

SENATE BILL NO. 320

INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,
QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,
PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN

IN THE SENATE

FEBRUARY 5, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 16, 1993	ON MOTION, TAKEN FROM COMMITTEE AND PLACED ON 2ND READING ON THE 40TH LEGISLATIVE DAY.
FEBRUARY 17, 1993	PRINTING REPORT.
FEBRUARY 18, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 20, 1993	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 44; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 64; NOES, 36.

MARCH 31, 1993

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

APRIL 6, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. *320*

ASH
INTRODUCED BY *McLean* *James* *Carlson* *James* *Griffith*
CRINOE *Menahan*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT
IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING
DECISIONS; REQUIRING SECURITY BEFORE CHALLENGING BOARD
DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR
CHALLENGES; DEFINING AND PROVIDING CRITERIA FOR AMENDMENTS
AND REVISIONS TO MINE PERMITS; AMENDING SECTIONS 82-4-303,
82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

NEW SECTION. Section 1. Limitations of actions. Legal
actions seeking review of a board decision granting or
denying an exploration license or operating permit issued
under this part must be filed within the time provided by
2-4-702(2)(a) for initiation of proceedings for judicial
review under the Montana Administrative Procedure Act.

NEW SECTION. Section 2. Injunctions -- security for
damages. In actions seeking an injunction or restraining
order concerning a board decision granting or denying an
exploration license or operating permit issued under this
part, the court shall require a written undertaking for the
payment of costs and damages incurred by a party who has

been wrongfully enjoined or restrained.

NEW SECTION. Section 3. Award of costs and attorney
fees. The court may require the unsuccessful plaintiff in a
legal action challenging the granting or denying of an
exploration license or operating permit issued under this
part to pay the costs and reasonable attorney fees of other
parties to the action.

NEW SECTION. Section 4. Amendment or revision of
operating permits. (1) During the term of an operating
permit issued under this part, an operator may apply for an
amendment or revision to the permit. The operator may not
apply for an amendment to delete disturbed acreage except
following reclamation, as required under 82-4-336, and bond
release for the disturbance, as required under 82-4-338.

(2) (a) Applications for major amendments must be
processed pursuant to 82-4-335.

(b) For the purposes of this section, major amendments
are those amendments that significantly affect the human
environment. Minor amendments are those amendments that will
not significantly affect the human environment.

(c) The department shall by rule establish criteria for
classification of amendments as major and minor. The rules
must establish requirements for the content of applications
for amendments and revisions and procedures for the
processing of minor amendments.

(3) Revisions are categorically exempt from the provisions of the Montana Environmental Policy Act unless the department determines that the revision will result in a significant environmental impact that was not previously analyzed in an environmental review document. The department determination required under this subsection must be in writing and be based on substantial and credible evidence.

Section 5. Section 82-4-303, MCA, is amended to read:

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

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

(2) "Amendment" means an action to increase or reduce the size of the mine permit area or to engage in the activities identified in 82-4-335(1) outside of a previously permitted area.

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

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

(5) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching

operations.

(6) "Department" means the department of state lands.

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

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

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

1 use, refinement, or smelting.

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

7 ~~(10)~~(11) "Ore processing" means milling, heap leaching,
8 flotation, vat leaching, or other standard hard-rock mineral
9 concentration processes.

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

15 ~~(12)~~(13) "Placer deposit" means naturally occurring,
16 scattered or unconsolidated valuable minerals in gravel or
17 alluvium lying above bedrock.

18 ~~(13)~~(14) "Placer or dredge mining" means the mining of
19 minerals from a placer deposit by a person or persons.

20 ~~(14)~~(15) "Reclamation plan" means the operator's written
21 proposal, as required and approved by the board, for
22 reclamation of the land that will be disturbed. The proposal
23 ~~shall~~ must include, to the extent practical at the time of
24 application for an operating permit:

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

1 land after reclamation;

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

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

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

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

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

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

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

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

22 (16) "Revision" means a change in the operating plan or
23 reclamation plan to extend, continue, or modify an activity
24 within the mine's permit boundary.

25 ~~(15)~~(17) (a) "Small miner" means a person, firm, or

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

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

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

12 (A) the only operations engaged in by the person, firm,
13 or corporation;

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

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

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

25 ~~116~~(18) "Surface mining" means all or any part of the

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

12 ~~117~~(19) "Underground mining" means all methods of
13 mining other than surface mining.

14 ~~118~~(20) "Unit of surface-mined area" means that area of
15 land and surface water included within an operating permit
16 actually disturbed by surface mining during each 12-month
17 period of time, beginning at the date of the issuance of the
18 permit, and it comprises and includes the area from which
19 overburden or minerals have been removed, the area covered
20 by mining debris, and all additional areas used in surface
21 mining or underground mining operations which by virtue of
22 mining use are susceptible to erosion in excess of the
23 surrounding undisturbed portions of land.

24 ~~119~~(21) "Vegetative cover" means the type of
25 vegetation, grass, shrubs, trees, or any other form of

1 natural cover considered suitable at time of reclamation."

2 **Section 6.** Section 82-4-337, MCA, is amended to read:

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

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

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

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

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

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

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

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

25 (iii) If the department decides to hire a third-party

contractor to prepare an environmental impact statement on the application, the contractor must be selected as follows:

(A) The department shall provide the applicant with the names of three contractors acceptable to the department.

(B) The applicant shall choose one of the three contractors.

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

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

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

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

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

(c) when significant environmental problem situations

are revealed by field inspection."

Section 7. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons if it is established by clear and convincing evidence that:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit ~~shall~~ must be in writing and state the reasons therefor for denial."

NEW SECTION. Section 8. Codification instruction. [Sections 1 through 4] are 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 [sections 1 through 4].

NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0320, as introduced.

