

House Bill 392

In The House

January 21, 1981

Introduced and referred  
to Committee on Natural  
Resources.

April 23, 1981

Died in Committee.

HOUSE BILL NO. 392 *Hanusitz*

INTRODUCED BY *Kanferl* *Patrick* *Huffman*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE METAL MINE RECLAMATION LAW; AMENDING SECTIONS 82-4-302 THROUGH 82-4-305, 82-4-321, 82-4-331, 82-4-332, 82-4-335, 82-4-336, 82-4-338, 82-4-353, AND 82-4-361, MCA."

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

Section 1. Section 82-4-302, MCA, is amended to read:

"82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area. The legislature recognizes that in some situations mining methods that will permit economic extractions of desired, strategic, and useful mineral deposits will require plans which unavoidably leave bare, solid rock devoid of soil materials at the surface and slopes too steep to support vegetation. The legislature also recognizes that vegetation is only one of the techniques of reclamation and that, where it is impractical or impossible, other reasonable and practical reclamation measures may be employed.

Section 2. 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 such state employee or state agency as may succeed to its powers and duties under this part.

1 (3) "Department" means the department of state lands.

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

10 (5) "Exploration" means all activities conducted on or  
11 beneath the surface of lands resulting in material  
12 disturbance of the surface for the purpose of determining  
13 the presence, location, extent, depth, grade, and economic  
14 viability of mineralization in those lands, if any, other  
15 than mining for production and economic exploitation, as  
16 well as all roads made for the purpose of facilitating  
17 exploration, except as noted in 82-4-305 and 82-4-310.

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

25 (7) "Mining" commences at such time as the operator

1 first mines ores or minerals in commercial quantities for  
2 sale, beneficiation, refining, or other processing or  
3 disposition or first takes bulk samples for metallurgical  
4 testing in excess of aggregate of 10,000 short tons. This  
5 limitation on ore extraction does not apply to ore or  
6 minerals removed in the course of underground exploration  
7 activities such as the construction of drifts, crosscuts,  
8 shafts, winzes, raises, or other openings driven through ore  
9 bodies for the primary purpose of gaining access to a  
10 mineral deposit to inspect, sample, or make determinations  
11 as to size, shape, or dimension or to make other  
12 evaluations.

13 (8) "Person" means any person, corporation, firm,  
14 association, partnership, or other legal entity engaged in  
15 exploration for or development or mining of minerals on or  
16 below the surface of the earth.

17 (9) "Reclamation plan" means the operator's written  
18 proposal, as required and approved by the board, for  
19 reclamation of the land that will be disturbed, which  
20 proposal shall include, to the extent practical at the time  
21 of application for an operating permit:

22 (a) a statement of the proposed subsequent use of the  
23 land after reclamation;

24 (b) plans for surface gradient restoration to a  
25 surface suitable for the proposed subsequent use of the land

1 after reclamation is completed and the proposed method of  
2 accomplishment;

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

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

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

10 (f) the method of diverting surface waters around the  
11 disturbed areas where necessary to prevent pollution of  
12 those waters or unnecessary erosion;

13 (g) the method of reclamation of stream channels and  
14 stream banks to control erosion, siltation, and pollution;  
15 and

16 (h) such maps and other supporting documents as may be  
17 reasonably required by the department; and

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

20 (10) (a) "Small miner" means a person, partnership,  
21 association, firm, or corporation that engages in the  
22 business of prospecting, exploration, or mining, that does  
23 not remove from the earth during any calendar year material  
24 in excess of 367,500 tons in the aggregate, that holds no  
25 operating permit or exploration license under 82-4-332 or

1 82-4-335, and that conducts:

2 (i)(a) operations resulting in not more than 5 acres  
3 of the earth's surface being disturbed and unreclaimed, or  
4 an operation which disturbs less than 10 acres of the  
5 earth's surface, not including necessary access roads;

6 (i)(b) two operations which disturb and leave  
7 unreclaimed less than 5 10 acres per operation if the  
8 respective mining properties are, not including necessary  
9 access roads, provided:

10 (A)(i) the only operations engaged in by the person,  
11 firm, or corporation, the person, partnership, association,  
12 firm, or corporation engages in only two operations;

13 (A)(ii) the operations are at least 1 mile apart at  
14 their closest point; and

15 (A)(iii) the operations are not operated simultaneously  
16 except during seasonal transitional periods not to exceed 30  
17 days.

