

HOUSE BILL NO. 442

INTRODUCED BY KNOX
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE HOUSE

FEBRUARY 3, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 10, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 11, 1993	PRINTING REPORT.
FEBRUARY 13, 1993	SECOND READING, DO PASS.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 16, 1993	THIRD READING, PASSED. AYES, 100; NOES, 0.
FEBRUARY 17, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 39; NOES, 9.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
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ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 15, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

IN THE SENATE

APRIL 15, 1993

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 16, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 21, 1993

FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 21, 1993

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 22, 1993

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 22, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 442
2 INTRODUCED BY Knox
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR
7 AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW
8 PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING
9 ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS
10 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND
11 82-4-362, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 82-4-305, MCA, is amended to read:

15 "82-4-305. Exemption -- small miners -- written
16 agreement. (1) Except as provided in subsections (3) through
17 (9), the provisions of this part do not apply to any small
18 miner if the small miner annually agrees in writing:

19 (a) that he the small miner will not pollute or
20 contaminate any stream;

21 (b) that he the small miner will provide protection for
22 human and animal life through the installation of bulkheads
23 installed over safety collars and the installation of doors
24 on tunnel portals;

25 (c) that he the small miner will provide a map locating

1 his the miner's mining operations. The map must be of a size
2 and scale determined by the department.

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

7 (2) For small-miner exemptions obtained after September
8 30, 1985, a small miner may not obtain or continue an
9 exemption under subsection (1) unless he the small miner
10 annually certifies in writing:

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

12 (i) no business association or partnership of which he
13 the small miner is a member or partner has a small-miner
14 exemption; and

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

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

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

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

25 (c) if the small miner is a corporation, that no

officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

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

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

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

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, he the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail,

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

15 (7) A small miner who intends to use a cyanide
 16 ore-processing reagent shall obtain an operating permit for
 17 that part of his the small miner's operation where the
 18 cyanide ore-processing reagent will be used or disposed of.

19 (8) The exemption provided in this section does not
 20 apply to:

21 (a) a person whose failure to comply with the
 22 provisions of this part, the rules adopted under this part,
 23 or a permit or license issued under this part has resulted
 24 in the forfeiture of a bond, unless that person meets the
 25 conditions described under 82-4-360;

1 (b) a person who has not paid a penalty for which the
 2 department has obtained a judgment pursuant to 82-4-361;

3 (c) a person who has failed to post a reclamation bond
 4 required by this section, unless the department has
 5 certified that the area for which the bond should have been
 6 posted has been reclaimed by that person or reclaimed by the
 7 department and the person has reimbursed the department for
 8 the cost of the reclamation; or

9 (d) a person who has failed to comply with an abatement
 10 order issued pursuant to 82-4-362, unless the department has
 11 completed the abatement and the person has reimbursed the
 12 department for the cost of abatement.

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

18 **Section 2.** Section 82-4-331, MCA, is amended to read:

19 "82-4-331. Exploration license required -- ~~employees~~
 20 included -- limitation. (1) A person may not engage in
 21 exploration in the state without first obtaining an
 22 exploration license from the board. A license must be issued
 23 for a period of 1 year from date of issue and is renewable
 24 from year to year on application. An application for renewal
 25 must be filed within 30 days preceding the expiration of the

current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the

department for the cost of abatement."

Section 3. Section 82-4-335, MCA, is amended to read:

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

A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

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

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an

1 additional fee is necessary and the additional fee will
 2 exceed \$5,000, the department shall notify the applicant
 3 that a fee must be paid and submit to the applicant an
 4 itemized estimate of the proposed expenses. The department
 5 shall provide the applicant an opportunity to review the
 6 department's estimated expenses. The applicant may indicate
 7 which proposed expenses the applicant considers duplicative
 8 or excessive, if any.

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

12 (a) name and address of the operator and, if a
 13 corporation or other business entity, the name and address
 14 of its officers, directors, owners of 10% or more of any
 15 class of voting stock, partners, and the like and its
 16 resident agent for service of process, if required by law;

17 (b) minerals expected to be mined;

18 (c) a proposed reclamation plan;

19 (d) expected starting date of operations;

20 (e) a map showing the specific area to be mined and the
 21 boundaries of the land which that will be disturbed,
 22 topographic detail, the location and names of all streams,
 23 roads, railroads, and utility lines on or immediately
 24 adjacent to the area, and the location of proposed access
 25 roads to be built;

1 (f) the names and addresses of the owners of record and
 2 any purchasers under contracts for deed of the surface of
 3 the land within the permit area and the owners of record and
 4 any purchasers under contracts for deed of all surface area
 5 within one-half mile of any part of the permit area,
 6 provided that the department is not required to verify this
 7 information;

8 (g) the names and addresses of the present owners of
 9 record and any purchasers under contracts for deed of all
 10 minerals in the land within the permit area, provided that
 11 the department is not required to verify this information;

12 (h) the source of the applicant's legal right to mine
 13 the mineral on the land affected by the permit, provided
 14 that the department is not required to verify this
 15 information;

16 (i) types of access roads to be built and manner of
 17 reclamation of road sites on abandonment;

18 (j) a plan which will provide, within limits of normal
 19 operating procedures of the industry, for completion of the
 20 operation;

21 (k) ground water and surface water hydrologic data
 22 gathered from a sufficient number of sources and length of
 23 time to characterize the hydrologic regime;

24 (l) a plan detailing the design, operation, and
 25 monitoring of impounding structures, including but not

1 limited to tailings impoundments and water reservoirs,
2 sufficient to ensure that the structures are safe and
3 stable;

4 (m) a plan identifying methods to be used to monitor
5 for the accidental discharge of objectionable materials and
6 remedial action plans to be used to control and mitigate
7 discharges to surface or ground water; and

8 (n) an evaluation of the expected life of any tailings
9 impoundment or waste area and the potential for expansion of
10 the tailings impoundment or waste site.

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

25 (6) When the department determines that a permittee has

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

18 (7) Compliance with 90-6-307 is not required for
19 exploration and bulk sampling for metallurgical testing when
20 the aggregate samples are less than 10,000 tons.