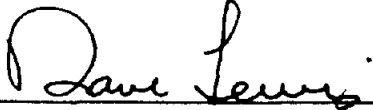
DESCRIPTION OF PROPOSED LEGISLATION: An act providing a time limit in which to challenge Board of Land Commissioners' mining decisions; requiring security before challenging board decisions; allowing the award of costs and attorney fees for challenges; defining and providing criteria for amendments and revisions to mine permits.


ASSUMPTIONS:

1. The 30-day statute of limitations provided in Section 1 may increase the number of permit challenges because persons who question the validity of the permit may file suit to protect their right to challenge the issuance of the permit. It is not possible to determine the increased costs to the Department of State Lands from this section.
2. Administrative rule adoption for 20 pages x \$35 = \$700, copying and mailing \$300.

FISCAL IMPACT: Operating expenses of \$1,000 in FY94.

TECHNICAL NOTES: Section 1 provides that an action to challenge a permit decision must be filed within the time frames of 2-4-702(2)(a). That statute requires filing of the action within 30 days of the notice required by 2-4-623(5) to be given to all parties to the administrative proceeding under the Montana Administrative Procedure Act (MAPA). Because MAPA does not apply to hard rock permit decisions, there is no mechanism to trigger the 30-day period under Section 1 of the bill.

 2-10-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


HENRY MCCLELLAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0320, as introduced

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 320

INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,
QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,
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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT
IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING
DECISIONS; ~~REQUIRING--SECURITY--BEFORE--CHALLENGING--BOARD~~
~~DECISIONS~~; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR
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82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
[SECTION 3] REQUIRES THE DEPARTMENT OF STATE LANDS TO ADOPT
ADMINISTRATIVE RULES. IN ADOPTING RULES, THE DEPARTMENT
SHALL ESTABLISH CRITERIA TO DISTINGUISH BETWEEN MAJOR AND
MINOR AMENDMENTS AND CRITERIA FOR REVISIONS TO OPERATING
PERMITS.

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

NEW SECTION. Section 1. Limitations of actions. Legal
actions seeking review of a board decision granting or

denying an exploration license or operating permit issued
under this part must be filed within the--time--provided--by
2-4-702(2)(a)--for--initiation--of--proceedings--for--judicial
review--under--the--Montana--Administrative--Procedure--Act 45
DAYS AFTER THE DECISION IS MADE.

NEW SECTION. Section 2. Injunctions. security--for--
damages--in--actions--seeking--an--injunction--or--restraining
order--concerning--a--board--decision--granting--or--denying--an
exploration--license--or--operating--permit--issued--under--this
part--the--court--shall--require--a--written--undertaking--for--the
payment--of--costs--and--damages--incurred--by--a--party--who--has
been--wrongfully--enjoined--or--restrained.

NEW SECTION. Section 2. Award of costs and attorney
fees. The court may require the unsuccessful plaintiff in a
legal action challenging the granting or denying of an
exploration license or operating permit issued under this
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amendment or revision to the permit. The operator may not
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following reclamation, as required under 82-4-336, and bond
release for the disturbance, as required under 82-4-338.

(2) (a) Applications for major amendments must be processed pursuant to 82-4-335.

(b) For the purposes of this section, major amendments are those amendments that significantly affect the human environment. Minor amendments are those amendments that will not significantly affect the human environment.

(c) The department shall by rule establish criteria for classification of amendments as major and minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for the processing of minor amendments.

(3) Revisions are categorically exempt from the provisions of the Montana Environmental Policy Act unless the department determines that the revision will result in a significant environmental impact that was not previously analyzed in an environmental review document. The department determination required under this subsection must be in writing and be based on substantial and credible evidence.

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

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

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

(5)(6) "Department" means the department of state lands.

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

(7)(8) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining

1 the presence, location, extent, depth, grade, and economic
2 viability of mineralization in those lands, if any, other
3 than mining for production and economic exploitation, as
4 well as all roads made for the purpose of facilitating
5 exploration, except as noted in 82-4-310.

6 {8}(9) "Mineral" means any ore, rock, or substance,
7 other than oil, gas, bentonite, clay, coal, sand, gravel,
8 phosphate rock, or uranium, taken from below the surface or
9 from the surface of the earth for the purpose of milling,
10 concentration, refinement, smelting, manufacturing, or other
11 subsequent use or processing or for stockpiling for future
12 use, refinement, or smelting.

13 {9}(10) "Mining" commences when the operator first mines
14 ores or minerals in commercial quantities for sale,
15 beneficiation, refining, or other processing or disposition
16 or first takes bulk samples for metallurgical testing in
17 excess of aggregate of 10,000 short tons.

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19 flotation, vat leaching, or other standard hard-rock mineral
20 concentration processes.

21 {11}(12) "Person" means any person, corporation, firm,
22 association, partnership, or other legal entity engaged in
23 exploration for or mining of minerals on or below the
24 surface of the earth, reprocessing of tailings or waste
25 materials, or operation of a hard-rock mill.

1 {12}(13) "Placer deposit" means naturally occurring,
2 scattered or unconsolidated valuable minerals in gravel or
3 alluvium lying above bedrock.

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5 minerals from a placer deposit by a person or persons.

6 {14}(15) "Reclamation plan" means the operator's written
7 proposal, as required and approved by the board, for
8 reclamation of the land that will be disturbed. The proposal
9 ~~shall~~ must include, to the extent practical at the time of
10 application for an operating permit:

11 (a) a statement of the proposed subsequent use of the
12 land after reclamation;

13 (b) plans for surface gradient restoration to a surface
14 suitable for the proposed subsequent use of the land after
15 reclamation is completed and the proposed method of
16 accomplishment;

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

19 (d) procedures proposed to avoid foreseeable situations
20 of public nuisance, endangerment of public safety, damage to
21 human life or property, or unnecessary damage to flora and
22 fauna in or adjacent to the area;

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

24 (f) the method of diverting surface waters around the
25 disturbed areas where necessary to prevent pollution of

those waters or unnecessary erosion;

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

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

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

(16) "Revision" means a change in the operating plan or reclamation plan to extend, continue, or modify an activity within the mine's permit boundary.