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

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

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

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

25 (14) "Vegetative cover" means the type of vegetation,

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

3 Section 3. Section 82-4-304, MCA, is amended to read:  
 4 "82-4-304. Exemption -- works performed prior to  
 5 promulgation of rules. No provision of this part shall be  
 6 applicable to any land subjected to exploration or mining  
 7 work performed prior to the date of promulgation of the  
 8 board's rules pursuant to 82-4-321."

9 Section 4. Section 82-4-305, MCA, is amended to read:  
 10 "82-4-305. Exemption -- small miners -- written  
 11 agreement -- ~~penalty. (1) No provisions of this part shall~~  
 12 ~~apply to any small miner when the small miner annually~~  
 13 ~~agrees in writing:~~ Any person, partnership, association,  
 14 firm, or corporation desiring to engage in prospecting,  
 15 exploration, or mining activities, when such activities will  
 16 not result in significant disturbance to the surface of the  
 17 earth and the proposed operations meet the requirements set  
 18 forth by 82-4-303(19), shall apply for, and the department  
 19 shall issue without charge, a small miner's license. The  
 20 license must be renewed annually and must require the holder  
 21 to agree in writing that:

22 (a) that he shall not pollute or contaminate any  
 23 stream;

24 (b) that he shall provide protection for human and  
 25 animal life through by the installation of bulkheads

1 installed or safety doors over safety shaft collars or  
 2 raises and ~~the--installation-of~~ doors or screens on tunnel  
 3 portals; and

4 (c) he shall provide a map locating ~~his--~~ mining  
 5 operations ~~--Such--map--shall--be~~ to a size and scale as  
 6 determined by the department on which his mining operations  
 7 have been located; and

8 (d) he will reclaim all disturbed areas upon  
 9 termination of operations.

10 (2) Nothing in this section applies to present holders  
 11 of lifetime small miner's exclusion statements issued under  
 12 earlier provisions of this part unless such holders wish to  
 13 exchange them for a small miner's license in order to obtain  
 14 the benefit of the larger acreage provisions of such  
 15 licenses.

16 ~~(2)(3)~~ Failure to obtain a license before commencing  
 17 operations or failure to otherwise comply with the  
 18 regulations stipulated in this section will constitute a  
 19 misdemeanor, and this offense will subject the owners or  
 20 operators of said project to a fine of not less than \$10 or  
 21 more than \$100, payable to the department of revenue of the  
 22 state of Montana or any board, commission, or person  
 23 authorized to collect said fine."

24 Section 5. Section 82-4-321, MCA, is amended to read:  
 25 "82-4-321. Administration. The board is charged with

1 the responsibility of administering this part. In order to  
 2 implement its terms and provisions, the board shall from  
 3 time to time promulgate such rules as the board shall deem  
 4 necessary. The board may delegate such powers, duties, and  
 5 functions to the department as it deems necessary for the  
 6 performance of its duties as administrator of this part.  
 7 However, any operator or applicant for a permit may appeal a  
 8 decision of the department to the board, notwithstanding any  
 9 other provisions of this part or the Montana Administrative  
 10 Procedure Act. The board shall employ only experienced,  
 11 qualified persons in the field of mined-land reclamation who  
 12 possess a minimum of 3 years' experience in the mineral  
 13 industry, and who, for the purpose of this part, are  
 14 referred to as supervisors."

15 Section 6. Section 82-4-331, MCA, is amended to read:  
 16 "82-4-331. Exploration license required -- employees  
 17 included. (1) No person shall engage in exploration in the  
 18 state without first obtaining an exploration license from  
 19 the board to do so, such license to be issued for a period  
 20 of 1 year from date of issue and to be renewable from year  
 21 to year on application therefor filed at any time within the  
 22 30 days next preceding the expiration of the current license  
 23 and payment of like fee as required for a new license,  
 24 provided that the applicant for renewal is not then held by  
 25 the board to be in violation of any provision of this law.

1 Such license shall be subject to suspension and revocation  
2 as provided by this part.

3 (2) Employees of persons holding a valid license under  
4 this part shall be deemed included in and covered by such  
5 license.