21 (8) A person may not be issued an operating permit if:

22 (a) that person's failure to comply with the provisions
23 of this part, the rules adopted under this part, or a permit
24 or license issued under this part has resulted in the
25 forfeiture of a bond, unless that person meets the

conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

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

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

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

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

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

"82-4-337. Inspection -- issuance of operating permit -- modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within 30-days-of-receipt the appropriate review period.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation

1 plan and plan of operation within ~~such~~ the time period, the
 2 operating permit ~~shall-be~~ is issued upon receipt of the bond
 3 as required in 82-4-338 and pursuant to the requirements of
 4 subsection (1)(c). The department shall promptly notify the
 5 applicant of the form and amount of bond which will be
 6 required.

7 (c) No A permit may not be issued until:

8 (i) sufficient bond has been submitted pursuant to
 9 82-4-338;

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

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

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

1 (ii) If the department determines that additional time
 2 is needed to review the application and reclamation plan for
 3 a major operation, the department and the applicant shall
 4 negotiate to extend the period prescribed in subsection
 5 (1)(b) by not more than 365 days in order to permit
 6 reasonable review.

7 (iii) Failure of the board to act upon a complete
 8 application within the extension period constitutes approval
 9 of the application, and the permit ~~shall~~ must be issued
 10 promptly upon receipt of the bond as required in 82-4-338.

11 (2) The operating permit ~~shall~~ must be granted for the
 12 period required to complete the operation and ~~shall--be~~ is
 13 valid until the operation authorized by the permit is
 14 completed or abandoned unless the permit is suspended or
 15 revoked by the board as provided in this part.

16 (3) The operating permit ~~shall~~ must provide that the
 17 reclamation plan may be modified by the board, upon proper
 18 application of the permittee or department, after timely
 19 notice and opportunity for hearing, at any time during the
 20 term of the permit and for any of the following reasons:

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

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

25 (c) when significant environmental problem situations

are revealed by field inspection."

NEW SECTION. Section 5. Amendment or revision of operating permits. (1) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(2) Applications for major amendments must be processed in the same manner as applications for new permits.

(3) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department shall by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(4) If the department demonstrates that a revision may result in a significant environmental impact that was not previously evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for other revisions must be processed within 30 days of receipt of a complete application.

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

"82-4-338. Performance bond. (1) The applicant shall

file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, and the rules of the board, and the permit. In lieu of such a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits in this subsection, the bond shall may not be less than the estimated cost to the state to ~~complete the reclamation of the disturbed land~~ ensure compliance with this part, the rules, and the permit. A public or governmental agency shall ~~may~~ not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such A blanket bond shall must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation compliance with

1 this part, the rules, and the permit, the department may
 2 modify the bonding requirements of that permit or license.
 3 The department shall make written findings, give the
 4 licensee or permittee a copy of the findings, and, for
 5 operating permits, publish notice of the findings in a
 6 newspaper of general circulation in the county in which the
 7 operation is located. The permittee or any person with an
 8 interest that may be adversely affected may obtain a
 9 contested case hearing under the provisions of the Montana
 10 Administrative Procedure Act on the adjusted bond level by
 11 filing with the department within 30 days of the notice a
 12 written request for hearing.

13 (3) A bond filed in accordance with the provisions of
 14 this part may not be released by the department until the
 15 provisions of this part, the rules adopted pursuant to this
 16 part, and ~~this--reclamation--plan~~ the permit have been
 17 fulfilled.

18 (4) No A bond filed for an operating permit obtained
 19 under 82-4-335 may not be released until the public has been
 20 provided an opportunity for a hearing."

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

22 "82-4-362. Suspension of permits -- hearing. (1) If any
 23 of the requirements of this part, the rules adopted under
 24 this part, or a license, permit, or reclamation plan has not
 25 been complied with ~~within--the--time--limits--set--by--the~~

1 ~~department-or-board-or-by-this-part~~, the department shall
 2 serve a notice of noncompliance on the licensee or permittee
 3 or, if necessary, the commissioner shall order the
 4 suspension of the permit. The commissioner may order
 5 immediate suspension of a permit whenever he the
 6 commissioner makes a finding that a violation of this part,
 7 the rules adopted under this part, or a license or permit,
 8 including the reclamation plan, is creating an imminent
 9 danger to the health or safety of persons outside the permit
 10 area. The notice or order must be handed to the licensee or
 11 permittee in person or served by certified ~~or--registered~~
 12 mail addressed to the permanent address shown on the
 13 application for a license or permit. The notice of
 14 noncompliance or order of suspension must specify in what
 15 respects the operator has failed to comply with this part,
 16 the rules adopted under this part, the permit, or the
 17 reclamation plan and must, if the violation has not been
 18 abated, order abatement within a specified time period.

19 (2) If the licensee or permittee has not complied with
 20 the requirements set forth in the notice of noncompliance or
 21 order of suspension within the time limits set therein in
 22 the notice or order, the permit may be revoked by order of
 23 the board and the performance bond forfeited to the
 24 department. The licensee or permittee is entitled to a
 25 hearing before the department on the revocation of a permit

1 or license or the forfeiture of a performance bond if a
2 hearing is requested within 30 days after service of notice
3 as provided in subsection (1). The notice must state when
4 those measures may be undertaken and must give notice of
5 opportunity for a hearing. If a hearing is requested within
6 the 30-day period, the permit or license may not be revoked
7 and the bond may not be forfeited until a final decision is
8 made by the department.

9 (3) If a permittee fails to pay the fee or file the
10 report required under 82-4-339, the department shall serve
11 notice of this failure, by certified mail or personal
12 delivery, on the permittee. If the permittee does not comply
13 within 30 days of receipt of the notice, the commissioner
14 shall suspend the permit. The commissioner shall reinstate
15 the permit upon compliance."

16 NEW SECTION. **Section 8.** Codification instruction.
17 [Section 5] is intended to be codified as an integral part
18 of Title 82, chapter 4, part 3, and the provisions of Title
19 82, chapter 4, part 3, apply to [section 5].