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

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

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

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

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

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

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

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

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

(20) "Unit of surface-mined area" means that area of

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

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

Section 5. 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 30 days of receipt. 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.

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

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

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

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

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

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice

of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

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

(iii) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the contractor must be selected as follows:

(A) The department shall provide the applicant with the names of three contractors acceptable to the department.

(B) The applicant shall choose one of the three contractors.

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

(2) The operating permit ~~shall~~ must be granted for the period required to complete the operation and ~~shall-be is~~ valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or

revoked by the board as provided in this part.

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

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

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

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

Section 6. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) A permit may be denied for any of the following reasons ~~if--it--is established-by-clear-and-convincing-evidence-that:~~

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit ~~shall~~ must be in writing and, state the reasons therefor for denial, AND BE BASED ON A

1 PREPONDERANCE OF THE EVIDENCE."

2 NEW SECTION. **Section 7.** Codification instruction.

3 [Sections 1 through 4 3] are intended to be codified as an
4 integral part of Title 82, chapter 4, part 3, and the
5 provisions of Title 82, chapter 4, part 3, apply to
6 [sections 1 through 4 3].

7 NEW SECTION. **Section 8.** Effective date. [This act] is
8 effective on passage and approval.

-End-

SENATE BILL NO. 320

INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,
 QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,
 PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT
 IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING
 DECISIONS; ~~REQUIRING--SECURITY--BEFORE--CHALLENGING--~~BOARD
 DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR
 CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR
APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING
 CRITERIA FOR AMENDMENTS AND REVISIONS TO MINE PERMITS; AND
 AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
[SECTION 3] REQUIRES AUTHORIZES THE DEPARTMENT OF STATE
LANDS TO ADOPT ADMINISTRATIVE RULES. IN ADOPTING RULES, THE
DEPARTMENT SHALL ESTABLISH CRITERIA TO DISTINGUISH BETWEEN
MAJOR AND MINOR AMENDMENTS AND CRITERIA FOR REVISIONS TO
OPERATING PERMITS APPLICATION CONTENT REQUIREMENTS THAT ARE
CONSISTENT WITH THE PERMITTING REQUIREMENTS ESTABLISHED IN
THIS BILL.

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

NEW SECTION. Section 1. Limitations of actions. Legal
 actions seeking review of a board decision granting or
 denying an exploration license or operating permit issued
 under this part must be filed within the--time--provided--by
 2-4-702(2)(a)--for--initiation--of--proceedings--for--judicial
 review--under--the--Montana--Administrative--Procedure--Act 45 180
 DAYS AFTER THE DECISION IS MADE.

~~NEW SECTION. Section 2. Injunctions--security--for--~~
~~damages--in--actions--seeking--an--injunction--or--restraining~~
~~order--concerning--a--board--decision--granting--or--denying--an~~
~~exploration--license--or--operating--permit--issued--under--this~~
~~party--the--court--shall--require--a--written--undertaking--for--the~~
~~payment--of--costs--and--damages--incurred--by--a--party--who--has~~
~~been--wrongfully--enjoined--or--restrained.~~

NEW SECTION. Section 2. Award of costs and attorney
fees. The court may require the unsuccessful plaintiff in a
legal action challenging the granting or denying of an
exploration license or operating permit issued under this
part to pay the costs and reasonable attorney fees of other
parties to the action WHEN ISSUING A FINAL ORDER IN AN
ACTION CHALLENGING THE GRANT OR DENIAL OF AN EXPLORATION
LICENSE OR OPERATING PERMIT ISSUED UNDER THIS PART, THE
COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE
ATTORNEY FEES, TO A PREVAILING OR SUBSTANTIALLY PREVAILING

PARTY WHENEVER, IN ITS DISCRETION, THE COURT DETERMINES THAT THE UNSUCCESSFUL PARTY'S LEGAL ACTION WAS FRIVOLOUS AND WITHOUT MERIT.

NEW SECTION. Section 3. Amendment or revision of operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) (a) Applications for major amendments must be processed pursuant to 82-4-335 82-4-337.

(b) ~~For the purposes of this section, major amendments are those amendments that significantly affect the human environment. Minor amendments are those amendments that will not significantly affect the human environment~~ THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A MINOR AMENDMENT AND PROVIDE A NOTICE OF DECISION ON THE ADEQUACY OF THE APPLICATION WITHIN 45 DAYS OF RECEIPT OF THE APPLICATION.

(c) The department shall ~~MAY~~ by rule establish criteria ~~for classification of amendments as major and minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for the processing of minor amendments.~~

(3) ~~Revisions are categorically exempt from the~~

~~provisions of the Montana Environmental Policy Act unless the department determines that the revision will result in a significant environmental impact that was not previously analyzed in an environmental review document. The department determination required under this subsection must be in writing and be based on substantial and credible evidence.~~
(A) AN APPLICATION FOR A MAJOR REVISION THAT MAY HAVE A SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT IS SUBJECT TO THE PROVISIONS OF 82-4-337(1).

(B) THE BOARD SHALL CAUSE AN APPLICATION FOR A MAJOR REVISION THAT WOULD NOT RESULT IN A SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT TO BE REVIEWED FOR COMPLETENESS WITHIN 30 DAYS OF RECEIPT. AN APPLICATION IS CONSIDERED COMPLETE UNLESS THE APPLICANT IS NOTIFIED OF A DEFICIENCY WITHIN THE 30-DAY PERIOD. THE BOARD SHALL REVIEW THE ADEQUACY OF THE PROPOSED MAJOR REVISION WITHIN 90 DAYS OF THE DETERMINATION THAT THE APPLICATION IS COMPLETE OR WITHIN 120 DAYS OF RECEIPT OF THE APPLICATION IF THE BOARD DOES NOT NOTIFY THE APPLICANT OF A DEFICIENCY IN THE APPLICATION.