6 ~~(3) Only one exploration license is required to~~  
7 ~~conduct exploration activities within the state and it may~~  
8 ~~cover all projects of the licensee.~~

9 ~~(4) No license is required to undertake claim~~  
10 ~~location, geophysical prospecting, geologic mapping,~~  
11 ~~surveying, geochemical sampling, or other exploration~~  
12 ~~techniques that do not create a significant disturbance of~~  
13 ~~the earth's surface.~~

14 ~~(5) The issuance of an exploration license is not a~~  
15 ~~major act which significantly affects the quality of the~~  
16 ~~human environment to such an extent a preliminary~~  
17 ~~environmental review or an environmental impact statement is~~  
18 ~~required under 79-1-201 or rules adopted thereunder by the~~  
19 ~~department."~~

20 Section 7. Section 82-4-332, MCA, is amended to read:

21 "82-4-332. Exploration license. (1) An exploration  
22 license shall be issued to any applicant therefor who shall  
23 within 10 days after he has:

24 (a) filed an application in conformity with subsection  
25 (2);

1 (a)(b) pay paid a fee of \$5 to the board;

2 (c) ~~posted with the department a reclamation and~~  
3 ~~revegetation bond in a form and amount determined by the~~  
4 ~~department under 82-4-338;~~

5 (b)(d) agree agreed to reclaim any surface area  
6 damaged disturbed by the--applicant--during exploration  
7 operations, as may be reasonably required by the board;

8 (e) ~~been found by the board~~ not to be in default of  
9 any other reclamation obligation under this law.

10 (2) An application for an exploration license shall be  
11 made in writing--notarized, and submitted to the department  
12 in duplicate upon forms prepared and furnished by it. The  
13 application shall include an exploration map or sketch in  
14 sufficient detail to locate the area to be explored and to  
15 ~~determine--whether--significant--environmental--problems--would~~  
16 ~~be--encountered~~ disclose the details of the project. The  
17 department shall by rule determine the precise nature of  
18 such exploration map or sketch. The applicant must state  
19 what type of prospecting and excavation techniques will be  
20 employed in disturbing the land.

21 (3) ~~Upon filing of any certificate of claim location~~  
22 ~~as permitted by federal and state mining laws and~~  
23 ~~regulations, the locator shall provide copies of the~~  
24 ~~certificate to the board.~~

25 (4) ~~Prior to the issuance of an exploration license,~~

1 ~~the applicant shall file with the department a reclamation~~  
 2 ~~and revegetation bond in a form and amount as determined by~~  
 3 ~~the department in accordance with 82-4-338.~~

4 (5)(3) In the event that the holder of an exploration  
 5 license desires to mine the area covered by the exploration  
 6 license and has fulfilled all of the requirements for an  
 7 operating permit, the department shall allow the  
 8 postponement of the reclamation of the acreage explored if  
 9 that acreage is incorporated into the complete reclamation  
 10 plan submitted with the application for an operating permit.  
 11 Any land actually affected by exploration or excavation  
 12 under an exploration license and not covered by the  
 13 operating reclamation plan shall be reclaimed within 2 years  
 14 after the completion of exploration or abandonment of the  
 15 site in a manner acceptable to the department."

16 Section 8. Section 82-4-335, MCA, is amended to read:  
 17 "82-4-335. Operating permit. (1) No person shall  
 18 engage in mining or disturb land in anticipation of mining  
 19 in the state without first obtaining an operating permit  
 20 from the board to do so. A separate operating permit shall  
 21 be required for each mine complex. Prior to receiving an  
 22 operating permit from the board, any person must pay the  
 23 basic permit fee of \$25 and must submit an application on a  
 24 form provided by the board, which shall contain the  
 25 following information and any other pertinent data required

1 by the rules:

2 (1)(a) name and address of the operator and, if a  
 3 corporation or other business entity, the name and address  
 4 of its principal officers, partners, and the like and its  
 5 resident agent for service of process, if required by law;

6 (2)(b) minerals expected to be mined;

7 (3)(c) a proposed reclamation plan;

8 (4)(d) expected starting date of mining;