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

1 House BILL NO. 442
2 INTRODUCED BY Knox
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
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16 agreement. (1) Except as provided in subsections (3) through
17 (9), the provisions of this part do not apply to any small
18 miner if the small miner annually agrees in writing:
19 (a) that he the small miner will not pollute or
20 contaminate any stream;
21 (b) that he the small miner will provide protection for
22 human and animal life through the installation of bulkheads
23 installed over safety collars and the installation of doors
24 on tunnel portals;
25 (c) that he the small miner will provide a map locating

1 his the miner's mining operations. The map must be of a size
2 and scale determined by the department.
3 (d) if the small miner's operations are placer or
4 dredge mining, that he the small miner shall reclaim all
5 land disturbed by the operations to comparable utility and
6 stability as that of adjacent areas.
7 (2) For small-miner exemptions obtained after September
8 30, 1985, a small miner may not obtain or continue an
9 exemption under subsection (1) unless he the small miner
10 annually certifies in writing:
11 (a) if the small miner is a natural person, that:
12 (i) no business association or partnership of which he
13 the small miner is a member or partner has a small-miner
14 exemption; and
15 (ii) no corporation of which he the small miner is an
16 officer, director, or owner of record of 25% or more of any
17 class of voting stock has a small-miner exemption; or
18 (b) if the small miner is a partnership or business
19 association, that:
20 (i) none of the associates or partners holds a
21 small-miner exemption; and
22 (ii) none of the associates or partners is an officer,
23 director, or owner of 25% or more of any class of voting
24 stock of a corporation that has a small-miner exemption; or
25 (c) if the small miner is a corporation, that no

officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

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

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

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

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, he the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail,

at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

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

(8) The exemption provided in this section does not apply to:

(a) a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) a person who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) a person who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) a person who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

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

Section 2. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required -- employees included -- limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the board. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the

current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the

department for the cost of abatement."

Section 3. Section 82-4-335, MCA, is amended to read:

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

A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

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

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an

1 additional fee is necessary and the additional fee will
2 exceed \$5,000, the department shall notify the applicant
3 that a fee must be paid and submit to the applicant an
4 itemized estimate of the proposed expenses. The department
5 shall provide the applicant an opportunity to review the
6 department's estimated expenses. The applicant may indicate
7 which proposed expenses the applicant considers duplicative
8 or excessive, if any.

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

12 (a) name and address of the operator and, if a
13 corporation or other business entity, the name and address
14 of its officers, directors, owners of 10% or more of any
15 class of voting stock, partners, and the like and its
16 resident agent for service of process, if required by law;

17 (b) minerals expected to be mined;

18 (c) a proposed reclamation plan;

19 (d) expected starting date of operations;

20 (e) a map showing the specific area to be mined and the
21 boundaries of the land which that will be disturbed,
22 topographic detail, the location and names of all streams,
23 roads, railroads, and utility lines on or immediately
24 adjacent to the area, and the location of proposed access
25 roads to be built;

1 (f) the names and addresses of the owners of record and
2 any purchasers under contracts for deed of the surface of
3 the land within the permit area and the owners of record and
4 any purchasers under contracts for deed of all surface area
5 within one-half mile of any part of the permit area,
6 provided that the department is not required to verify this
7 information;

8 (g) the names and addresses of the present owners of
9 record and any purchasers under contracts for deed of all
10 minerals in the land within the permit area, provided that
11 the department is not required to verify this information;

12 (h) the source of the applicant's legal right to mine
13 the mineral on the land affected by the permit, provided
14 that the department is not required to verify this
15 information;

16 (i) types of access roads to be built and manner of
17 reclamation of road sites on abandonment;

18 (j) a plan which will provide, within limits of normal
19 operating procedures of the industry, for completion of the
20 operation;

21 (k) ground water and surface water hydrologic data
22 gathered from a sufficient number of sources and length of
23 time to characterize the hydrologic regime;

24 (l) a plan detailing the design, operation, and
25 monitoring of impounding structures, including but not

1 limited to tailings impoundments and water reservoirs,
2 sufficient to ensure that the structures are safe and
3 stable;

4 (m) a plan identifying methods to be used to monitor
5 for the accidental discharge of objectionable materials and
6 remedial action plans to be used to control and mitigate
7 discharges to surface or ground water; and

8 (n) an evaluation of the expected life of any tailings
9 impoundment or waste area and the potential for expansion of
10 the tailings impoundment or waste site.

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

25 (6) When the department determines that a permittee has

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

18 (7) Compliance with 90-6-307 is not required for
19 exploration and bulk sampling for metallurgical testing when
20 the aggregate samples are less than 10,000 tons.

21 (8) A person may not be issued an operating permit if:

22 (a) that person's failure to comply with the provisions
23 of this part, the rules adopted under this part, or a permit
24 or license issued under this part has resulted in the
25 forfeiture of a bond, unless that person meets the

1 conditions described in 82-4-360:

2 (b) that person has not paid a penalty for which the
3 department has obtained a judgment pursuant to 82-4-361;

4 (c) that person has failed to post a reclamation bond
5 required by 82-4-305, unless the department has certified
6 that the area for which the bond should have been posted has
7 been reclaimed by that person or reclaimed by the department
8 and the person has reimbursed the department for the cost of
9 the reclamation;

10 (d) that person has failed to comply with an abatement
11 order issued pursuant to 82-4-362, unless the department has
12 completed the abatement and the person has reimbursed the
13 department for the cost of abatement.

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

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

22 (ii) presents a certification by the administering
23 agency that the violation is in the process of being
24 corrected to the agency's satisfaction or is the subject of
25 a bona fide administrative or judicial appeal; and

1 (b) if the person is a partnership, corporation, or
2 other business association, provides the certification
3 required by subsection (9)(a)(i) or (9)(a)(ii), as
4 applicable, for any partners, officers, directors, owners of
5 10% or more of any class of voting stock, and business
6 association members."

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

8 "82-4-337. Inspection -- issuance of operating permit
9 -- modification. (1) (a) The board shall cause all
10 applications for operating permits to be reviewed for
11 completeness within 60 days of receipt of the initial
12 application and within 30 days of receipt of responses to
13 notices of deficiencies. The board shall notify the
14 applicant concerning completeness as soon as possible. An
15 application is considered complete unless the applicant is
16 notified of any deficiencies within 30-days-of-receipt the
17 appropriate review period.

