  
22 file with the department a bond payable to the state of  
23 Montana with surety satisfactory to the department in the  
24 ~~penal~~ sum to be determined by the department of not less  
25 than \$200 or more than \$2,500 for each acre or fraction

1 thereof of the disturbed area, conditioned upon the faithful  
2 performance of the requirements of this part and the rules  
3 of the board. In lieu of such bond, the applicant may file  
4 with the board a cash deposit, an assignment of a  
5 certificate of deposit, or other surety acceptable to the  
6 board. Regardless of the above limits, the bond shall not be  
7 less than the estimated cost to the state to complete the  
8 reclamation of the disturbed land. A public or governmental  
9 agency shall not be required to post a bond under the  
10 provisions of this part. A blanket performance bond covering  
11 two or more operations may be accepted by the board. Such  
12 blanket bond shall adequately secure the estimated total  
13 number of acres of disturbed land.

14 (2) The department shall review the amount of each bond  
15 at least every 5 years and shall consult with the licensee  
16 or permittee if the review indicates that the bond level  
17 should be adjusted. When determined by the department that  
18 the set bonding level of a permit or license does not  
19 represent the present costs of reclamation, the department  
20 may modify the bonding requirements of that permit or  
21 license. The department shall make written findings, give  
22 the licensee or permittee a copy of the findings, and, for  
23 operating permits, publish notice of the findings in a  
24 newspaper of general circulation in the county in which the  
25 operation is located. The permittee or any person with an

1 interest that may be adversely affected may obtain a  
 2 contested case hearing under the provisions of the Montana  
 3 Administrative Procedure Act on the adjusted bond level by  
 4 filing with the department within 30 days of the notice a  
 5 written request for hearing.

6 ~~(2)~~(3) No A bond filed in accordance with the  
 7 provisions of this part ~~shall~~ may not be released by the  
 8 department until the provisions of this part, the rules  
 9 adopted pursuant ~~thereto~~ to this part, and this reclamation  
 10 plan have been fulfilled.

11 ~~(3)~~(4) No bond filed for an operating permit obtained  
 12 under 82-4-335 may be released until the public has been  
 13 provided an opportunity for a hearing."

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

15 **"82-4-339. Annual report of activities by permittee --**  
 16 **fee -- notice of large-scale mineral developer status. (1)**  
 17 **Within 30 days after completion or abandonment of operations**  
 18 **on an area under permit or within 30 days after each**  
 19 **anniversary date of the permit, whichever is earlier, or at**  
 20 **such later date as may be provided by rules of the board and**  
 21 **each year thereafter until reclamation is completed and**  
 22 **approved, the permittee shall pay the annual fee of \$25 and**  
 23 **shall file a report of activities completed during the**  
 24 **preceding year on a form prescribed by the board which**  
 25 **report shall:**

- 1 (a) identify the permittee and the permit number;  
 2 (b) locate the operation by subdivision, section,  
 3 township, and range and with relation to the nearest town or  
 4 other well-known geographic feature;  
 5 (c) estimate acreage to be newly disturbed by operation  
 6 in the next 12-month period;  
 7 (d) include the number of persons on the payroll for  
 8 the previous permit year and for the next permit year at  
 9 intervals that the department considers sufficient to enable  
 10 a determination of the permittee's status under 90-6-302(4);  
 11 **and**  
 12 (e) update the information required in 82-4-335(4)(a);  
 13 **and**  
 14 (f) update any maps previously submitted or  
 15 specifically requested by the board. Such maps shall show:  
 16 (i) the permit area;  
 17 (ii) the unit of disturbed land;  
 18 (iii) the area to be disturbed during the next 12-month  
 19 period;  
 20 (iv) if completed, the date of completion of operations;  
 21 (v) if not completed, the additional area estimated to  
 22 be further disturbed by the operation within the following  
 23 permit year; and  
 24 (vi) the date of beginning, amount, and current status  
 25 of reclamation performed during the previous 12 months.