9 (5)(e) a map showing the ~~specific area to be mined and~~  
 10 ~~the boundaries of the land which will be disturbed~~  
 11 topographic detail area desired to be included in the  
 12 permit, which includes the area the applicant expects will  
 13 be disturbed during the life of the mine by the operations  
 14 described, the location and names of all existing perennial  
 15 streams, roads, railroads, and utility lines on or  
 16 immediately adjacent to the area, location of proposed  
 17 access roads to be built, and the names and addresses of the  
 18 surface and mineral owners of all lands within the mining  
 19 area to the extent known to applicant the area to be  
 20 disturbed by mining or related activities during the first  
 21 year of operation;

22 (6)(f) ~~types of access roads to be built and manner of~~  
 23 reclamation of road sites on abandonment, and a description  
 24 of the type of road access, if any, that will be built to  
 25 the permit area and the manner of reclamation of such road



1 construction upon abandonment:

2 (g) the names and addresses, to the extent known to  
3 the applicant, of the surface and mineral owners of all  
4 lands adjoining the area requested to be permitted;

5 (h) a description of the proposed mining and ancillary  
6 operations, the mining method to be used, the equipment to  
7 be used, and how it will be used; and

8 (i) a reclamation plan as required by 32-4-336.

9 ~~(7) a plan of mining which will provide, within limits~~  
10 ~~of normal operating procedures of the industry, for~~  
11 ~~completion of mining and associated land disturbances;~~

12 (2) Since the purpose of this part is to require  
13 reclamation of disturbance to the earth's surface, if the  
14 mining method proposed is underground, the mining-related  
15 surface disturbance to be expected shall be described with  
16 a statement that an underground extraction method will be  
17 employed and no further information is required.

18 (3) No requirement may be imposed by the department  
19 other than those specifically set forth in subsections (1)  
20 and (2).

21 (4) When because of the discovery of additional ore  
22 there is a need for additional space for disposal of mine  
23 wastes or tailings, additional area may be added to an  
24 existing valid operating permit by making application to the  
25 department for amendment of the permit. The department shall

1 issue an amendment within 30 days if the operator supplies a  
2 map showing the boundaries of the additional area in  
3 relationship to the boundaries of the existing permit and  
4 provides an increased reclamation bond or a rider increasing  
5 an existing bond by an amount sufficient to cover the  
6 amended area at a rate consistent with the bonding level of  
7 the original permit."

8 Section 9. Section 82-4-336, MCA, is amended to read:

9 "82-4-336. Reclamation plan and specific reclamation  
10 requirements. (1) The reclamation plan shall provide that  
11 reclamation activities, particularly those relating to  
12 control of erosion, to the extent feasible, shall be  
13 conducted simultaneously with mining and in any case shall  
14 be initiated promptly after completion or abandonment of  
15 mining on those portions of the mine complex that will not  
16 be subject to further disturbance by the mining operation.  
17 In the absence of an order by the board providing a longer  
18 period, the plan shall provide that reclamation activities  
19 shall be completed not more than 2 years after completion or  
20 abandonment of mining on that portion of mine complex.

21 (2) In the absence of emergency or suddenly threatened  
22 or existing catastrophe, an operator may not depart from an  
23 approved reclamation plan without previously obtaining from  
24 the department written approval of his proposed change.

25 (3) Provision shall be made to avoid accumulation of

1 stagnant water in the mined area which may serve as a host  
2 or breeding ground for mosquitoes or other disease-bearing  
3 or noxious insect life.

4 (4) All final grading shall be made with nonnoxious,  
5 nonflammable, noncombustible solids unless approval has been  
6 granted by the board for a supervised sanitary fill.

7 (5) Where mining has left an open pit exceeding 2  
8 acres of surface area and the composition of the floor or  
9 walls of the pit are likely to cause formation of acid,  
10 toxic, or otherwise pollutive solutions (hereinafter  
11 "objectionable effluents") on exposure to moisture, the  
12 reclamation plan shall include provisions which adequately  
13 provide for:

14 (a) insulation of all faces from moisture or water  
15 contact by covering to a depth of 2 feet or more with  
16 material or fill not susceptible itself to generation of  
17 objectionable effluents;

18 (b) processing of any objectionable effluents in the  
19 pit before their being allowed to flow or be pumped out of  
20 it to reduce toxic or other objectionable ratios to a level  
21 considered safe to humans and the environment by the board;

22 (c) drainage of any objectionable effluents to  
23 settling or treatment basins when the objectionable  
24 effluents must be reduced to levels considered safe by the  
25 board before release from the settling basin; or

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

3 (e) prevention of entrance into the open pit by  
4 persons or livestock lawfully upon adjacent lands by  
5 fencing, warning signs, and such other devices as may  
6 reasonably be required by the board.