18 (b) Unless the review period is extended as provided in
19 this section, the board shall review the adequacy of the
20 proposed reclamation plan and plan of operation within 30
21 days of the determination that the application is complete
22 or within 60 days of receipt of the application if the board
23 does not notify the applicant of any deficiencies in the
24 application. If the applicant is not notified of
25 deficiencies or inadequacies in the proposed reclamation

1 plan and plan of operation within such the time period, the
 2 operating permit ~~shall be~~ is issued upon receipt of the bond
 3 as required in 82-4-338 and pursuant to the requirements of
 4 subsection (1)(c). The department shall promptly notify the
 5 applicant of the form and amount of bond which will be
 6 required.

7 (c) No A permit may not be issued until:

8 (i) sufficient bond has been submitted pursuant to
 9 82-4-338;

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

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

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

1 (ii) If the department determines that additional time
 2 is needed to review the application and reclamation plan for
 3 a major operation, the department and the applicant shall
 4 negotiate to extend the period prescribed in subsection
 5 (1)(b) by not more than 365 days in order to permit
 6 reasonable review.

7 (iii) Failure of the board to act upon a complete
 8 application within the extension period constitutes approval
 9 of the application, and the permit ~~shall~~ must be issued
 10 promptly upon receipt of the bond as required in 82-4-338.

11 (2) The operating permit ~~shall~~ must be granted for the
 12 period required to complete the operation and ~~shall--be~~ is
 13 valid until the operation authorized by the permit is
 14 completed or abandoned unless the permit is suspended or
 15 revoked by the board as provided in this part.

16 (3) The operating permit ~~shall~~ must provide that the
 17 reclamation plan may be modified by the board, upon proper
 18 application of the permittee or department, after timely
 19 notice and opportunity for hearing, at any time during the
 20 term of the permit and for any of the following reasons:

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

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

25 (c) when significant environmental problem situations

are revealed by field inspection."

NEW SECTION. Section 5. Amendment or revision of operating permits. (1) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(2) Applications for major amendments must be processed in the same manner as applications for new permits.

(3) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department shall by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(4) If the department demonstrates that a revision may result in a significant environmental impact that was not previously evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for other revisions must be processed within 30 days of receipt of a complete application.

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

"82-4-338. Performance bond. (1) The applicant shall

file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, and the rules of the board, and the permit. In lieu of such a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits in this subsection, the bond ~~shall~~ may not be less than the estimated cost to the state to ~~complete the reclamation of the disturbed land~~ ensure compliance with this part, the rules, and the permit. A public or governmental agency ~~shall~~ may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such a blanket bond ~~shall~~ must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation compliance with

this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and ~~this--reclamation--plan~~ the permit have been fulfilled.

(4) No A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

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

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan 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 the commissioner 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 or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not been abated, order abatement within a specified time period.

(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 in the notice or order, 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

1 or license or the forfeiture of a performance bond if a
2 hearing is requested within 30 days after service of notice
3 as provided in subsection (1). The notice must state when
4 those measures may be undertaken and must give notice of
5 opportunity for a hearing. If a hearing is requested within
6 the 30-day period, the permit or license may not be revoked
7 and the bond may not be forfeited until a final decision is
8 made by the department.

9 (3) If a permittee fails to pay the fee or file the
10 report required under 82-4-339, the department shall serve
11 notice of this failure, by certified mail or personal
12 delivery, on the permittee. If the permittee does not comply
13 within 30 days of receipt of the notice, the commissioner
14 shall suspend the permit. The commissioner shall reinstate
15 the permit upon compliance."

16 NEW SECTION. **Section 8.** Codification instruction.
17 [Section 5] is intended to be codified as an integral part
18 of Title 82, chapter 4, part 3, and the provisions of Title
19 82, chapter 4, part 3, apply to [section 5].

-End-

1 House BILL NO. 442
 2 INTRODUCED BY KNOX
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 6 MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR
 7 AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW
 8 PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING
 9 ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS
 10 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND
 11 82-4-362, MCA."
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 **Section 1.** Section 82-4-305, MCA, is amended to read:
 15 "82-4-305. Exemption -- small miners -- written
 16 agreement. (1) Except as provided in subsections (3) through
 17 (9), the provisions of this part do not apply to any small
 18 miner if the small miner annually agrees in writing:
 19 (a) that he the small miner will not pollute or
 20 contaminate any stream;
 21 (b) that he the small miner will provide protection for
 22 human and animal life through the installation of bulkheads
 23 installed over safety collars and the installation of doors
 24 on tunnel portals;
 25 (c) that he the small miner will provide a map locating

1 his the miner's mining operations. The map must be of a size
 2 and scale determined by the department.
 3 (d) if the small miner's operations are placer or
 4 dredge mining, that he the small miner shall reclaim all
 5 land disturbed by the operations to comparable utility and
 6 stability as that of adjacent areas.
 7 (2) For small-miner exemptions obtained after September
 8 30, 1985, a small miner may not obtain or continue an
 9 exemption under subsection (1) unless he the small miner
 10 annually certifies in writing:
 11 (a) if the small miner is a natural person, that:
 12 (i) no business association or partnership of which he
 13 the small miner is a member or partner has a small-miner
 14 exemption; and
 15 (i)
 16 officer
 17 class
 18 (i)
 19 associ
 20 (i)
 21 small-
 22 (i)
 23 direct
 24 stock
 25 (c

THERE ARE NO CHANGES IN THIS BILL.
 PLEASE REFER TO WHITE OR YELLOW FOR
 COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 29, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration House Bill No. 442 (third reading copy -- blue), respectfully report that House Bill No. 442 be amended as follows and as so amended be concurred in.

Signed: *Don Bianchi*
Senator Don Bianchi, Chair

That such amendments read:

1. Page 21.
Following: line 19
Insert:

"NEW SECTION. Section 9. Coordination instruction. If [this act] is passed and if it includes [section 5] that affects the amendment or revision of operating permits, then [section 3 of Senate Bill No. 320] is void."

-END-

AW
Amd. Coord.
The Sec. of Senate

Bianchi
Senator Carrying Bill

SENATE

HB 442

701524SC.SAN

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 2:18 pm

Mr. Chairman: I move to amend House Bill No. 442 (third reading copy -- blue).