(C) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A MINOR REVISION AND PROVIDE A NOTICE OF DECISION ON THE ADEQUACY OF THE APPLICATION WITHIN 15 DAYS. IF THE DEPARTMENT DOES NOT RESPOND WITHIN 15 DAYS, THEN THE PERMIT IS REVISED IN ACCORDANCE WITH THE APPLICATION. WITHIN THE

15-DAY PERIOD, THE DEPARTMENT MAY NOTIFY THE APPLICANT THAT THE REVISION APPLIED FOR IS A MAJOR REVISION AND IS SUBJECT TO THE PROVISIONS OF SUBSECTION (3)(A).

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

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

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

~~(2) "Amendment" means an action to increase or reduce the size of the mine permit area or to engage in the activities identified in 82-4-335(1) outside of a previously permitted area.~~

~~(3)(2)~~ "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

~~(3)(4)(3)~~ "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

~~(4)(5)(4)~~ "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(5)(6)(5)~~ "Department" means the department of state lands.

~~(6)(7)(6)~~ "Disturbed land" means that area of land or

surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~(7)(8)(7)~~ "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "MAJOR AMENDMENT" MEANS AN ACTION THAT INCREASES OR REDUCES THE SIZE OF THE MINE PERMIT AREA AND THAT IS NOT A MINOR AMENDMENT.

(9) "MAJOR REVISION" MEANS ANY CHANGE IN THE MINING OR RECLAMATION PLAN THAT:

(A) RESULTS IN A SIGNIFICANT CHANGE IN THE POSTMINING DRAINAGE PLAN;

(B) RESULTS IN A CHANGE IN THE APPROVED POSTMINING LAND USE;

(C) RESULTS IN A SIGNIFICANT CHANGE IN THE BONDING

1 LEVEL WITHIN THE PERMITTED AREA;

2 (D) RESULTS IN A CHANGE THAT MAY AFFECT THE
3 RECLAIMABILITY OF THE AREA OR THE HYDROLOGIC BALANCE ON OR
4 OFF THE PERMITTED AREA; OR

5 (E) RESULTS IN A SIGNIFICANT CHANGE IN THE RATE,
6 VOLUME, OR METHOD OF MINERAL EXTRACTION OR PROCESSING.

7 (8)(9)(10) "Mineral" means any ore, rock, or substance,
8 other than oil, gas, bentonite, clay, coal, sand, gravel,
9 phosphate rock, or uranium, taken from below the surface or
10 from the surface of the earth for the purpose of milling,
11 concentration, refinement, smelting, manufacturing, or other
12 subsequent use or processing or for stockpiling for future
13 use, refinement, or smelting.

14 (9)(10)(11) "Mining" commences when the operator first
15 mines ores or minerals in commercial quantities for sale,
16 beneficiation, refining, or other processing or disposition
17 or first takes bulk samples for metallurgical testing in
18 excess of aggregate of 10,000 short tons.

19 (12) "MINOR AMENDMENT" MEANS A CHANGE IN THE PERMIT
20 BOUNDARY IN WHICH A FEW ACRES THAT ARE INSIGNIFICANT IN
21 IMPACT RELATIVE TO THE ENTIRE OPERATION, GENERALLY LESS THAN
22 10 ACRES, ARE ADDED TO OR SUBTRACTED FROM THE PERMIT AREA
23 FOR THE PURPOSES OF ASSOCIATED DISTURBANCE. THE TERM DOES
24 NOT INCLUDE CHANGES MADE FOR MINERAL EXTRACTION.

25 (13) "MINOR REVISION" MEANS ANY CHANGE IN THE MINING OR

1 RECLAMATION PLAN THAT IS NOT A MAJOR REVISION OR A MAJOR OR
2 MINOR AMENDMENT.

3 (10)(11)(14) "Ore processing" means milling, heap
4 leaching, flotation, vat leaching, or other standard
5 hard-rock mineral concentration processes.

6 (11)(12)(15) "Person" means any person, corporation,
7 firm, association, partnership, or other legal entity
8 engaged in exploration for or mining of minerals on or below
9 the surface of the earth, reprocessing of tailings or waste
10 materials, or operation of a hard-rock mill.

11 (12)(13)(16) "Placer deposit" means naturally occurring,
12 scattered or unconsolidated valuable minerals in gravel or
13 alluvium lying above bedrock.

14 (13)(14)(17) "Placer or dredge mining" means the mining
15 of minerals from a placer deposit by a person or persons.

16 (14)(15)(18) "Reclamation plan" means the operator's
17 written proposal, as required and approved by the board, for
18 reclamation of the land that will be disturbed. The proposal
19 shall must include, to the extent practical at the time of
20 application for an operating permit:

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

23 (b) plans for surface gradient restoration to a surface
24 suitable for the proposed subsequent use of the land after
25 reclamation is completed and the proposed method of

1 accomplishment;

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

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

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

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

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

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

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

18 ~~†16† "Revision" means a change in the operating plan or~~
19 ~~reclamation plan to extend, continue, or modify an activity~~
20 ~~within the mine's permit boundary.~~

21 ~~†15††17†(19)~~ (a) "Small miner" means a person, firm, or
22 corporation that engages in the business of mining or
23 reprocessing of tailings or waste materials that does not
24 remove from the earth during any calendar year material in
25 excess of 36,500 tons in the aggregate, that does not hold

1 an operating permit under 82-4-335 except for a permit
2 issued under 82-4-335(2), and that conducts:

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

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

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

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

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

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

21 ~~†16††18†(20)~~ "Surface mining" means all or any part of
22 the process involved in mining of minerals by removing the
23 overburden and mining directly from the mineral deposits
24 exposed, including but not limited to open-pit mining of
25 minerals naturally exposed at the surface of the earth,

mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(17)~~~~(19)~~(21) "Underground mining" means all methods of mining other than surface mining.