7 (6) Provisions for vegetative cover shall be required  
8 in the reclamation plan if appropriate to the future use of  
9 the land as specified in the reclamation plan, provided  
10 sufficient soil materials are present and climatic  
11 conditions are such as to support vegetative growth. The  
12 inability to establish vegetation is not of itself  
13 sufficient reason to deny a mining permit or refuse release  
14 of a reclamation bond when all other specified requirements  
15 have been fulfilled.

16 (7) The reclamation plan shall provide for the  
17 reclamation of all disturbed land. Proposed reclamation need  
18 not reclaim the areas to a better condition or different use  
19 than that which existed prior to development or mining.

20 (8) A reclamation plan shall be approved by the board  
21 if it adequately provides for the accomplishment of the  
22 activities specified in this section.

23 (9) The requirements set forth in this section shall  
24 be strictly construed, and specify the only information that  
25 may be required in a reclamation plan."

1 Section 10. Section 82-4-338, MCA, is amended to read:  
 2 "82-4-338. Performance bond. (1) The applicant shall  
 3 file with the department a bond payable to the state of  
 4 Montana with surety satisfactory to the department in the  
 5 penal sum to be determined by the department of not less  
 6 than \$200 or more than \$2,500 for each acre or fraction  
 7 thereof of the disturbed area, conditioned upon the faithful  
 8 performance of the requirements of this part and the rules  
 9 of the board. In lieu of such bond, the applicant may file  
 10 with the board a cash deposit, an assignment of a  
 11 certificate of deposit, or other surety acceptable to the  
 12 board. Regardless of the above limits, the bond shall not be  
 13 less than the estimated cost to the state to complete the  
 14 reclamation of the disturbed land. A public or governmental  
 15 agency shall not be required to post a bond under the  
 16 provisions of this part. A blanket performance bond covering  
 17 two or more operations may be accepted by the board. Such  
 18 blanket bond shall adequately secure the estimated total  
 19 number of acres of disturbed land. When determined by the  
 20 department that the set bonding level of a permit or license  
 21 does not represent the present costs of reclamation, the  
 22 department may modify the bonding requirements of that  
 23 permit or license.

24 (2) No bond filed in accordance with the provisions of  
 25 this part shall ~~may~~ be released by the department until the

1 provisions of this part, the rules adopted pursuant thereto,  
 2 and this reclamation plan have been fulfilled. ~~However, the~~  
 3 ~~department may not refuse to release a bond due to lack of~~  
 4 ~~vegetative growth caused by lack of soil materials,~~  
 5 ~~unfavorable climatic conditions, or the exigencies of a~~  
 6 ~~mining method which unavoidably leaves slopes too steep to~~  
 7 ~~support vegetation or a surface of bare rock.~~

8 ~~(3) If a dispute arises between an operator and the~~  
 9 ~~board as to the reasons for failure to obtain satisfactory~~  
 10 ~~vegetation of a disturbed area, the operator shall consult~~  
 11 ~~with the designated vegetative expert of the department and~~  
 12 ~~obtain his recommendations for obtaining successful~~  
 13 ~~satisfactory vegetation. If the operator then follows the~~  
 14 ~~recommended procedure, the department must release the bond.~~

15 ~~(4) The bond required by this section, upon~~  
 16 ~~application for a permit, is required to cover only that~~  
 17 ~~acreage that will be disturbed during the first year of~~  
 18 ~~operation, as specified in 82-4-338(1)(a), for each~~  
 19 ~~succeeding year the operator, at the time of filing his~~  
 20 ~~annual report, must state the acreage to be disturbed during~~  
 21 ~~the succeeding year and file a map showing the permit~~  
 22 ~~boundary, the boundary of the area disturbed and bonded~~  
 23 ~~during the previous years, and the boundary of the area to~~  
 24 ~~be disturbed during the succeeding year. He must then~~  
 25 ~~provide a bond or rider increasing his present bond by an~~

1 amount sufficient to cover the additional acreage before he  
 2 may begin operations on the new area."