ADOPT

REJECT

Signed: Don Bianchi
Senator Don Bianchi

That such amendments read:

1. Page 17, line 19.
Following: "previously"
Insert: "and substantially"

-END-

1 HOUSE BILL NO. 442

2 INTRODUCED BY KNOX

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR
7 AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW
8 PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING
9 ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS
10 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND
11 82-4-362, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 82-4-305, MCA, is amended to read:

15 "82-4-305. **Exemption -- small miners -- written**
16 **agreement.** (1) Except as provided in subsections (3) through
17 (9), the provisions of this part do not apply to any small
18 miner if the small miner annually agrees in writing:

19 (a) that he the small miner will not pollute or
20 contaminate any stream;

21 (b) that he the small miner will provide protection for
22 human and animal life through the installation of bulkheads
23 installed over safety collars and the installation of doors
24 on tunnel portals;

25 (c) that he the small miner will provide a map locating

1 his the miner's mining operations. The map must be of a size
2 and scale determined by the department.

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

7 (2) For small-miner exemptions obtained after September
8 30, 1985, a small miner may not obtain or continue an
9 exemption under subsection (1) unless he the small miner
10 annually certifies in writing:

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

12 (i) no business association or partnership of which he
13 the small miner is a member or partner has a small-miner
14 exemption; and

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

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

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

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

25 (c) if the small miner is a corporation, that no

1 officer, director, or owner of record of 25% or more of any
2 class of voting stock of the corporation:

- 3 (i) holds a small-miner exemption;
- 4 (ii) is a member or partner in a business association or
5 partnership that holds a small-miner exemption;
- 6 (iii) is an officer, director, or owner of record of 25%
7 or more of any class of voting stock of another corporation
8 that holds a small-miner exemption.

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

16 (4) If a small miner who conducts a placer or dredge
17 mining operation fails to reclaim the operation, he the
18 small miner is liable to the department for all its
19 reasonable costs of reclamation, including a reasonable
20 charge for services performed by state personnel and state
21 materials and equipment used. If the small miner posts a
22 surety bond, the surety is liable to the state to the extent
23 of the bond amount and the small miner is liable for the
24 remainder of the reasonable costs to the state of reclaiming
25 the operation.

1 (5) If a small miner who conducts a placer or dredge
2 mining operation fails to commence reclamation of the
3 operation within 6 months after cessation of mining or
4 within an extended period allowed by the department for good
5 cause shown or if the small miner fails to diligently
6 complete reclamation, the department shall notify the small
7 miner by certified mail that it intends to reclaim the
8 operation unless the small miner commences reclamation
9 within 30 days and diligently completes the reclamation. The
10 notice must be mailed to the address stated on the small
11 miner exclusion statement or, if the small miner has
12 notified the department of a different address by letter or
13 in the annual certification form, to the most recent address
14 given to the department. If the small miner fails to
15 commence reclamation within 30 days or to diligently
16 complete reclamation, the department may revoke the small
17 miner exclusion statement, forfeit any bond that has been
18 posted with the department, and enter and reclaim the
19 operation. If the small miner has not posted a bond with the
20 department or if the reasonable costs of reclamation exceed
21 the amount of the bond, the department may also collect
22 additional reclamation costs, as set forth in subsection
23 (6), before or after it incurs those costs.

24 (6) To collect additional reclamation costs, the
25 department shall notify the small miner by certified mail,

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

15 (7) A small miner who intends to use a cyanide
 16 ore-processing reagent shall obtain an operating permit for
 17 that part of his the small miner's operation where the
 18 cyanide ore-processing reagent will be used or disposed of.

19 (8) The exemption provided in this section does not
 20 apply to:

21 (a) a person whose failure to comply with the
 22 provisions of this part, the rules adopted under this part,
 23 or a permit or license issued under this part has resulted
 24 in the forfeiture of a bond, unless that person meets the
 25 conditions described under 82-4-360;

1 (b) a person who has not paid a penalty for which the
 2 department has obtained a judgment pursuant to 82-4-361;

3 (c) a person who has failed to post a reclamation bond
 4 required by this section, unless the department has
 5 certified that the area for which the bond should have been
 6 posted has been reclaimed by that person or reclaimed by the
 7 department and the person has reimbursed the department for
 8 the cost of the reclamation; or

9 (d) a person who has failed to comply with an abatement
 10 order issued pursuant to 82-4-362, unless the department has
 11 completed the abatement and the person has reimbursed the
 12 department for the cost of abatement.

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

18 **Section 2.** Section 82-4-331, MCA, is amended to read:

19 "82-4-331. Exploration license required -- employees
 20 included -- limitation. (1) A person may not engage in
 21 exploration in the state without first obtaining an
 22 exploration license from the board. A license must be issued
 23 for a period of 1 year from date of issue and is renewable
 24 from year to year on application. An application for renewal
 25 must be filed within 30 days preceding the expiration of the

current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the

department for the cost of abatement."

Section 3. Section 82-4-335, MCA, is amended to read:

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

A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

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

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an

1 additional fee is necessary and the additional fee will
 2 exceed \$5,000, the department shall notify the applicant
 3 that a fee must be paid and submit to the applicant an
 4 itemized estimate of the proposed expenses. The department
 5 shall provide the applicant an opportunity to review the
 6 department's estimated expenses. The applicant may indicate
 7 which proposed expenses the applicant considers duplicative
 8 or excessive, if any.

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

12 (a) name and address of the operator and, if a
 13 corporation or other business entity, the name and address
 14 of its officers, directors, owners of 10% or more of any
 15 class of voting stock, partners, and the like and its
 16 resident agent for service of process, if required by law;

17 (b) minerals expected to be mined;

18 (c) a proposed reclamation plan;

19 (d) expected starting date of operations;

20 (e) a map showing the specific area to be mined and the
 21 boundaries of the land which that will be disturbed,
 22 topographic detail, the location and names of all streams,
 23 roads, railroads, and utility lines on or immediately
 24 adjacent to the area, and the location of proposed access
 25 roads to be built;

1 (f) the names and addresses of the owners of record and
 2 any purchasers under contracts for deed of the surface of
 3 the land within the permit area and the owners of record and
 4 any purchasers under contracts for deed of all surface area
 5 within one-half mile of any part of the permit area,
 6 provided that the department is not required to verify this
 7 information;

8 (g) the names and addresses of the present owners of
 9 record and any purchasers under contracts for deed of all
 10 minerals in the land within the permit area, provided that
 11 the department is not required to verify this information;

12 (h) the source of the applicant's legal right to mine
 13 the mineral on the land affected by the permit, provided
 14 that the department is not required to verify this
 15 information;

