### SENATE BILL NO. 283

# INTRODUCED BY DOHERTY, T. BECK, GRINDE BY REQUEST OF THE DEPARTMENT OF STATE LANDS

	IN THE SENATE
FEBRUARY 5, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 6, 1991	FIRST READING.
FEBRUARY 14, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 16, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 1.
	TRANSMITTED TO HOUSE.
	IN THE HOUSE
FEBRUARY 16, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 18, 1991	FIRST READING.
MARCH 13, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 16, 1991	SECOND READING, CONCURRED IN.
MARCH 18, 1991	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE.
	IN THE SENATE

RECEIVED FROM HOUSE.

REPORTED CORRECTLY ENROLLED.

SENT TO ENROLLING.

MARCH 19, 1991

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not resume.

and duties under this part.

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	THE BILL NO.
2	INTRODUCED BY Drosty T. Buch - haven Har Corner
3	BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4	,
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE
6	ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW;
7	EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE
8	VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE
9	COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN
10	OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR
11	SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS
12	82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN
13	EFFECTIVE DATE."
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15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16	Section 1. Section 82-4-303, MCA, is amended to read:
17	"82-4-303. Definitions. As used in this part, unless
18	the context indicates otherwise, the following definitions
19	apply:

(1) "Abandonment of surface or underground mining" may

(2) "Board" means the board of land commissioners or a

be presumed when it is shown that continued operation will

state employee or state agency as may succeed to its powers

Games 2003

3	$\{3\}$ (4) "Cyanide ore-processing reagent" means cyanide
4	or a cyanide compound used as a reagent in leaching
5	operations.
6	$\{4\}$ (5) "Department" means the department of state
7	lands.
8	(5)(6) "Disturbed land" means that area of land or
9	surface water disturbed, beginning at the date of the
10	issuance of the permit, and it comprises that area from
11	which the overburden, tailings, waste materials, or minerals
12	have been removed and tailings ponds, waste dumps, roads,
13	conveyor systems, leach dumps, and all similar excavations
14	or covering resulting from the operation and which have not
15	been previously reclaimed under the reclamation plan.
16	(6)(7) "Exploration" means all activities conducted on
17	or beneath the surface of lands resulting in material
18	disturbance of the surface for the purpose of determining
19	the presence, location, extent, depth, grade, and economic
20	viability of mineralization in those lands, if any, other
21	than mining for production and economic exploitation, as
22	well as all roads made for the purpose of facilitating
23	exploration, except as noted in 82-4-310.
24	(7)(8) "Mineral" means any ore, rock, or substance,

other than oil, gas, bentonite, clay, coal, sand, gravel,

lands provided for in 2-15-3202.

(3) "Commissioner" means the commissioner of state

phosphate rock, or uranium, taken from below the surface or 1 from the surface of the earth for the purpose of milling, 2 concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting. 5

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- (8) (9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.
- 49+(10) "Ore processing" means milling, heap leaching, 11 flotation, vat leaching, or other standard hard-rock mineral 12 13 concentration processes.
  - (18)(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.
  - (11) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.
- #12+(13) "Placer or dredge mining" means the mining of 22 minerals from a placer deposit by a person or persons. 23
- (14) "Reclamation plan" means the operator's written 24 proposal, as required and approved by the board, for 25

- reclamation of the land that will be disturbed. The proposal shall include, to the extent practical at the time of 2 application for an operating permit: 3
- (a) a statement of the proposed subsequent use of the land after reclamation;
- (b) plans for surface gradient restoration to a surface 6 suitable for the proposed subsequent use of the land after 7 reclamation is completed and the proposed method of accomplishment;
- (c) the manner and type of revegetation or other 10 surface treatment of disturbed areas; 11
- (d) procedures proposed to avoid foreseeable situations 12 13 of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and 14 15 fauna in or adjacent to the area;
  - (e) the method of disposal of mining debris;

- (f) the method of diverting surface waters around the 17 disturbed areas where necessary to prevent pollution of 18 19 those waters or unnecessary erosion;
- (q) the method of reclamation of stream channels and 20 stream banks to control erosion, siltation, and pollution; 21
- 22 (h) maps and other supporting documents as may be 23 reasonably required by the department; and
- (i) a time schedule for reclamation that meet: the 24 25 requirements of 82-4-336.