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

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

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

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

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

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

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

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

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

23 (iii) If the department decides to hire a third-party
24 contractor to prepare an environmental impact statement on
25 the application, the contractor must be selected as follows:

1 ~~(A) The department shall provide the applicant with the~~
2 ~~names of three contractors acceptable to the department.~~

3 ~~(B) The applicant shall choose one of the three~~
4 ~~contractors.~~ DEPARTMENT SHALL CONSULT WITH THE APPLICANT IN
5 SELECTING THE CONTRACTOR AND CONSIDER AND WEIGH THE
6 APPLICANT'S ARGUMENTS CONCERNING THE ADVANTAGES AND
7 DISADVANTAGES OF HIRING A PARTICULAR CONTRACTOR.

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

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

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

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

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

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

Section 6. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) A- AN APPLICATION FOR A permit OR AN APPLICATION FOR AN AMENDMENT TO OR REVISION OF A PERMIT may be denied for any of the following reasons if--it--is--established--by--clear---and convincing-evidence-that:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit ~~shall~~ must be in writing and, state the reasons therefor for denial, AND BE BASED ON A PREFONDERANCE OF THE EVIDENCE."

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4 3] are 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 [sections 1 through 4 3].

~~NEW-SECTION--Section 8.--Effective--date--{This-act}-is--~~
effective-on-passage-and-approval:

NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].


-End-

HOUSE STANDING COMMITTEE REPORT

March 16, 1993
Page 2 of 4

March 16, 1993
Page 1 of 4

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 320 (third reading copy - blue) be concurred in as amended.

Signed: 
Steve Benedict, Chair

And, that such amendments read:

Carried by: Rep. D. Brown

1. Title, line 12.

Strike: "AND REVISIONS"

Strike: "AND"

2. Title, line 14.

Following: "DATE"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 18.

Following: "REQUIRES"

Strike: "AUTHORIZES"

Insert: "requires"

4. Page 1, line 22.

Following: "REQUIREMENTS"

Insert: "and amendment processing procedures"

5. Page 2, line 7.

Strike: "180"

Insert: "90"

6. Page 2, line 25.

Following: "ATTORNEY"

Insert: "and expert witness"

7. Page 3, lines 1 through 3.

Strike: "THAT" on line 1 through "MERIT" on line 3

Insert: "an award is appropriate"

8. Page 3, line 4.

Following: "Amendment"

Strike: "or revision of"

Insert: "to"

9. Page 3, line 7.

Strike: "or revision"

10. Page 3.

Following: line 10

Insert: "(2) The department may by rule establish criteria for the classification of amendments as major or minor. The department shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments."

Renumber: subsequent subsections

11. Page 3, line 11.

Strike: "(a)"

12. Page 3, line 13 through page 4, line 20.

Strike: "(b)" on page 3, line 13 through "APPLICATION." on page 4, line 20

13. Page 4, line 21.

Strike: "(C)"

Insert: "(4)"

14. Page 4, line 22.

Strike: "REVISION"

Insert: "amendment"

15. Page 4, line 25 through page 5, line 3.

Strike: "WITHIN" on page 4, line 25 through "(3)(A)." on page 5, line 3

16. Page 5.

Following: line 3

Insert: "(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

exclusion (a) actions that qualify for a categorical as defined by rule or justified by

a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or

Committee Vote:

Yes 14, No 4.

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SB 320

HOUSE

enforcement of environmental standards;

the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

or (f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance."

17. Page 5.

Following: line 14

Insert: "(2) 'Amendment' means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment."

Renumber: subsequent subsections

18. Page 6, line 16 through page 7, line 6.

Strike: "(8)" on page 6, line 16 through "PROCESSING." on page 7, line 6

Renumber: subsequent subsections

19. Page 7, line 19 through page 8, line 2.

Strike: "(12)" on page 7, line 19 through "AMENDMENT." on page 8, line 2

Renumber: subsequent subsections

20. Page 12, line 4.

Following: "DEFICIENCIES."

Insert: "The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b)."

21. Page 14, lines 4 through 7.

Following: "SHALL" on line 4

Strike: "CONSULT" on line 4 through "CONTRACTOR" on line 7

Insert: "prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant"

22. Page 15, line 6.

Strike: "OR REVISION OF"

23. Page 16, line 2.

Strike: "RIGHTS AND DUTIES THAT MATURED,"

24. Page 16, line 3.

Following: "INCURRED"

Strike: ","

25. Page 16.

Following: line 4

Insert:

"NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval."

-END-

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT
Senate Bill 320
Representative Brown

March 27, 1993 9:25 am
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 320 (third reading copy -- blue).

Signed: 
Representative Brown

And, that such amendments to Senate Bill 320 read as follows:

1. Page 4, lines 23 and 24.
Strike: "15"
Insert: "30"

-END-


ADOPT

REJECT

HOUSE
690924CW.Hss

S B 320

SENATE BILL NO. 320

INTRODUCED BY MCCLERNAN, TOEWS, MCCARTHY, LYNCH, TASH,
QUILICI, HARRINGTON, PAVLOVICH, GRIMES, GROSFIELD,
PETERSON, ENDY, KELLER, SWYSGOOD, GRINDE, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TIME LIMIT
IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING
DECISIONS; ~~REQUIRING--SECURITY--BEFORE--CHALLENGING--~~ BOARD
DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR
CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR
APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING
CRITERIA FOR AMENDMENTS AND REVISIONS TO MINE PERMITS; AND
AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE
[SECTION 3] REQUIRES AUTHORIZES REQUIRES THE DEPARTMENT OF
STATE LANDS TO ADOPT ADMINISTRATIVE RULES. IN ADOPTING
RULES, THE DEPARTMENT SHALL ESTABLISH CRITERIA--TO
DISTINGUISH--BETWEEN-MAJOR-AND-MINOR-AMENDMENTS-AND-CRITERIA
FOR--REVISIONS--TO--OPERATING--PERMITS APPLICATION CONTENT
REQUIREMENTS AND AMENDMENT PROCESSING PROCEDURES THAT ARE
CONSISTENT WITH THE PERMITTING REQUIREMENTS ESTABLISHED IN

THIS BILL.