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

7 **Section 8.** Section 82-4-355, MCA, is amended to read:

8 "82-4-355. Action for damages to water supply --  
 9 replacement. (1) An owner of an interest in real property  
 10 who obtains all or part of his supply of water for  
 11 beneficial uses, as defined in 85-2-102, from an underground  
 12 source other than a subterranean stream having a permanent,  
 13 distinct, and known channel may sue the operator engaged in  
 14 a-mining-or-exploration an operation for which a license is  
 15 required pursuant to 82-4-332 or for which a permit is  
 16 required pursuant to 82-4-335 to recover damages for loss in  
 17 quality or quantity of the water supply resulting from  
 18 mining or exploration. The owner is required to exhaust the  
 19 administrative remedy under subsection (2) prior to filing  
 20 suit.

21 (2) (a) An owner described in subsection (1) may file a  
 22 complaint with the department detailing the loss in quality  
 23 or quantity of water. Upon receipt of a valid complaint, the  
 24 department:

25 (i) shall investigate the statements and charges in the

1 complaint, using all available information, including  
 2 monitoring data gathered at the exploration or mine site;

3 (ii) may require the operator, if necessary, to install  
 4 monitoring wells or other practices that may be needed to  
 5 determine the cause of water loss, if there is a loss, in  
 6 terms of quantity and quality;

7 (iii) shall issue a written finding specifying the cause  
 8 of the water loss, if there is a loss, in terms of quantity  
 9 and quality;

10 (iv) shall, if it determines that the preponderance of  
 11 evidence indicates that the loss is caused by an exploration  
 12 or mining operation, order the operator, in compliance with  
 13 Title 85, chapter 2, to provide the needed water immediately  
 14 on a temporary basis and within a reasonable time replace  
 15 the water in like quality, quantity, and duration. If the  
 16 water is not replaced, the department shall order the  
 17 suspension of the operator's exploration or operating permit  
 18 until such time as the operator provides substitute water,  
 19 except that nothing in this section preempts Title 85,  
 20 chapter 2. The operator may not be required to replace a  
 21 junior right if the operator's withdrawal or dewatering is  
 22 not in excess of his senior right.

23 (b) If the department determines that there is a great  
 24 potential that surface or subsurface water quality and  
 25 quantity may be adversely affected by a mining or

1 exploration operation, the operator shall install a water  
 2 quality monitoring program, water quantity monitoring  
 3 program, or both, which must be approved by the department  
 4 prior to the commencement of exploration or mining."

5 NEW SECTION. Section 9. ~~hard-rock-----environmental~~  
 6 ~~emergency-account----statutory--appropriation-----abatement~~  
 7 ABATEMENT of environmental emergencies. ~~{1}--There--is-a~~  
 8 ~~hard-rock-environmental-emergency-account-within--the--state~~  
 9 ~~special-revenue-fund-established-in-17-2-102.~~

10 ~~{2}--On--July--17--1991,--and--at--the--beginning--of--each~~  
 11 ~~succeeding--biennium,--there--is--statutorily--appropriated,--as~~  
 12 ~~provided---in---17-7-502,--to--the--hard-rock--environmental~~  
 13 ~~emergency-account-\$200,000--from--the--interest--income--of--the~~  
 14 ~~resource--indemnity--trust--fund,--except--that--if--at--the~~  
 15 ~~beginning--of--a--biennium--the--unobligated--cash--balance--in--the~~  
 16 ~~hard-rock-environmental-emergency-account:~~

17 ~~{a)--equals--or--exceeds--\$200,000,--no--allocation--may--be~~  
 18 ~~made,--or~~

19 ~~{b)--is--less--than--\$200,000,--then--an--amount--equal--to--the~~  
 20 ~~difference--between--the--unobligated--cash--balance--and--\$200,000~~  
 21 ~~must--be--allocated--to--the--hard-rock--environmental--emergency~~  
 22 ~~account--from--the--interest--income--of--the--resource--indemnity~~  
 23 ~~trust--fund.~~

24 ~~{3}{1}~~ Whenever an environmental emergency exists, as  
 25 determined by the department, at an active, temporarily

1 abandoned, or permanently abandoned exploration, mining, ore  
 2 processing, or hard-rock mill site, the department may enter  
 3 the site and may APPLY FOR AND, IF APPROVED BY THE GOVERNOR,  
 4 use the funds in the hard-rock environmental emergency  
 5 CONTINGENCY account CREATED IN 75-1-1101 to abate the  
 6 situation on either a temporary or a permanent basis, or  
 7 both.