3 Section 11. Section 82-4-353, MCA, is amended to read:

4 "82-4-353. Administrative remedies -- notice --  
 5 parties. (1) Upon receipt of an application for an operating  
 6 permit, the department shall provide notice of the  
 7 application by publication in a newspaper of general  
 8 circulation in the area to be affected by the operation. The  
 9 notice shall be published once a week for 3 successive  
 10 weeks.

11 ~~(2) All hearings and appeal procedures shall be in~~  
 12 ~~accordance with the Montana Administrative Procedure Act.~~  
 13 ~~Any person whose interests may be adversely affected as a~~  
 14 ~~result of an action taken pursuant to this part may become a~~  
 15 ~~party to any proceeding held hereunder upon a showing that~~  
 16 ~~such person is capable of adequately representing the~~  
 17 ~~interests claimed. (a) Any person who is either an applicant~~  
 18 ~~for a permit, or an operator under this part, may appeal any~~  
 19 ~~decision, action, or lack of action directly to the board,~~  
 20 ~~notwithstanding the requirements of the Montana~~  
 21 ~~Administrative Procedure Act.~~

22 (b) To initiate an appeal the person concerned shall  
 23 write a letter to the commissioner of the department stating  
 24 his grievance and his intention to appeal such decision or  
 25 action to the board and requesting a time for an appearance

1 before the board for himself or his attorney, or both. The  
 2 commissioner shall then place the request on the agenda for  
 3 the next meeting of the board and notify the appellant of  
 4 the time and place when he may be heard.

5 (3) As used in this section, "person" means any  
 6 individual, ~~association, firm,~~ corporation, partnership, or  
 7 other legal entity."

8 NEW SECTION. Section 12. Restoration of previous  
 9 roads or trails exempt. If a mining prospect, property, or  
 10 area has been previously accessible by means of a road or  
 11 trail usable by motor vehicles, but which has fallen into  
 12 disrepair through lack of use and maintenance, the  
 13 restoration of such road or trail to a usable condition by  
 14 regrading and construction of drainage structures is exempt  
 15 from this part.

16 NEW SECTION. Section 13. Custom mills -- definition  
 17 -- exemption. (1) A custom mill is a concentration, mineral  
 18 processing, or beneficiation plant that treats or processes  
 19 ore or mineral products from two or more sources not under  
 20 the control of or owned by the same legal entity.

21 (2) Custom mills and necessary ancillary facilities  
 22 are exempt from this part, even if the owner of such a mill  
 23 is also owner and operator of a producing mineral operation  
 24 which provides a portion of the ore or mineral product  
 25 processed.

1 Section 14. Section 82-4-361, MCA, is amended to read:  
 2 "82-4-361. Violation -- penalties. (1) A person who  
 3 violates any of the provisions of this part or rules or  
 4 orders adopted under this part shall pay a civil penalty of  
 5 not less than \$100 or more than \$1,000 for the violations  
 6 and an additional civil penalty of not less than \$100 or  
 7 more than \$1,000 for each day during which a violation  
 8 continues and may be enjoined from continuing such  
 9 violations as hereinafter provided in this section. ~~These~~  
 10 ~~penalties shall be~~ Any penalty is recoverable in any action  
 11 brought in the name of the state of Montana by the county  
 12 attorney general in the district court of the first judicial  
 13 district of this state in and for the county of -- Lewis -- and  
 14 Stark -- or -- in the district court having jurisdiction of the  
 15 defendant in which the violation is alleged to have  
 16 occurred.

17 (2) The county attorney, general if satisfied that a  
 18 violation has occurred and after determining the amount of  
 19 penalty to be sought, shall, upon the request of the  
 20 department, sue for the recovery of the penalties provided  
 21 for in this section and bring an action for a restraining  
 22 order or temporary or permanent injunction against an  
 23 operator or other person violating or threatening to violate  
 24 an order adopted under this part."

25 Section 15. Codification instruction. Sections 12 and

1 13 are intended to be codified as an integral part of Title  
 2 82, chapter 4, part 3, and the provisions of Title 82,  
 3 chapter 4, part 3, apply to sections 12 and 13.

-End-