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

NEW SECTION. Section 1. Limitations of actions. Legal
actions seeking review of a board decision granting or
denying an exploration license or operating permit issued
under this part must be filed within ~~the time provided by~~
~~2-4-702(2)(a) for initiation of proceedings for judicial~~
~~review under the Montana Administrative Procedure Act 45 100~~
90 DAYS AFTER THE DECISION IS MADE.

~~NEW SECTION. Section 2. Injunctions--security for--~~
~~damages--in actions seeking an injunction or restraining~~
~~order concerning a board decision granting or denying an~~
~~exploration license or operating permit issued under this~~
~~part; the court shall require a written undertaking for the~~
~~payment of costs and damages incurred by a party who has~~
~~been wrongfully enjoined or restrained.~~

NEW SECTION. Section 2. Award of costs and attorney
fees. The court may require the unsuccessful plaintiff in a
legal action challenging the granting or denying of an
exploration license or operating permit issued under this
part to pay the costs and reasonable attorney fees of other
parties to the action WHEN ISSUING A FINAL ORDER IN AN
ACTION CHALLENGING THE GRANT OR DENIAL OF AN EXPLORATION
LICENSE OR OPERATING PERMIT ISSUED UNDER THIS PART, THE

COURT MAY AWARD COSTS OF LITIGATION, INCLUDING REASONABLE ATTORNEY AND EXPERT WITNESS FEES, TO A PREVAILING OR SUBSTANTIALLY PREVAILING PARTY WHENEVER, IN ITS DISCRETION, THE COURT DETERMINES THAT--THE--UNSUCCESSFUL--PARTY'S--LEGAL ACTION---WAS---FRIVOLOUS--AND--WITHOUT--MERIT AN AWARD IS APPROPRIATE.

NEW SECTION. Section 3. Amendment of revision of TO operating permits. (1) During the term of an operating permit issued under this part, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) THE DEPARTMENT MAY BY RULE ESTABLISH CRITERIA FOR THE CLASSIFICATION OF AMENDMENTS AS MAJOR OR MINOR. THE DEPARTMENT SHALL ADOPT RULES ESTABLISHING REQUIREMENTS FOR THE CONTENT OF APPLICATIONS FOR MAJOR AND MINOR AMENDMENTS AND THE PROCEDURES FOR PROCESSING MINOR AMENDMENTS.

(2)--(a)(3) Applications for major amendments must be processed pursuant to 82-4-335 82-4-337.

(b)--For--the--purposes--of--this--section,--major--amendments are--those--amendments--that--significantly--affect--the--human environment. Minor amendments are those amendments that will not--significantly--affect--the--human--environment--THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A MINOR AMENDMENT

AND PROVIDE A NOTICE OF DECISION ON THE ADEQUACY OF THE APPLICATION WITHIN 45 DAYS OF RECEIPT OF THE APPLICATION.

(c)--The department shall MAY by rule establish criteria for classification of amendments as major and minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for the processing of minor amendments.

(3)--Revisions are categorically exempt from the provisions of the Montana Environmental Policy Act unless the department determines that the revision will result in a significant environmental impact that was not previously analyzed in an environmental review document. The department determination required under this subsection must be in writing and be based on substantial and credible evidence.

(A)--AN APPLICATION FOR A MAJOR REVISION THAT MAY HAVE A SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT IS SUBJECT TO THE PROVISIONS OF 82-4-337(1).

(B)--THE BOARD SHALL CAUSE AN APPLICATION FOR A MAJOR REVISION THAT WOULD NOT RESULT IN A SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT TO BE REVIEWED FOR COMPLETENESS WITHIN 30 DAYS OF RECEIPT. AN APPLICATION IS CONSIDERED COMPLETE UNLESS THE APPLICANT IS NOTIFIED OF A DEFICIENCY WITHIN THE 30-DAY PERIOD. THE BOARD SHALL REVIEW THE ADEQUACY OF THE PROPOSED MAJOR REVISION WITHIN 90 DAYS OF THE DETERMINATION THAT THE APPLICATION IS COMPLETE OR

~~WITHIN 120 DAYS OF RECEIPT OF THE APPLICATION IF THE BOARD
DOES NOT NOTIFY THE APPLICANT OF A DEFICIENCY IN THE
APPLICATION.~~

~~(c)(4) THE DEPARTMENT SHALL REVIEW AN APPLICATION FOR A
MINOR REVISION AMENDMENT AND PROVIDE A NOTICE OF DECISION ON
THE ADEQUACY OF THE APPLICATION WITHIN 15 30 DAYS. IF THE
DEPARTMENT DOES NOT RESPOND WITHIN 15 30 DAYS, THEN THE
PERMIT IS REVISED IN ACCORDANCE WITH THE APPLICATION. WITHIN
THE 15-DAY PERIOD, THE DEPARTMENT MAY NOTIFY THE APPLICANT
THAT THE REVISION APPLIED FOR IS A MAJOR REVISION AND IS
SUBJECT TO THE PROVISIONS OF SUBSECTION (3)(A).~~

~~(5) THE DEPARTMENT IS NOT REQUIRED TO PREPARE AN
ENVIRONMENTAL ASSESSMENT OR AN ENVIRONMENTAL IMPACT
STATEMENT FOR THE FOLLOWING CATEGORIES OF ACTION:~~