16 (i) types of access roads to be built and manner of
 17 reclamation of road sites on abandonment;

18 (j) a plan which will provide, within limits of normal
 19 operating procedures of the industry, for completion of the
 20 operation;

21 (k) ground water and surface water hydrologic data
 22 gathered from a sufficient number of sources and length of
 23 time to characterize the hydrologic regime;

24 (l) a plan detailing the design, operation, and
 25 monitoring of impounding structures, including but not

1 limited to tailings impoundments and water reservoirs,
2 sufficient to ensure that the structures are safe and
3 stable;

4 (m) a plan identifying methods to be used to monitor
5 for the accidental discharge of objectionable materials and
6 remedial action plans to be used to control and mitigate
7 discharges to surface or ground water; and

8 (n) an evaluation of the expected life of any tailings
9 impoundment or waste area and the potential for expansion of
10 the tailings impoundment or waste site.

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

25 (6) When the department determines that a permittee has

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

18 (7) Compliance with 90-6-307 is not required for
19 exploration and bulk sampling for metallurgical testing when
20 the aggregate samples are less than 10,000 tons.

21 (8) A person may not be issued an operating permit if;
22 (a) that person's failure to comply with the provisions
23 of this part, the rules adopted under this part, or a permit
24 or license issued under this part has resulted in the
25 forfeiture of a bond, unless that person meets the

1 conditions described in 82-4-360r;

2 (b) that person has not paid a penalty for which the
3 department has obtained a judgment pursuant to 82-4-361;

4 (c) that person has failed to post a reclamation bond
5 required by 82-4-305, unless the department has certified
6 that the area for which the bond should have been posted has
7 been reclaimed by that person or reclaimed by the department
8 and the person has reimbursed the department for the cost of
9 the reclamation;

10 (d) that person has failed to comply with an abatement
11 order issued pursuant to 82-4-362, unless the department has
12 completed the abatement and the person has reimbursed the
13 department for the cost of abatement.

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

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

22 (ii) presents a certification by the administering
23 agency that the violation is in the process of being
24 corrected to the agency's satisfaction or is the subject of
25 a bona fide administrative or judicial appeal; and

1 (b) if the person is a partnership, corporation, or
2 other business association, provides the certification
3 required by subsection (9)(a)(i) or (9)(a)(ii), as
4 applicable, for any partners, officers, directors, owners of
5 10% or more of any class of voting stock, and business
6 association members."

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

8 "82-4-337. Inspection -- issuance of operating permit
9 -- modification. (1) (a) The board shall cause all
10 applications for operating permits to be reviewed for
11 completeness within 60 days of receipt of the initial
12 application and within 30 days of receipt of responses to
13 notices of deficiencies. The board shall notify the
14 applicant concerning completeness as soon as possible. An
15 application is considered complete unless the applicant is
16 notified of any deficiencies within 30-days-of-receipt the
17 appropriate review period.

18 (b) Unless the review period is extended as provided in
19 this section, the board shall review the adequacy of the
20 proposed reclamation plan and plan of operation within 30
21 days of the determination that the application is complete
22 or within 60 days of receipt of the application if the board
23 does not notify the applicant of any deficiencies in the
24 application. If the applicant is not notified of
25 deficiencies or inadequacies in the proposed reclamation

1 plan and plan of operation within ~~such~~ the time period, the
 2 operating permit ~~shall-be~~ is issued upon receipt of the bond
 3 as required in 82-4-338 and pursuant to the requirements of
 4 subsection (1)(c). The department shall promptly notify the
 5 applicant of the form and amount of bond which will be
 6 required.

7 (c) No A permit may not be issued until:

8 (i) sufficient bond has been submitted pursuant to
 9 82-4-338;

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

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

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

1 (ii) If the department determines that additional time
 2 is needed to review the application and reclamation plan for
 3 a major operation, the department and the applicant shall
 4 negotiate to extend the period prescribed in subsection
 5 (1)(b) by not more than 365 days in order to permit
 6 reasonable review.

7 (iii) Failure of the board to act upon a complete
 8 application within the extension period constitutes approval
 9 of the application, and the permit ~~shall~~ must be issued
 10 promptly upon receipt of the bond as required in 82-4-338.

11 (2) The operating permit ~~shall~~ must be granted for the
 12 period required to complete the operation and ~~shall--be~~ is
 13 valid until the operation authorized by the permit is
 14 completed or abandoned unless the permit is suspended or
 15 revoked by the board as provided in this part.

16 (3) The operating permit ~~shall~~ must provide that the
 17 reclamation plan may be modified by the board, upon proper
 18 application of the permittee or department, after timely
 19 notice and opportunity for hearing, at any time during the
 20 term of the permit and for any of the following reasons:

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

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

25 (c) when significant environmental problem situations

1 are revealed by field inspection."

2 NEW SECTION. Section 5. Amendment or revision of
3 operating permits. (1) During the term of an operating
4 permit, an operator may apply for an amendment or revision
5 to the permit. The operator may not apply for an amendment
6 to delete disturbed acreage from the permit.

7 (2) Applications for major amendments must be processed
8 in the same manner as applications for new permits.

9 (3) Major amendments are those that may significantly
10 affect the environment. Minor amendments are those that will
11 not significantly affect the environment. The department
12 shall by rule establish criteria for classification of
13 amendments as major or minor. The rules must establish
14 requirements for the content of applications for amendments
15 and revisions and procedures for processing of minor
16 amendments.

17 (4) If the department demonstrates that a revision may
18 result in a significant environmental impact that was not
19 previously AND SUBSTANTIALLY evaluated in an environmental
20 impact statement, the application must be processed in the
21 same manner as is provided for new permits. Applications for
22 other revisions must be processed within 30 days of receipt
23 of a complete application.