8 ~~{4}{2}~~ The department may bring an action against the  
 9 operator to recover the abatement costs in the district  
 10 court of the first judicial district in Lewis and Clark  
 11 County. Nothing in this section affects the right of the  
 12 department to retain or pursue forfeiture of any bond posted  
 13 pursuant to 82-4-338. Expenditures from the hard-rock  
 14 environmental emergency CONTINGENCY account that are  
 15 recovered under this subsection must be deposited in the  
 16 resource--indemnity--trust--fund ENVIRONMENTAL CONTINGENCY  
 17 ACCOUNT.

18 ~~Section-10,--Section-15-30-202,--MCA,--is--amended--to--read:~~  
 19 ~~"15-30-202---Investment-of-resource-indemnity-trust-fund~~  
 20 ~~---expenditure---minimum-balance,--{1}--All--money--paid--into~~  
 21 ~~the--resource--indemnity--trust--fund,--including--money--payable~~  
 22 ~~into--the--fund--under--the--provisions--of--15-37-117--and--money~~  
 23 ~~recovered--by--the--department--of--state--lands--pursuant--to~~  
 24 ~~{section--9},--shall--be--invested--at--the--discretion--of--the~~  
 25 ~~board--of--investments,--All--the--net--earnings--accruing--to--the~~

1 resource indemnity trust fund shall annually be added to the  
 2 trust fund until it has reached the sum of \$10 million.  
 3 Thereafter, only the net earnings may be appropriated and  
 4 expended until the fund reaches \$100 million. Thereafter,  
 5 all net earnings and all receipts shall be appropriated by  
 6 the legislature and expended, provided that the balance in  
 7 the fund may never be less than \$100 million.

8 (2) (a) At the beginning of each biennium, there is  
 9 allocated from the interest income of the resource indemnity  
 10 trust fund:

11 (i) an amount not to exceed \$175,000 to the  
 12 environmental contingency account pursuant to the conditions  
 13 of 75-1-1101; and

14 (ii) beginning in fiscal year 1992, an amount not to  
 15 exceed \$50,000 to the oil and gas production damage  
 16 mitigation account pursuant to the conditions of 82-11-161,  
 17 and

18 (iii) an amount not to exceed \$200,000 to the hard rock  
 19 environmental emergency account pursuant to the conditions  
 20 of {section 9}.

21 (b) The remainder of the interest income is allocated  
 22 as follows:

23 (i) Beginning in fiscal year 1982, provided the amount  
 24 in the resource indemnity trust fund is greater than \$10  
 25 million, 30% of the interest income of the resource

1 indemnity trust fund must be allocated to the water  
 2 development state special revenue account created by  
 3 85-1-604.

4 (ii) Beginning in fiscal year 1988, 12% of the interest  
 5 income of the resource indemnity trust fund must be  
 6 allocated to the hazardous waste/CERCLA special revenue  
 7 account provided for in 75-10-621.

8 (iii) Beginning in fiscal year 1990, 8% of the interest  
 9 income from the resource indemnity trust fund must be  
 10 allocated to the renewable resource development account  
 11 provided for in Title 90, chapter 2.

12 (iv) Beginning in fiscal year 1990, 46% of the interest  
 13 income from the resource indemnity trust fund must be  
 14 allocated to the reclamation and development grants account  
 15 provided for in 90-2-1104.

16 (v) Beginning in fiscal year 1990, 4% of the interest  
 17 income of the resource indemnity trust fund must be  
 18 allocated to the environmental quality protection fund  
 19 provided for in 75-10-704.