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(14)(15) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

- 8 (i) an operation resulting in not more than 5 acres of 9 the earth's surface being disturbed and unreclaimed; or
- 10 (ii) two operations which disturb and leave unreclaimed
  11 less than 5 acres per operation if the respective mining
  12 properties are:
  - (A) the only operations engaged in by the person, firm, or corporation;
    - (B) at least 1 mile apart at their closest point; and
  - (C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.
  - (b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

tistical "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

13 (16)(17) "Underground mining" means all methods of
14 mining other than surface mining.

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

25 (18)(19) "Vegetative cover" means the type of

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vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

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Section 2. Section 82-4-361, MCA, is amended to read:

- "82-4-361. Violation -- penalties -- waiver. (1) A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit, or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.
- (2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.
- (3) The civil penalties provided for in this section

1 may be waived for a minor violation if it is determined that 2 the violation does not represent potential harm to public 3 health, public safety, or the environment and does not 4 impair the administration of this part. The board shall adopt rules to implement and administer a procedure for 5

#### Section 3. Section 82-4-362, MCA, is amended to read:

waiver of a penalty under this subsection."

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, the rules adopted under this part, or the a license, permit, or reclamation plan have has not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. The commissioner may order immediate suspension of a permit whenever he makes a finding 17 that a violation of this part, the rules adopted under this 18 part, or a license or permit, including the reclamation 19 plan, is creating an imminent danger to the health or safety 20 of persons outside the permit area. The notice or order must 21 be handed to the licensee or permittee in person or served 22 by certified or registered mail addressed to the permanent 23 address shown on the application for a license or permit. 24 The notice of noncompliance must specify in what respects 25 the operator has failed to comply with this part, the rules adopted under this part, or the reclamation plan.

- (2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.
  - (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."
- NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1991.

#### STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0283, as introduced.

#### DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the enforcement provisions of the metal mine reclamation law; expanding the scope of enforcement actions to include violations of a license or permit; and clarifying that the Commissioner of State Lands may suspend the permit of an operation creating an imminent danger to the health or safety of persons outside the permit area.

#### ASSUMPTIONS:

- 1. This bill will not affect the revenues or expenditures of the Department of State Lands.
- 2. This bill clarifies conditions under which the Commissioner of State Lands may suspend a license, permit, or reclamation plan.

#### FISCAL IMPACT:

None

ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning

STEVE DOHERTY, PRIMARY SPONSOR

2/12/91

DATE

Fiscal Note for <u>SB0283</u>, as introduced.

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## APPROVED BY COMM. ON NATURAL RESOURCES

INTRODUCED BY DWAY T. B. - LAND Har Course

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW: 6 7 EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE VIOLATIONS OF A LICENSE OR PERMIT: CLARIFYING THAT THE COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN 9 OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR 10 11 SAFETY OF PERSONS OUTSIDE THE PERMIT AREA: AMENDING SECTIONS 12 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN EFFECTIVE DATE." 13

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

Section 1. Section 82-4-303, MCA, is amended to read:

- (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.

