

House BILL NO. 381

INTRODUCED BY

*Knox*

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING PERMITTING AND ENFORCEMENT PROCEDURES FOR THE METAL MINE RECLAMATION LAWS; AUTHORIZING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES; ALLOWING THE PERMIT REVIEW PERIOD TO BE INCREASED FOR CERTAIN OPERATIONS; AMENDING SECTIONS 82-4-304, 82-4-337, 82-4-341, 82-4-361, AND 82-4-362, MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** Section 82-4-304, MCA, is amended to read:

**"82-4-304. Exemption -- works performed prior to promulgation of rules.** ~~No provision of this~~ This part ~~shall be~~ is not applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. ~~No provision of this~~ This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at ~~such~~ a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules."

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

**"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.** (1) (a) The board shall ~~cause~~ review 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

1 completeness as soon as possible. An application is considered complete unless the applicant is notified  
2 of any deficiencies within the appropriate review period.

3 (b) Unless the review period is extended as provided in this section, the board shall review the  
4 adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that  
5 the application is complete or within 60 days of receipt of the application if the board does not notify the  
6 applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or  
7 inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating  
8 permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements  
9 of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond  
10 ~~which~~ that will be required.

11 (c) A permit may not be issued until:

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

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

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

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

22 (ii) If the department determines that additional time is needed for analysis to determine whether  
23 a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant  
24 shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit  
25 reasonable analysis. The applicant may by written waiver extend this period.

26 (iii) If the department determines that additional time is needed to review the application and  
27 reclamation plan for a major operation, the department and the applicant shall negotiate to extend the  
28 period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The  
29 applicant may by written waiver extend this time period.

30 ~~###~~(iv) If the department decides to hire a third-party contractor to prepare an environmental impact

1 statement on the application, the department shall prepare a list of no fewer than four contractors  
2 acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall  
3 provide the department with a list of at least 50% of the contractors from the department's list. The  
4 department shall select its contractor from the list provided by the applicant.

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

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

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

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

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

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

18 (4) During the term of an operating permit, an operator may apply for an amendment or revision  
19 to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

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

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

26 (7) If the department demonstrates that a revision may result in a significant environmental impact  
27 that was not previously and substantially evaluated in an environmental impact statement, the application  
28 must be processed in the same manner as is provided for new permits. Applications for minor amendments  
29 and other revisions must be processed within 30 days of receipt of an application."  
30

1           **Section 3.** Section 82-4-341, MCA, is amended to read:

2           "**82-4-341. Compliance with reclamation plan -- reclamation by board.** (1) ~~Following receipt of~~  
3 ~~the permittee's report and at any other reasonable time the board may elect, the~~ The board shall cause the  
4 permit area to be inspected at least annually to determine if whether the permittee has complied with ~~the~~  
5 ~~reclamation plan and the board's~~ this part, the rules adopted under this part, or the permit.

6           (2) The permittee shall proceed with reclamation as scheduled in ~~his~~ the approved reclamation plan.  
7 Following written notice by the board noting deficiencies, the permittee shall commence action within 30  
8 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, ~~provided~~  
9 ~~that deficiencies~~ Deficiencies that also violate other laws that require earlier rectification ~~shall~~ must be  
10 corrected in accordance with the applicable time provisions of ~~such~~ those laws. The board may extend  
11 performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's  
12 control, but only when the permittee is, in the opinion of the board, making every reasonable effort to  
13 comply.

14           (3) Within 30 days after notification by the permittee and when, in the judgment of the board,  
15 reclamation of a unit of disturbed land area is properly completed, the permittee ~~shall~~ must be notified in  
16 writing and ~~his~~ the bond on ~~said~~ the area ~~shall~~ must be released or decreased proportionately to the acreage  
17 included within the bond coverage.

18           (4) ~~#~~ The board shall cause the bond to be forfeited if:

19           (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the  
20 permittee has not commenced action to rectify deficiencies within 30 days after notification by the board;  
21 ~~or~~

22           (b) ~~#~~ reclamation is not properly completed in conformance with the reclamation plan within 2  
23 years after completion or abandonment of operation on any fraction of the permit area or ~~such~~ within a  
24 longer period as that may have been authorized ~~hereunder~~ under this part; or if,

25           (c) after default by the permittee, the surety either refuses or fails to perform the work to the  
26 satisfaction of the board within the time required ~~therefor, the board may, with the staff, equipment, and~~  
27 ~~material under its control or by contract with others, take such actions as are necessary for required~~  
28 ~~reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board~~  
29 ~~shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under~~  
30 ~~this section, including a reasonable charge for the services performed by the state's personnel and the~~

1 ~~state's equipment and materials utilized.~~

2 (5) The board shall notify the permittee and his the surety by order. ~~The order shall state the~~  
3 ~~amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the~~  
4 ~~amount is due and payable to the board by the permittee and the surety.~~ If the amount specified in the  
5 ~~order~~ bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the  
6 board, shall bring an action on behalf of the state in district court.

