

SENATE BILL NO. 369

INTRODUCED BY GRAHAM, HOLLIDAY

IN THE SENATE

February 5, 1983	Introduced and referred to Committee on Natural Resources.
February 12, 1983	Committee recommend bill do pass. Report adopted.
February 14, 1983	Bill printed and placed on members' desks.
February 15, 1983	Second reading, do pass.
February 16, 1983	Correctly engrossed.
February 17, 1983	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Natural Resources.
March 7, 1983	Committee recommend bill be concurred in. Report adopted.
March 9, 1983	Second reading, concurred in.
March 10, 1983	Third reading, concurred in.

IN THE SENATE

March 11, 1983	Returned to Senate. Sent to enrolling. Reported correctly enrolled.
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1 *Sen. Holliday* BILL NO. *369*
2 INTRODUCED BY *Sen. Holliday*
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DELETE THE
5 REQUIREMENT THAT ADDITIONAL STRIP- AND UNDERGROUND-MINING
6 PERMITS MAY NOT BE ISSUED TO AN OPERATOR WHO HAS REPEATEDLY
7 VIOLATED STATE RECLAMATION LAWS; AMENDING SECTION 82-4-251,
8 MCA."
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 82-4-251, MCA, is amended to read:

12 "82-4-251. Noncompliance -- suspension of permits. (1)

13 The commissioner or an authorized representative of the
14 department shall, if he determines on the basis of an
15 inspection that any condition or practices exist or that the
16 permittee is in violation of any requirement of this part or
17 any permit condition required by the part that creates an
18 imminent danger to the health or safety of the public or is
19 causing or can reasonably be expected to cause significant
20 and imminent environmental harm to land, air, or water
21 resources, immediately order cessation of the operation or
22 the portion thereof relevant to the condition, practice, or
23 violation. The cessation order remains in effect until the
24 commissioner or his authorized representative determines
25 that the condition, practice, or violation has been abated

1 or until modified, vacated, or terminated by the
2 commissioner or his authorized representative pursuant to
3 subsection (5). If the commissioner or his authorized
4 representative finds that the ordered cessation of the
5 operation, or any portion thereof, will not completely abate
6 the imminent danger to the health or safety of the public or
7 the significant and imminent environmental harm to land,
8 air, or water resources, he shall in addition to the
9 cessation order impose affirmative obligations requiring
10 whatever steps the commissioner or his authorized
11 representative considers necessary to abate the imminent
12 danger or the significant environmental harm.

13 (2) When, on the basis of an inspection, the
14 department determines that any permittee is in violation of
15 any requirement of this part or any permit condition
16 required by this part which does not create an imminent
17 danger to the health or safety of the public or cannot be
18 reasonably expected to cause significant and imminent
19 environmental harm to land, air, or water resources, the
20 commissioner or authorized representative shall issue a
21 notice to the permittee or his agent fixing a reasonable
22 time, not exceeding 90 days, for the abatement of the
23 violation and providing opportunity for public hearing. If,
24 upon expiration of the period of time as originally fixed or
25 subsequently extended, for good cause shown and upon the

1 written finding of the commissioner or his authorized
 2 representative, the commissioner or his authorized
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 8 has been abated or until modified, vacated, or terminated by
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 10 to subsection (5). In the order of cessation issued under
 11 this subsection, the commissioner shall determine the steps
 12 necessary to abate the violation in the most expeditious
 13 manner possible and shall include the necessary measures in
 14 the order.