1	(3)	"Commissioner"	means	the	commissioner	of	state
2	lands pr	ovided for in 2	-15-3202	<u>.</u>			

- 3 (3)(4) "Cyanide ore-processing reagent" means cyanide
  4 or a cyanide compound used as a reagent in leaching
  5 operations.
- 6 +4+(5) "Department" means the department of state 7 lands.
- 8 (5)(6) "Disturbed land" means that area of land or
  9 surface water disturbed, beginning at the date of the
  10 issuance of the permit, and it comprises that area from
  11 which the overburden, tailings, waste materials, or minerals
  12 have been removed and tailings ponds, waste dumps, roads,
- conveyor systems, leach dumps, and all similar excavations
- or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.
- 16 (6)(7) "Exploration" means all activities conducted on
- 17 or beneath the surface of lands resulting in material
- 18 disturbance of the surface for the purpose of determining
- 19 the presence, location, extent, depth, grade, and economic
- 20 viability of mineralization in those lands, if any, other
- 21 than mining for production and economic exploitation, as
- 22 well as all roads made for the purpose of facilitating
- exploration, except as noted in 82-4-310.
- 24 (77)(8) "Mineral" means any ore, rock, or substance,
- other than oil, gas, bentonite, clay, coal, sand, gravel,

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phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

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

(12)(13) "Placer or dredge mining" means the mining of 22 minerals from a placer deposit by a person or persons. 23

24 +13+(14) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for 25

reclamation of the land that will be disturbed. The proposal 1 shall include, to the extent practical at the time of 2 application for an operating permit:

- (a) a statement of the proposed subsequent use of the land after reclamation;
- (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after 7 reclamation is completed and the proposed method of 9 accomplishment:
- (c) the manner and type of revegetation or other 10 11 surface treatment of disturbed areas;
- (d) procedures proposed to avoid foreseeable situations 1.2 of public nuisance, endangerment of public safety, damage to 13 14 human life or property, or unnecessary damage to flora and fauna in or adjacent to the area; 15
  - (e) the method of disposal of mining debris;
- (f) the method of diverting surface waters around the 17 disturbed areas where necessary to prevent pollution of 18 19 those waters or unnecessary erosion;
- (g) the method of reclamation of stream channels and 20 stream banks to control erosion, siltation, and pollution; 21
- (h) maps and other supporting documents as may be 22 23 reasonably required by the department; and
- (i) a time schedule for reclamation that meets the 24 25 requirements of 82-4-336.

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- 8 (i) an operation resulting in not more than 5 acres of9 the earth's surface being disturbed and unreclaimed; or
  - (ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:
- (A) the only operations engaged in by the person, firm,or corporation;
  - (B) at least 1 mile apart at their closest point; and
  - (C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.
  - (b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

1 (15) (16) "Surface mining" means all or any part of the process involved in mining of minerals by removing the 2 overburden and mining directly from the mineral deposits 3 exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, 6 mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the 7 8 course of mining. Surface mining does not include the 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or 10 grading conducted for on-site farming, on-site road construction, or 11 12 other on-site building construction.

- 13 (16)(17) "Underground mining" means all methods of
  14 mining other than surface mining.
  - fiff) (18) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of mining use are susceptible to erosion in excess of the
- 25 (18)(19) "Vegetative cover" means the type of

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Section 2. Section 82-4-361, MCA, is amended to read:

\*\*82-4-361. Violation — penalties — waiver. (1) A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit, or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

- may be waived for a minor violation if it is determined that
  the violation does not represent potential harm to public
  health, public safety, or the environment and does not
  impair the administration of this part. The board shall
  adopt rules to implement and administer a procedure for
- 7 Section 3. Section 82-4-362, MCA, is amended to read:

waiver of a penalty under this subsection."

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, the rules adopted under this part, or the a license, permit, or reclamation plan have has not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. The commissioner may order immediate suspension of a permit whenever he makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance must specify in what respects

the operator has failed to comply with this part, the rules

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- 2 (2) If the licensee or permittee has not complied with 3 the requirements set forth in the notice of noncompliance or 4 order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee 7 or permittee is entitled to a hearing before the department 8 on the revocation of a permit or license or the forfeiture 9 of a performance bond if a hearing is requested within 30 10 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken 11 12 and must give notice of opportunity for a hearing. If a 13 hearing is requested within the 30-day period, the permit or 14 license may not be revoked and the bond may not be forfeited 15 until a final decision is made by the department.
  - (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."
- NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1991.

lands.