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

25 "82-4-338. Performance bond. (1) The applicant shall

1 file with the department a bond payable to the state of
2 Montana with surety satisfactory to the department in the
3 sum to be determined by the department of not less than \$200
4 or more than \$2,500 for each acre or fraction thereof of an
5 acre of the disturbed area, conditioned upon the faithful
6 performance of the requirements of this part, and the rules
7 of the board, and the permit. In lieu of such a bond, the
8 applicant may file with the board a cash deposit, an
9 assignment of a certificate of deposit, or other surety
10 acceptable to the board. Regardless of the above limits in
11 this subsection, the bond ~~shall~~ may not be less than the
12 estimated cost to the state to ~~complete-the-reclamation-of~~
13 ~~the-disturbed-land~~ ensure compliance with this part, the
14 rules, and the permit. A public or governmental agency ~~shall~~
15 may not be required to post a bond under the provisions of
16 this part. A blanket performance bond covering two or more
17 operations may be accepted by the board. Such A blanket bond
18 ~~shall~~ must adequately secure the estimated total number of
19 acres of disturbed land.

20 (2) The department shall review the amount of each bond
21 at least every 5 years and shall consult with the licensee
22 or permittee if the review indicates that the bond level
23 should be adjusted. When determined by the department that
24 the set bonding level of a permit or license does not
25 represent the present costs of reclamation compliance with

this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and ~~this--reclamation--plan~~ the permit have been fulfilled.

(4) No A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

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

"82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan 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 the commissioner 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 or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not 'been abated, order abatement within a specified time period.

(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 in the notice or order, 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 8. Codification instruction.
[Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 5].

NEW SECTION. SECTION 9. COORDINATION INSTRUCTION. IF
[THIS ACT] IS PASSED AND IF IT INCLUDES [SECTION 5] THAT
AFFECTS THE AMENDMENT OR REVISION OF OPERATING PERMITS, THEN
[SECTION 3 OF SENATE BILL NO. 320] IS VOID.

-End-

Free Conference Committee
on House Bill 442
Report No.1, April 20, 1993

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 442 and recommend as follows:

1. Page 17, line 12.

Strike: "shall"

Insert: "may"

2. Page 17, line 21.

Following: the second "for"

Insert: "minor amendments and"

3. Page 17, line 23.

Strike: "a complete"

Insert: "an"

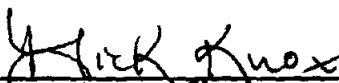
4. Page 21, lines 20 through 23.

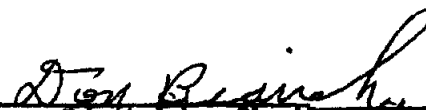
Strike: section 9 in its entirety


Further, that this Free Conference Committee report be adopted.

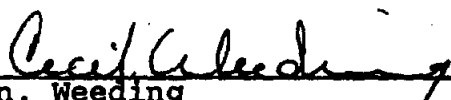
For the House:

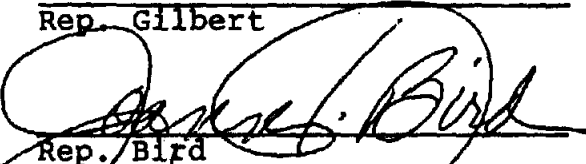
For the Senate:

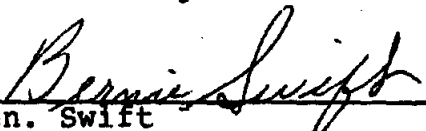

Rep. Knox, Chair


Sen. Bianchi, Chair


Rep. Gilbert


Sen. Weeding


Rep. Bird


Sen. Swift

ADOPT

REJECT

F.C.C.R.#1

HB 442

871442CC.Hpf

1 HOUSE BILL NO. 442

2 INTRODUCED BY KNOX

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR
7 AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW
8 PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING
9 ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS
10 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND
11 82-4-362, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 82-4-305, MCA, is amended to read:

15 "82-4-305. Exemption -- small miners -- written
16 agreement. (1) Except as provided in subsections (3) through
17 (9), the provisions of this part do not apply to any small
18 miner if the small miner annually agrees in writing:

19 (a) that he the small miner will not pollute or
20 contaminate any stream;

21 (b) that he the small miner will provide protection for
22 human and animal life through the installation of bulkheads
23 installed over safety collars and the installation of doors
24 on tunnel portals;

25 (c) that he the small miner will provide a map locating

1 his the miner's mining operations. The map must be of a size
2 and scale determined by the department.

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

7 (2) For small-miner exemptions obtained after September
8 30, 1985, a small miner may not obtain or continue an
9 exemption under subsection (1) unless he the small miner
10 annually certifies in writing:

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

12 (i) no business association or partnership of which he
13 the small miner is a member or partner has a small-miner
14 exemption; and

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

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

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

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

25 (c) if the small miner is a corporation, that no

1 officer, director, or owner of record of 25% or more of any
2 class of voting stock of the corporation:

3 (i) holds a small-miner exemption;

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

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

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

16 (4) If a small miner who conducts a placer or dredge
17 mining operation fails to reclaim the operation, he the
18 small miner is liable to the department for all its
19 reasonable costs of reclamation, including a reasonable
20 charge for services performed by state personnel and state
21 materials and equipment used. If the small miner posts a
22 surety bond, the surety is liable to the state to the extent
23 of the bond amount and the small miner is liable for the
24 remainder of the reasonable costs to the state of reclaiming
25 the operation.

1 (5) If a small miner who conducts a placer or dredge
2 mining operation fails to commence reclamation of the
3 operation within 6 months after cessation of mining or
4 within an extended period allowed by the department for good
5 cause shown or if the small miner fails to diligently
6 complete reclamation, the department shall notify the small
7 miner by certified mail that it intends to reclaim the
8 operation unless the small miner commences reclamation
9 within 30 days and diligently completes the reclamation. The
10 notice must be mailed to the address stated on the small
11 miner exclusion statement or, if the small miner has
12 notified the department of a different address by letter or
13 in the annual certification form, to the most recent address
14 given to the department. If the small miner fails to
15 commence reclamation within 30 days or to diligently
16 complete reclamation, the department may revoke the small
17 miner exclusion statement, forfeit any bond that has been
18 posted with the department, and enter and reclaim the
19 operation. If the small miner has not posted a bond with the
20 department or if the reasonable costs of reclamation exceed
21 the amount of the bond, the department may also collect
22 additional reclamation costs, as set forth in subsection
23 (6), before or after it incurs those costs.

24 (6) To collect additional reclamation costs, the
25 department shall notify the small miner by certified mail,

at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

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

(8) The exemption provided in this section does not apply to:

(a) a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) a person who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) a person who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) a person who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

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

Section 2. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required -- employees included -- limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the board. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the

current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the

department for the cost of abatement."