20 (3) Any formal budget document prepared by the  
 21 legislature or the executive branch that proposes to  
 22 appropriate funds from the resource indemnity trust interest  
 23 account other than as provided for by the allocations in  
 24 subsection (2) must specify the amount of money from each  
 25 allocation that is proposed to be diverted and the proposed

1 use-of-the-diverted-funds,-A-formal-budget-document-includes  
2 a--printed--and--publicly--distributed--budget--proposal--or  
3 recommendation,-an--introduced--bill,-or--a-bill-developed  
4 during-the-legislative-appropriation--process--or--otherwise  
5 during-a-legislative-session;#

6 Section-11,-Section-17-7-502,-MCA,-is-amended-to-read:

7 (1)-Statutory--appropriations-----definition---  
8 requisites-for-validity,-(1)-A-statutory-appropriation-is-an  
9 appropriation-made-by-permanent-law-that-authorizes-spending  
10 by--a--state--agency--without--the--need--for--a--biennial  
11 legislative-appropriation-or-budget-amendment;

12 (2)-Except---as--provided--in--subsection--(4),--to-be  
13 effective,-a-statutory-appropriation-must-comply--with--both  
14 of-the-following-provisions:

15 (a)-The--law-containing-the-statutory-authority-must-be  
16 listed-in-subsection-(3);

17 (b)-The-law-or-portion-of-the-law-making-a--statutory  
18 appropriation--must--specifically--state--that--a--statutory  
19 appropriation-is-made-as-provided-in-this-section;

20 (3)-The--following--laws--are--the-only-laws-containing  
21 statutory--appropriations,-2-9-202,-2-17-105,-2-18-812,  
22 10-3-203,-10-3-312,-10-3-314,-10-4-301,-13-37-304,-15-1-111,  
23 15-25-123,-15-31-782,-15-36-112,-15-37-117,-15-65-121,  
24 15-78-101,-16-1-404,-16-1-410,-16-1-411,-17-3-212,-17-5-404,  
25 17-5-424,-17-5-804,-19-8-504,-19-9-782,-19-9-1007;

1 19-10-205,-19-10-305,-19-10-506,-19-11-512,-19-11-513,  
2 19-11-606,-19-12-301,-19-13-604,-20-6-406,-20-8-111,  
3 20-9-361,-23-5-306,-23-5-409,-23-5-610,-23-5-612,-23-5-1016,  
4 23-5-1027,-27-12-206,-37-51-501,-39-71-2504,-53-6-1507,  
5 53-24-206,-61-2-406,-61-5-121,-67-3-205,-75-1-1101,  
6 75-5-1100,-75-11-313,-76-12-123,-80-2-103,-82-11-136,  
7 82-11-161,-90-3-301,-90-4-215,-90-4-613,-90-6-331,-90-9-306,  
8 and--section--13,-House--Bill--No--861,-laws-of-1985,-and  
9 {section-9};

10 (4)-There-is-a--statutory--appropriation--to--pay--the  
11 principal,-interest,-premiums,-and-costs-of-issuing,-paying,  
12 and-securing-all-bonds,-notes,-or-other-obligations,-as-due,  
13 that-have-been-authorized-and-issued-pursuant-to-the-laws-of  
14 Montana---Agencies---that---have--entered--into--agreements  
15 authorized--by--the--laws--of--Montana--to--pay--the--state  
16 treasurer,-for--deposit-in-accordance-with-17-2-101-through  
17 17-2-107,-as-determined-by-the-state--treasurer,-an--amount  
18 sufficient--to--pay-the-principal-and-interest-as-due-on-the  
19 bonds-or-notes-have-statutory--appropriation--authority--for  
20 such--payments,-{In-subsection-(3)},-pursuant-to-sec-107-Chr  
21 664,-B,-1987,-the-inclusion-of--39-71-2504--terminates--June  
22 30,-1991;#

23 NEW SECTION. Section 10. Codification instruction.  
24 [Section 9] is intended to be codified as an integral part  
25 of Title 82, chapter 4, part 3, and the provisions of Title

HB 0448/03

1 82, chapter 4, part 3, apply to [section 9].  
2 NEW SECTION. **Section 11. Effective date.** [This act] is  
3 effective July 1, 1991.

-End-