7 (6) The board may, with the staff, equipment, and material under its control or by contract with  
8 others, take any necessary actions for required reclamation of the disturbed lands. Except in an  
9 environmental emergency, work provided for in this section must be let on the basis of competitive bidding.  
10 The board shall keep a record of all necessary expenses incurred in carrying out the work or activity  
11 authorized under this section, including a reasonable charge for the services performed by the state's  
12 personnel and the state's equipment and materials used. The surety ~~shall be~~ is liable to the state to the  
13 extent of the bond. The permittee ~~shall be~~ is liable for the remainder of the cost. Upon completion of the  
14 reclamation, the board shall return any amount not expended.

15 ~~(6)(7)~~ (7) In addition to the other liabilities imposed by this part, failure to commence an action to  
16 remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to  
17 satisfactorily complete reclamation work on any segment of the permit area within 2 years, ~~or such~~ within  
18 a longer period as that the board may permit on the permittee's application ~~therefor~~ or on the board's own  
19 motion, after completion or abandonment of operations on any segment of the permit area, ~~shall constitute~~  
20 constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or  
21 license to the applicant, ~~provided, however, that such~~ A cancellation action ~~shall~~ may not be effected while  
22 an appeal is pending from any ruling requiring the ~~same~~ cancellation of a permit or license."

23  
24 **Section 4.** Section 82-4-361, MCA, is amended to read:

25 **"82-4-361. Violation -- penalties -- waiver.** (1) ~~A person who violates any of the provisions of this~~  
26 ~~part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit,~~  
27 ~~or the conditions of a small-miner exemption shall pay a civil penalty of not less than \$100 or more than~~  
28 ~~\$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~  
29 ~~day during which a violation continues and may be enjoined from continuing such violations as provided~~  
30 ~~in this section. These penalties are recoverable in any action brought in the name of the state of Montana~~

1 ~~by the attorney general in the district court of the first judicial district of this state in and for the county~~  
2 ~~of Lewis and Clark or in the district court having jurisdiction of the defendant.~~ (a) Except as provided in  
3 subsections (1)(b) and (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the  
4 following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day  
5 during which the violation continues, and an injunction from continuing the violation may be imposed  
6 against:

7 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
8 or a term or condition of a permit; or

9 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
10 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a  
11 permit.

12 (b) If the violation created an imminent danger to the health or safety of the public or caused  
13 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

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

18 ~~(3) (b) The civil penalties provided for in this section may be waived for a minor violation if it is~~  
19 ~~determined that the violation does not represent potential harm to public health, public safety, or the~~  
20 ~~environment and does not impair the administration of this part. The board shall adopt rules to implement~~  
21 ~~and administer a procedure for waiver of a penalty under this subsection.~~

22 (3) The department shall notify the person or operator of the violation. The department shall issue  
23 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by  
24 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing  
25 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be  
26 assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall  
27 make findings of fact and issue a written decision as to the occurrence of the violation and whether the  
28 amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The  
29 person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of  
30 receipt of the order. A person or operator who fails to request the hearing provided for in this subsection

1 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or  
 2 operator's right to seek judicial review of the violation or penalty determinations. These penalties are  
 3 recoverable in an action brought by the department."  
 4

5 **Section 5.** Section 82-4-362, MCA, is amended to read:

6 **"82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the  
 7 rules adopted under this part, or of a license, or permit, ~~or reclamation plan~~ has not been complied with,  
 8 the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the  
 9 commissioner shall order the suspension of the permit. The permit may be suspended for failure to comply  
 10 with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The  
 11 commissioner may order immediate suspension of a permit whenever the commissioner makes a finding  
 12 that a violation of this part, of the rules adopted under this part, or of a license or permit, ~~including the~~  
 13 ~~reclamation plan~~, is creating an imminent danger to the health or safety of persons outside the permit area.  
 14 The notice or order must be handed to the licensee or permittee in person or served by certified mail  
 15 addressed to the permanent address shown on the application for a license or permit. The notice of  
 16 noncompliance or order of suspension must specify in what respects the operator has failed to comply with  
 17 this part, the rules adopted under this part, or the permit, ~~or the reclamation plan~~ and must, if the violation  
 18 has not been abated, order abatement within a specified time period.