1	Senate BILL NO. 283
2	INTRODUCED BY Drosty T. Buch - Lawy Har Course-
3	BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4	

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING 6 ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW; 7 EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE 8 VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE 9 COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN 10 OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR 11 SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS 12 82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN

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Section 1. Section 82-4-303, MCA, is amended to read:

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- 23 (2) "Board" means the board of land commissioners or a 24 state employee or state agency as may succeed to its powers 25 and duties under this part.

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13 conveyor systems, leach dumps, and all similar excavations
14 or covering resulting from the operation and which have not

been previously reclaimed under the reclamation plan.

(6)(7) "Exploration" means all activities conducted on

or beneath the surface of lands resulting in material

disturbance of the surface for the purpose of determining

the presence, location, extent, depth, grade, and economic

viability of mineralization in those lands, if any, other

than mining for production and economic exploitation, as

well as all roads made for the purpose of facilitating

exploration, except as noted in 82-4-310.

24 (7)(8) "Mineral" means any ore, rock, or substance, 25 other than oil, gas, bentonite, clay, coal, sand, gravel,

THIRD READING

phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

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- f13+(14) "Reclamation plan" means the operator's written 24 proposal, as required and approved by the board, for 25

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- 3 application for an operating permit:
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- (b) plans for surface gradient restoration to a surface 7 suitable for the proposed subsequent use of the land after 8 reclamation is completed and the proposed method of accomplishment;
- 10 (c) the manner and type of revegetation or other 11 surface treatment of disturbed areas;
- 12 (d) procedures proposed to avoid foreseeable situations 13 of public nuisance, endangerment of public safety, damage to 14 human life or property, or unnecessary damage to flora and 15 fauna in or adjacent to the area;
- 16 (e) the method of disposal of mining debris:
- 17 (f) the method of diverting surface waters around the 18 disturbed areas where necessary to prevent pollution of 19 those waters or unnecessary erosion;
- 20 (q) the method of reclamation of stream channels and 21 stream banks to control erosion, siltation, and pollution:
- 22 (h) maps and other supporting documents as may be 23 reasonably required by the department; and
- 24 (i) a time schedule for reclamation that meets the 25 requirements of 82-4-336.

(14)(15) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

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- (i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or
- 10 (ii) two operations which disturb and leave unreclaimed
  11 less than 5 acres per operation if the respective mining
  12 properties are:
- (A) the only operations engaged in by the person, firm,or corporation;
  - (B) at least 1 mile apart at their closest point; and
- (C) not operated simultaneously except during seasonaltransitional periods not to exceed 30 days.
  - (b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(15)(16) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

13 (16)(17) "Underground mining" means all methods of
14 mining other than surface mining.

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

(19)(19) "Vegetative cover" means the type of

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vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

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Section 2. Section 82-4-361, MCA, is amended to read:

- \*82-4-361. Violation -- penalties -- waiver. (1) A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit, or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.
- (2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.
  - (3) The civil penalties provided for in this section

may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection."

Section 3. Section 82-4-362, MCA, is amended to read:

7 \*82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, the rules adopted under 10 this part, or the a license, permit, or reclamation plan 11 have has not been complied with within the time limits set 12 by the department or board or by this part, the department 13 shall serve a notice of noncompliance on the licensee or 14 permittee or, if necessary, the commissioner shall order the suspension of the permit. The commissioner may order 15 16 immediate suspension of a permit whenever he makes a finding 17 that a violation of this part, the rules adopted under this 18 part, or a license or permit, including the reclamation 19 plan, is creating an imminent danger to the health or safety 20 of persons outside the permit area. The notice or order must 21 be handed to the licensee or permittee in person or served

by certified or registered mail addressed to the permanent

address shown on the application for a license or permit.