15 (3) When, on the basis of an inspection, the
 16 commissioner or his authorized representative determines
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 18 part or any permit conditions required by this part exists
 19 or has existed and if the commissioner or his authorized
 20 representative also finds that such violations are caused by
 21 the unwarranted failure of the permittee to comply with any
 22 requirements of this part or any permit conditions or that
 23 such violations are willfully caused by the permittee, the
 24 commissioner or his authorized representative shall
 25 forthwith issue an order to the permittee to show cause as

1 to why the permit should not be suspended or revoked and
 2 shall provide opportunity for a public hearing. If a hearing
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 8 board shall revoke the permit. When a permit has been
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10 (4) Any additional permits held by an operator whose
 11 mining permit has been revoked shall be suspended and the
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 13 have the suspended permits reinstated until he has complied
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 15 permits issued him. An operator who has forfeited a bond is
 16 not eligible to receive another permit unless the land for
 17 which the bond was forfeited has been reclaimed without cost
 18 to the state or the operator has paid into the reclamation
 19 account a sum together with the value of the bond the board
 20 finds adequate to reclaim the lands. ~~The department may not~~
 21 ~~issue any additional permits to an operator who has~~
 22 ~~repeatedly been in noncompliance or violation of this part.~~

23 (5) Notices and orders issued pursuant to this section
 24 shall set forth with reasonable specificity the nature of
 25 the violation and the remedial action required, the period

1 of time established for abatement, and a reasonable
2 description of the portion of the operation to which the
3 notice or order applies. Each notice or order issued under
4 this section shall be given promptly to the permittee or his
5 agent by the department or the commissioner or his
6 authorized representative who issues the notice or order.
7 All such notices and orders must be in writing and be signed
8 by the authorized representatives. Any notice or order
9 issued pursuant to this section may be modified, vacated, or
10 terminated by the commissioner or his authorized
11 representative, provided that any notice or order issued
12 pursuant to this section that requires cessation of mining
13 by the operator expires within 30 days of actual notice to
14 the operator unless a public hearing is held at the site or
15 within such reasonable proximity to the site that any
16 viewings of the site can be conducted during the course of
17 public hearing.

18 (6) A person issued a notice or an order of cessation
19 pursuant to this section or any person having an interest
20 that is or may be adversely affected by an order or by
21 modification, vacation, or termination of an order may apply
22 to the department for review of that order within 30 days of
23 its issuance or within 30 days of its modification,
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25 the department shall make an investigation. The

1 investigation shall provide an opportunity for public
2 hearing at the request of the applicant or the person having
3 an interest who is or may be adversely affected to enable
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5 to the issuance and continuance of the notice or order or
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7 of an application for review under this subsection may not
8 operate as a stay of any order or notice. The department
9 shall make findings of fact and issue a written decision
10 incorporating an order vacating, affirming, modifying, or
11 terminating the order.

12 (7) Whenever an order is issued under this section or
13 as the result of any administrative proceeding under this
14 part, at the request of any person, a sum equal to the
15 aggregate amount of all costs, expenses, and attorney fees
16 as determined by the department to have been reasonably
17 incurred by such person for or in connection with his
18 participation in such proceedings, including any judicial
19 review of agency actions, may be assessed against either
20 party as the court, resulting from judicial review, or the
21 department, resulting from administrative proceedings,
22 considers proper.

23 (8) In order to protect the stability of the land, the
24 commissioner or his authorized representative shall order
25 cessation of underground coal mining under urbanized areas,

1 cities, towns, and communities and adjacent to industrial or
2 commercial buildings, major impoundments, or permanent
3 streams if he finds imminent danger to inhabitants of the
4 urbanized areas, cities, towns, and communities."

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Approved by Committee
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19 causing or can reasonably be expected to cause significant
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21 resources, immediately order cessation of the operation or
22 the portion thereof relevant to the condition, practice, or
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14 part, at the request of any person, a sum equal to the
15 aggregate amount of all costs, expenses, and attorney fees
16 as determined by the department to have been reasonably
17 incurred by such person for or in connection with his
18 participation in such proceedings, including any judicial
19 review of agency actions, may be assessed against either
20 party as the court, resulting from judicial review, or the
21 department, resulting from administrative proceedings,
22 considers proper.

23 (8) In order to protect the stability of the land, the
24 commissioner or his authorized representative shall order
25 cessation of underground coal mining under urbanized areas,

1 cities, towns, and communities and adjacent to industrial or
2 commercial buildings, major impoundments, or permanent
3 streams if he finds imminent danger to inhabitants of the
4 urbanized areas, cities, towns, and communities."

-End-