19 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of  
 20 noncompliance or order of suspension within the time limits set in the notice or order, the permit may be  
 21 revoked by order of the board and the performance bond forfeited to the department. The licensee or  
 22 permittee is entitled to a hearing before the department on the revocation of a permit or license or the  
 23 forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided  
 24 in subsection (1). The notice must state when those measures may be undertaken and must give notice  
 25 of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may  
 26 not be revoked and the bond may not be forfeited until a final decision is made by the department.

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





STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0381, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

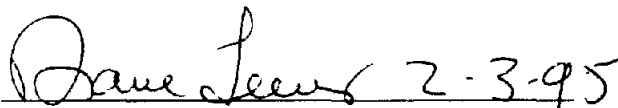
An act amending permitting and enforcement procedures for the Metal Mine Reclamation Laws; authorizing the administrative assessment of civil penalties; allowing the permit review period to be increased for certain operations.

ASSUMPTIONS:

1. The Department of State Lands Reclamation Division will conduct the procedures described in this bill within existing budget and resources.

FISCAL IMPACT:

There will be no fiscal impact to the Department of State Lands.

 2-3-95

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 2/3/95

DICK KNOX, PRIMARY SPONSOR      DATE

Fiscal Note for HB0381, as introduced

**HB 381**

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1 completeness as soon as possible. An application is considered complete unless the applicant is notified  
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19 review. The department shall serve written notice of extension upon the applicant in person or by certified  
20 mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative  
21 Procedure Act.

22 (ii) If the department determines that additional time is needed for analysis to determine whether  
23 a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant  
24 shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit  
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 20 constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or  
 21 license to the applicant; ~~provided, however, that such~~ A cancellation action shall ~~may~~ not be effected while  
 22 an appeal is pending from any ruling requiring the ~~same~~ cancellation of a permit or license."

23

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

25 **"82-4-361. Violation -- penalties -- waiver.** (1) ~~A person who violates any of the provisions of this~~  
 26 ~~part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit,~~  
 27 ~~or the conditions of a small minor exemption shall pay a civil penalty of not less than \$100 or more than~~  
 28 ~~\$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~  
 29 ~~day during which a violation continues and may be enjoined from continuing such violations as provided~~  
 30 ~~in this section. These penalties are recoverable in any action brought in the name of the state of Montana~~

1 ~~by the attorney general in the district court of the first judicial district of this state in and for the county~~  
2 ~~of Lewis and Clark or in the district court having jurisdiction of the defendant.~~ (a) Except as provided in  
3 subsections (1)(b) and (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the  
4 following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day  
5 during which the violation continues, and an injunction from continuing the violation may be imposed  
6 against:

7 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
8 or a term or condition of a permit; or

9 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
10 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a  
11 permit.

12 (b) If the violation created an imminent danger to the health or safety of the public or caused  
13 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

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

18 ~~(3) (b)~~ (b) The civil penalties provided for in this section may be waived for a minor violation if it is  
19 determined that the violation does not represent potential harm to public health, public safety, or the  
20 environment and does not impair the administration of this part. The board shall adopt rules to implement  
21 and administer a procedure for waiver of a penalty under this subsection.

22 (3) The department shall notify the person or operator of the violation. The department shall issue  
23 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by  
24 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing  
25 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be  
26 assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall  
27 make findings of fact and issue a written decision as to the occurrence of the violation and whether the  
28 amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The  
29 person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of  
30 receipt of the order. A person or operator who fails to request the hearing provided for in this subsection

1 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or  
2 operator's right to seek judicial review of the violation or penalty determinations. These penalties are  
3 recoverable in an action brought by the department."