The notice of noncompliance must specify in what respects

the operator has failed to comply with this part, the rules

adopted under this part, or the reclamation plan.

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- 2 (2) If the licensee or permittee has not complied with 3 the requirements set forth in the notice of noncompliance or 4 order of suspension within the time limits set therein, the 5 permit may be revoked by order of the board and the 6 performance bond forfeited to the department. The licensee 7 or permittee is entitled to a hearing before the department 8 on the revocation of a permit or license or the forfeiture 9 of a performance bond if a hearing is requested within 30 10 days after service of notice as provided in subsection (1). 11 The notice must state when those measures may be undertaken 12 and must give notice of opportunity for a hearing. If a 13 hearing is requested within the 30-day period, the permit or 14 license may not be revoked and the bond may not be forfeited 15 until a final decision is made by the department.
  - (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."
- NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1991.

and duties under this part.

1	SENATE BILL NO. 283	1	(3) "Commissioner" means the commissioner of state
2	INTRODUCED BY DOHERTY, T. BECK, GRINDE	2	lands provided for in 2-15-3202.
3	BY REQUEST OF THE DEPARTMENT OF STATE LANDS	3	(3)(4) "Cyanide ore-processing reagent" means cyanide
4		4	or a cyanide compound used as a reagent in leaching
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE	5	operations.
6	ENFORCEMENT PROVISIONS OF THE METAL MINE RECLAMATION LAW;	6	<pre></pre>
7	EXPANDING THE SCOPE OF ENFORCEMENT ACTIONS TO INCLUDE	7	lands.
8	VIOLATIONS OF A LICENSE OR PERMIT; CLARIFYING THAT THE	8	<pre>+5+(6) "Disturbed land" means that area of land or</pre>
9	COMMISSIONER OF STATE LANDS MAY SUSPEND THE PERMIT OF AN	9	surface water disturbed, beginning at the date of the
10	OPERATION CREATING AN IMMINENT DANGER TO THE HEALTH OR	10	issuance of the permit, and it comprises that area from
11	SAFETY OF PERSONS OUTSIDE THE PERMIT AREA; AMENDING SECTIONS	11	which the overburden, tailings, waste materials, or minerals
12	82-4-303, 82-4-361, AND 82-4-362, MCA; AND PROVIDING AN	12	have been removed and tailings ponds, waste dumps, roads,
13	EFFECTIVE DATE."	13	conveyor systems, leach dumps, and all similar excavations
14		14	or covering resulting from the operation and which have not
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15	been previously reclaimed under the reclamation plan.
16	Section 1. Section 82-4-303, MCA, is amended to read:	16	
			+6+(7) "Exploration" means all activities conducted on
17	<b>*82-4-303.</b> Definitions. As used in this part, unless	17	or beneath the surface of lands resulting in material
18	the context indicates otherwise, the following definitions	18	disturbance of the surface for the purpose of determining
19	apply:	19	the presence, location, extent, depth, grade, and economic
20	(1) "Abandonment of surface or underground mining" may	20	viability of mineralization in those lands, if any, other
21	be presumed when it is shown that continued operation will	21	than mining for production and economic exploitation, as
22	not resume.	22	well as all roads made for the purpose of facilitating
23	(2) "Board" means the board of land commissioners or a	23	exploration, except as noted in 82-4-310.
24	state employee or state agency as may succeed to its powers	24	+7+(8) 'Mineral" means any ore, rock, or substance,