Section 3. Section 82-4-335, MCA, is amended to read:

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

A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

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

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of \$25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an

1 additional fee is necessary and the additional fee will
 2 exceed \$5,000, the department shall notify the applicant
 3 that a fee must be paid and submit to the applicant an
 4 itemized estimate of the proposed expenses. The department
 5 shall provide the applicant an opportunity to review the
 6 department's estimated expenses. The applicant may indicate
 7 which proposed expenses the applicant considers duplicative
 8 or excessive, if any.

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

12 (a) name and address of the operator and, if a
 13 corporation or other business entity, the name and address
 14 of its officers, directors, owners of 10% or more of any
 15 class of voting stock, partners, and the like and its
 16 resident agent for service of process, if required by law;

17 (b) minerals expected to be mined;

18 (c) a proposed reclamation plan;

19 (d) expected starting date of operations;

20 (e) a map showing the specific area to be mined and the
 21 boundaries of the land which that will be disturbed,
 22 topographic detail, the location and names of all streams,
 23 roads, railroads, and utility lines on or immediately
 24 adjacent to the area, and the location of proposed access
 25 roads to be built;

1 (f) the names and addresses of the owners of record and
 2 any purchasers under contracts for deed of the surface of
 3 the land within the permit area and the owners of record and
 4 any purchasers under contracts for deed of all surface area
 5 within one-half mile of any part of the permit area,
 6 provided that the department is not required to verify this
 7 information;

8 (g) the names and addresses of the present owners of
 9 record and any purchasers under contracts for deed of all
 10 minerals in the land within the permit area, provided that
 11 the department is not required to verify this information;

12 (h) the source of the applicant's legal right to mine
 13 the mineral on the land affected by the permit, provided
 14 that the department is not required to verify this
 15 information;

16 (i) types of access roads to be built and manner of
 17 reclamation of road sites on abandonment;

18 (j) a plan which will provide, within limits of normal
 19 operating procedures of the industry, for completion of the
 20 operation;

21 (k) ground water and surface water hydrologic data
 22 gathered from a sufficient number of sources and length of
 23 time to characterize the hydrologic regime;

24 (l) a plan detailing the design, operation, and
 25 monitoring of impounding structures, including but not

1 limited to tailings impoundments and water reservoirs,
2 sufficient to ensure that the structures are safe and
3 stable;

4 (m) a plan identifying methods to be used to monitor
5 for the accidental discharge of objectionable materials and
6 remedial action plans to be used to control and mitigate
7 discharges to surface or ground water; and

8 (n) an evaluation of the expected life of any tailings
9 impoundment or waste area and the potential for expansion of
10 the tailings impoundment or waste site.

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

25 (6) When the department determines that a permittee has

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

18 (7) Compliance with 90-6-307 is not required for
19 exploration and bulk sampling for metallurgical testing when
20 the aggregate samples are less than 10,000 tons.

21 (8) A person may not be issued an operating permit if:
22 (a) that person's failure to comply with the provisions
23 of this part, the rules adopted under this part, or a permit
24 or license issued under this part has resulted in the
25 forfeiture of a bond, unless that person meets the

conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

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

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

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

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

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

"82-4-337. Inspection -- issuance of operating permit -- modification. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within ~~30 days of receipt~~ the appropriate review period.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation

1 plan and plan of operation within such the time period, the
 2 operating permit ~~shall-be~~ is issued upon receipt of the bond
 3 as required in 82-4-338 and pursuant to the requirements of
 4 subsection (1)(c). The department shall promptly notify the
 5 applicant of the form and amount of bond which will be
 6 required.

7 (c) No A permit may not be issued until:

8 (i) sufficient bond has been submitted pursuant to
 9 82-4-338;

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

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

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

1 (ii) If the department determines that additional time
 2 is needed to review the application and reclamation plan for
 3 a major operation, the department and the applicant shall
 4 negotiate to extend the period prescribed in subsection
 5 (1)(b) by not more than 365 days in order to permit
 6 reasonable review.

7 (iii) Failure of the board to act upon a complete
 8 application within the extension period constitutes approval
 9 of the application, and the permit ~~shall~~ must be issued
 10 promptly upon receipt of the bond as required in 82-4-338.

11 (2) The operating permit ~~shall~~ must be granted for the
 12 period required to complete the operation and ~~shall--be~~ is
 13 valid until the operation authorized by the permit is
 14 completed or abandoned unless the permit is suspended or
 15 revoked by the board as provided in this part.

16 (3) The operating permit ~~shall~~ must provide that the
 17 reclamation plan may be modified by the board, upon proper
 18 application of the permittee or department, after timely
 19 notice and opportunity for hearing, at any time during the
 20 term of the permit and for any of the following reasons:

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

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

25 (c) when significant environmental problem situations

are revealed by field inspection."

NEW SECTION. Section 5. Amendment or revision of operating permits. (1) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(2) Applications for major amendments must be processed in the same manner as applications for new permits.

(3) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department shall MAY by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(4) If the department demonstrates that a revision may result in a significant environmental impact that was not previously AND SUBSTANTIALLY evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for MINOR AMENDMENTS AND other revisions must be processed within 30 days of receipt of a complete AN application.

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

"82-4-338. Performance bond. (1) The applicant shall

file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, and the rules of the board, and the permit. In lieu of such a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits in this subsection, the bond shall may not be less than the estimated cost to the state to ~~complete the reclamation of the disturbed land~~ ensure compliance with this part, the rules, and the permit. A public or governmental agency shall may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such A blanket bond shall must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation compliance with

this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and ~~this--reclamation--plan~~ the permit have been fulfilled.

(4) No A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

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

"82-4-362. **Suspension of permits -- hearing.** (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan 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 the commissioner 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 or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not been abated, order abatement within a specified time period.

(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 in the notice or order, 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 8. Codification instruction.
[Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 5].

~~NEW SECTION. SECTION 9. COORDINATION INSTRUCTION. IF
{THIS ACT} IS PASSED AND IF IT INCLUDES {SECTION 5} THAT
AFFECTS THE AMENDMENT OR REVISION OF OPERATING PERMITS, THEN
{SECTION 3 OF SENATE BILL NO. 320} IS VOID.~~

-End-