~~(A) ACTIONS THAT QUALIFY FOR A CATEGORICAL EXCLUSION AS
DEFINED BY RULE OR JUSTIFIED BY A PROGRAMMATIC REVIEW
PURSUANT TO TITLE 75, CHAPTER 1;~~

~~(B) ADMINISTRATIVE ACTIONS, SUCH AS ROUTINE, CLERICAL,
OR SIMILAR FUNCTIONS OF A DEPARTMENT, INCLUDING BUT NOT
LIMITED TO ADMINISTRATIVE PROCUREMENT, CONTRACTS FOR
CONSULTING SERVICES, AND PERSONNEL ACTIONS;~~

~~(C) REPAIR OR MAINTENANCE OF THE PERMITTEE'S EQUIPMENT
OR FACILITIES;~~

~~(D) INVESTIGATION AND ENFORCEMENT ACTIONS, SUCH AS DATA
COLLECTION, INSPECTION OF FACILITIES, OR ENFORCEMENT OF~~

ENVIRONMENTAL STANDARDS;

(E) MINISTERIAL ACTIONS, SUCH AS ACTIONS IN WHICH THE
AGENCY DOES NOT EXERCISE DISCRETION, BUT ACTS UPON A GIVEN
STATE OF FACTS IN A PRESCRIBED MANNER;

(F) APPROVAL OF ACTIONS THAT ARE PRIMARILY SOCIAL OR
ECONOMIC IN NATURE AND THAT DO NOT OTHERWISE AFFECT THE
HUMAN ENVIRONMENT;

(G) CHANGES IN A PERMIT BOUNDARY THAT INCREASE
DISTURBED ACRES THAT ARE INSIGNIFICANT IN IMPACT RELATIVE TO
THE ENTIRE OPERATION, PROVIDED THAT THE INCREASE IS LESS
THAN 10 ACRES OR 5% OF THE PERMITTED AREA, WHICHEVER IS
LESS; AND

(H) CHANGES IN AN APPROVED OPERATING PLAN OR
RECLAMATION PLAN FOR AN ACTIVITY THAT WAS PREVIOUSLY
PERMITTED, PROVIDED THAT THE IMPACTS OF THE CHANGE WILL BE
INSIGNIFICANT RELATIVE TO THE IMPACTS OF THE ENTIRE
OPERATION AND THERE IS LESS THAN 10 ACRES OF ADDITIONAL
DISTURBANCE.

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

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

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

1 ~~(2)--"Amendment"--means--an--action--to--increase--or--reduce~~
 2 ~~the--size--of--the--mine--permit--area--or--to--engage--in--the~~
 3 ~~activities--identified--in--82-4-335(1)--outside--of--a--previously~~
 4 ~~permitted--area.~~

5 (2) "AMENDMENT" MEANS A CHANGE TO AN APPROVED OPERATING
 6 OR RECLAMATION PLAN. A MAJOR AMENDMENT IS AN AMENDMENT THAT
 7 MAY SIGNIFICANTLY AFFECT THE HUMAN ENVIRONMENT. A MINOR
 8 AMENDMENT IS AN AMENDMENT THAT WILL NOT SIGNIFICANTLY AFFECT
 9 THE HUMAN ENVIRONMENT.

10 (2)(3)(2)(3) "Board" means the board of land
 11 commissioners or a state employee or state agency as may
 12 succeed to its powers and duties under this part.

13 (3)(4)(3)(4) "Commissioner" means the commissioner of
 14 state lands provided for in 2-15-3202.

15 (4)(5)(4)(5) "Cyanide ore-processing reagent" means
 16 cyanide or a cyanide compound used as a reagent in leaching
 17 operations.

18 (5)(6)(5)(6) "Department" means the department of state
 19 lands.

20 (6)(7)(6)(7) "Disturbed land" means that area of land
 21 or surface water disturbed, beginning at the date of the
 22 issuance of the permit, and it comprises that area from
 23 which the overburden, tailings, waste materials, or minerals
 24 have been removed and tailings ponds, waste dumps, roads,
 25 conveyor systems, leach dumps, and all similar excavations

1 or covering resulting from the operation and which have not
 2 been previously reclaimed under the reclamation plan.

3 (7)(8)(7)(8) "Exploration" means all activities
 4 conducted on or beneath the surface of lands resulting in
 5 material disturbance of the surface for the purpose of
 6 determining the presence, location, extent, depth, grade,
 7 and economic viability of mineralization in those lands, if
 8 any, other than mining for production and economic
 9 exploitation, as well as all roads made for the purpose of
 10 facilitating exploration, except as noted in 82-4-310.

11 (8)--"MAJOR-AMENDMENT"--MEANS-AN-ACTION-THAT-INCREASES-OR
 12 REDUCES--THE--SIZE-OF-THE-MINE-PERMIT-AREA-AND-THAT-IS-NOT-A
 13 MINOR-AMENDMENT.

14 (9)--"MAJOR-REVISION"--MEANS-ANY-CHANGE-IN-THE-MINING--OR
 15 RECLAMATION-PLAN-THAT:

16 (A)--RESULTS--IN--A-SIGNIFICANT-CHANGE-IN-THE-POSTMINING
 17 DRAINAGE-PLAN;

18 (B)--RESULTS-IN-A-CHANGE-IN-THE-APPROVED-POSTMINING-LAND
 19 USE;

20 (C)--RESULTS-IN-A-SIGNIFICANT-CHANGE--IN--THE--BONDING
 21 LEVEL-WITHIN-THE-PERMITTED-AREA;

22 (D)--RESULTS--IN--A--CHANGE--THAT--MAY--AFFECT--THE
 23 RECLAIMABILITY-OF-THE-AREA-OR-THE-HYDROLOGIC-BALANCE--ON--OR
 24 OFF-THE-PERMITTED-AREA;-OR

25 (E)--RESULTS--IN--A-SIGNIFICANT-CHANGE--IN--THE--RATE,

VOLUME, OR METHOD OF MINERAL EXTRACTION OR PROCESSING:

(8)(9)(10)(9) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9)(10)(11)(10) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(12) "MINOR--AMENDMENT"--MEANS--A--CHANGE--IN--THE--PERMIT BOUNDARY--IN--WHICH--A--FEW--ACRES--THAT--ARE--INSIGNIFICANT--IN IMPACT--RELATIVE--TO--THE--ENTIRE--OPERATION,--GENERALLY--LESS--THAN 10--ACRES,--ARE--ADDED--TO--OR--SUBTRACTED--FROM--THE--PERMIT--AREA FOR--THE--PURPOSES--OF--ASSOCIATED--DISTURBANCE,--THE--TERM--DOES NOT--INCLUDE--CHANGES--MADE--FOR--MINERAL--EXTRACTION.