(3) "Commissioner" means the commissioner of state
lands provided for in 2-15-3202.
(3) "Cyanide ore-processing reagent" means cyanide
or a cyanide compound used as a reagent in leaching
operations.
(4)(5) "Department" means the department of state
lands.
+5+(6) "Disturbed land" means that area of land or
surface water disturbed, beginning at the date of the
issuance of the permit, and it comprises that area from
which the overburden, tailings, waste materials, or mineral:
have been removed and tailings ponds, waste dumps, roads
conveyor systems, leach dumps, and all similar excavation
or covering resulting from the operation and which have no
been previously reclaimed under the reclamation plan.
+6+(7) "Exploration" means all activities conducted o
or beneath the surface of lands resulting in materia
disturbance of the surface for the purpose of determinin
the presence, location, extent, depth, grade, and economi
viability of mineralization in those lands, if any, othe
than mining for production and economic exploitation, a

other than oil, das, bentonite, clay, coal, sand, gravel,

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- phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.
  - (0) (9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.
- (10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

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- tith; (11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.
- tlt(12) "Placer deposit" means naturally occurring, 20 scattered or unconsolidated valuable minerals in gravel or 21 alluvium lying above bedrock.
- 22 tl2)(13) "Placer or dredge mining" means the mining of 23 minerals from a placer deposit by a person or persons.
  - ft3+(14) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for

- reclamation of the land that will be disturbed. The proposal
- shall include, to the extent practical at the time of 2
  - application for an operating permit:

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- (a) a statement of the proposed subsequent use of the land after reclamation;
- (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;
- 10 (c) the manner and type of revegetation or other 11 surface treatment of disturbed areas:
- 12 (d) procedures proposed to avoid foreseeable situations 13 of public nuisance, endangerment of public safety, damage to 14 human life or property, or unnecessary damage to flora and 15 fauna in or adjacent to the area:
  - (e) the method of disposal of mining debris;
- 17 (f) the method of diverting surface waters around the 18 disturbed areas where necessary to prevent pollution of 19 those waters or unnecessary erosion;
- 20 (q) the method of reclamation of stream channels and 21 stream banks to control erosion, siltation, and pollution;
- 22 (h) maps and other supporting documents as may be 23 reasonably required by the department; and
- 24 (i) a time schedule for reclamation that meets the 25 requirements of 82-4-336.

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(14)(15) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

- (i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or
- 10 (ii) two operations which disturb and leave unreclaimed
  11 less than 5 acres per operation if the respective mining
  12 properties are:
- 13 (A) the only operations engaged in by the person, firm, 14 or corporation;
- 15 (B) at least 1 mile apart at their closest point; and
- 16 (C) not operated simultaneously except during seasonal 17 transitional periods not to exceed 30 days.
  - (b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

t+5+(16) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

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

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

25 (18)(19) "Vegetative cover" means the type of

surrounding undisturbed portions of land.

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vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-361, MCA, is amended to read:

"82-4-361. Violation — penalties — waiver. (1) A person who violates any of the provisions of this part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit, or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

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

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may be waived for a minor violation if it is determined that
the violation does not represent potential harm to public
health, public safety, or the environment and does not
impair the administration of this part. The board shall
adopt rules to implement and administer a procedure for

7 Section 3. Section 82-4-362, MCA, is amended to read:

waiver of a penalty under this subsection."

"82-4-362. Suspension of permits -- hearing. (1) If any 9 of the requirements of this part, the rules adopted under 10 this part, or the a license, permit, or reclamation plan have has not been complied with within the time limits set 11 by the department or board or by this part, the department 12 shall serve a notice of noncompliance on the licensee or 13 permittee or, if necessary, the commissioner shall order the 14 15 suspension of the permit. The commissioner may order 16 immediate suspension of a permit whenever he makes a finding 17 that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation 18 19 plan, is creating an imminent danger to the health or safety 20 of persons outside the permit area. The notice or order must 21 be handed to the licensee or permittee in person or served 22 by certified or registered mail addressed to the permanent 23 address shown on the application for a license or permit. The notice of noncompliance must specify in what respects 24

the operator has failed to comply with this part, the rules

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1 adopted under this part, or the reclamation plan.

- (2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.
  - (3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."
- NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 1991.

-End-