(13) "MINOR--REVISION"--MEANS--ANY--CHANGE--IN--THE--MINING--OR RECLAMATION--PLAN--THAT--IS--NOT--A--MAJOR--REVISION--OR--A--MAJOR--OR MINOR--AMENDMENT.

(10)(11)(14)(11) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

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

(12)(13)(16)(13) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

(13)(14)(17)(14) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14)(15)(18)(15) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal shall must include, to the extent practical at the time of application for an operating permit:

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

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

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

(d) procedures proposed to avoid foreseeable situations

of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

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

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

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

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

~~{16}-"Revision"--means-a-change-in-the-operating-plan-or reclamation-plan-to-extend, continue, or modify an activity within the mine's permit boundary.~~

~~{15}{17}{19}{16}~~ (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

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

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

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

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

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

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

~~{16}{18}{20}{17}~~ "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel,

phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(17)(19)(21)~~(18) "Underground mining" means all methods of mining other than surface mining.

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

~~(19)(21)(23)~~(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 5. 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 INITIAL COMPLETENESS NOTICE

MUST NOTE ALL DEFICIENCY ISSUES, AND THE DEPARTMENT MAY NOT IN A LATER COMPLETENESS NOTICE RAISE AN ISSUE PERTAINING TO THE INITIAL APPLICATION THAT WAS NOT RAISED IN THE INITIAL NOTICE. THE DEPARTMENT MAY, HOWEVER, RAISE ANY DEFICIENCY DURING THE ADEQUACY REVIEW PURSUANT TO SUBSECTION (1)(B).

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

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

(i) sufficient bond has been submitted pursuant to

82-4-338;

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

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

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

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

(iii) If the department decides to hire a third-party contractor to prepare an environmental impact statement on

the application, the contractor must be selected as follows:

(A) The department shall provide the applicant with the names of three contractors acceptable to the department;

(B) The applicant shall choose one of the three contractors; DEPARTMENT SHALL CONSULT WITH THE APPLICANT IN SELECTING THE CONTRACTOR AND CONSIDER AND WEIGH THE APPLICANT'S ARGUMENTS CONCERNING THE ADVANTAGES AND DISADVANTAGES OF HIRING A PARTICULAR CONTRACTOR PREPARE A LIST OF NO FEWER THAN FOUR CONTRACTORS ACCEPTABLE TO THE DEPARTMENT AND SHALL PROVIDE THE APPLICANT WITH A COPY OF THE LIST. THE APPLICANT SHALL PROVIDE THE DEPARTMENT WITH A LIST OF AT LEAST 50% OF THE CONTRACTORS FROM THE DEPARTMENT'S LIST. THE DEPARTMENT SHALL SELECT ITS CONTRACTOR FROM THE LIST PROVIDED BY THE APPLICANT.

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

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

(3) The operating permit shall must provide that the reclamation plan may be modified by the board, upon proper

1 application of the permittee or department, after timely
2 notice and opportunity for hearing, at any time during the
3 term of the permit and for any of the following reasons:

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

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

8 (c) when significant environmental problem situations
9 are revealed by field inspection."

10 **Section 6.** Section 82-4-351, MCA, is amended to read:

11 "82-4-351. Reasons for denial of permit. (1) A-- AN
12 APPLICATION FOR A permit OR AN APPLICATION FOR AN AMENDMENT
13 TO OR REVISION OF A PERMIT may be denied for any--of the
14 following reasons if--it--is--established--by--clear--and
15 convincing-evidence-that:

16 (a) the plan of operation or reclamation conflicts with
17 Title 75, chapter 2, as amended, Title 75, chapter 5, as
18 amended, Title 75, chapter 6, as amended, or rules adopted
19 pursuant to these laws;

20 (b) the reclamation plan does not provide an acceptable
21 method for accomplishment of reclamation as required by this
22 part.

23 (2) A denial of a permit ~~shall~~ must be in writing and,
24 state the reasons therefor for denial, AND BE BASED ON A
25 PREPONDERANCE OF THE EVIDENCE."

1 NEW SECTION. Section 7. Codification instruction.

2 [Sections 1 through 4 3] are intended to be codified as an
3 integral part of Title 82, chapter 4, part 3, and the
4 provisions of Title 82, chapter 4, part 3, apply to
5 [sections 1 through 4 3].

6 ~~NEW-SECTION--Section 8--Effective-date--{This-act}--is--~~
7 ~~effective-on-passage-and-approval;~~

8 NEW SECTION. SECTION 8. SAVING CLAUSE. [THIS ACT] DOES
9 NOT AFFECT RIGHTS--AND-DUTIES--THAT-MATURED, PENALTIES THAT
10 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE
11 EFFECTIVE DATE OF THIS ACT].

12 NEW SECTION. SECTION 9. SEVERABILITY. IF A PART OF
13 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
14 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
15 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
16 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
17 SEVERABLE FROM THE INVALID APPLICATIONS.

18 NEW SECTION. SECTION 10. EFFECTIVE DATE. [THIS ACT] IS
19 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-