4  
5 **Section 5.** Section 82-4-362, MCA, is amended to read:

6 **"82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the  
7 rules adopted under this part, or of a license, or permit, or reclamation plan has not been complied with,  
8 the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the  
9 commissioner shall order the suspension of the permit. The permit may be suspended for failure to comply  
10 with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The  
11 commissioner may order immediate suspension of a permit whenever the commissioner makes a finding  
12 that a violation of this part, of the rules adopted under this part, or of a license or permit, including the  
13 reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area.  
14 The notice or order must be handed to the licensee or permittee in person or served by certified mail  
15 addressed to the permanent address shown on the application for a license or permit. The notice of  
16 noncompliance or order of suspension must specify in what respects the operator has failed to comply with  
17 this part, the rules adopted under this part, or the permit, or the reclamation plan and must, if the violation  
18 has not been abated, order abatement within a specified time period.

19 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of  
20 noncompliance or order of suspension within the time limits set in the notice or order, the permit may be  
21 revoked by order of the board and the performance bond forfeited to the department. The licensee or  
22 permittee is entitled to a hearing before the department on the revocation of a permit or license or the  
23 forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided  
24 in subsection (1). The notice must state when those measures may be undertaken and must give notice  
25 of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may  
26 not be revoked and the bond may not be forfeited until a final decision is made by the department.

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



1 **NEW SECTION. Section 6. Effective dates.** (1) [Section 1] and this section are effective on  
2 passage and approval.  
3 (2) [Sections 2 through 5] are effective October 1, 1995.

4 -END-

House BILL NO. 381

INTRODUCED BY

Knox

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING PERMITTING AND ENFORCEMENT PROCEDURES FOR THE METAL MINE RECLAMATION LAWS; AUTHORIZING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES; ALLOWING THE PERMIT REVIEW PERIOD TO BE INCREASED FOR CERTAIN OPERATIONS; AMENDING SECTIONS 82-4-304, 82-4-337, 82-4-341, 82-4-361, AND 82-4-362, MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** Section 82-4-304, MCA, is amended to read:

"82-4-304. Exemption -- works performed prior to promulgation of rules. ~~No provision of this~~ This part ~~shall be~~ is not applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. ~~No provision of this~~ This part is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at ~~each~~ a mill that does not use cyanide ore-processing reagent and that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules."

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

"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision. (1) (a) The board shall ~~cease~~ review 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

1 completeness as soon as possible. An application is considered complete unless the applicant is notified  
2 of any deficiencies within the appropriate review period.

3 (b) Unless the review period is extended as provided in this section, the board shall review the  
4 adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that  
5 the application is complete or within 60 days of receipt of the application if the board does not notify the  
6 applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or  
7 inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating  
8 permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements  
9 of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond  
10 ~~which~~ that will be required.

11 (c) A permit may not be issued until:

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

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

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

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

22 (ii) If the department determines that additional time is needed for analysis to determine whether  
23 a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant  
24 shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit  
25 reasonable analysis. The applicant may by written waiver extend this period.

26 (iii) If the department determines that additional time is needed to review the application and  
27 reclamation plan for a major operation, the department and the applicant shall negotiate to extend the  
28 period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The  
29 applicant may by written waiver extend this time period.

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

1 statement on the application, the department shall prepare a list of no fewer than four contractors  
2 acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall  
3 provide the department with a list of at least 50% of the contractors from the department's list. The  
4 department shall select its contractor from the list provided by the applicant.

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

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

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

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

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

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

18 (4) During the term of an operating permit, an operator may apply for an amendment or revision  
19 to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

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

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

26 (7) If the department demonstrates that a revision may result in a significant environmental impact  
27 that was not previously and substantially evaluated in an environmental impact statement, the application  
28 must be processed in the same manner as is provided for new permits. Applications for minor amendments  
29 and other revisions must be processed within 30 days of receipt of an application."  
30

1 Section 3. Section 82-4-341, MCA, is amended to read:

2 "~~82-4-341. Compliance with reclamation plan -- reclamation by board. (1) Following receipt of~~  
 3 ~~the permittee's report and at any other reasonable time the board may elect, the~~ The board shall cause the  
 4 permit area to be inspected at least annually to determine if whether the permittee has complied with ~~the~~  
 5 ~~reclamation plan and the board's~~ this part, the rules adopted under this part, or the permit.

6 (2) The permittee shall proceed with reclamation as scheduled in ~~his~~ the approved reclamation plan.  
 7 Following written notice by the board noting deficiencies, the permittee shall commence action within 30  
 8 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, ~~provided~~  
 9 ~~that deficiencies~~ Deficiencies that also violate other laws that require earlier rectification ~~shall~~ must be  
 10 corrected in accordance with the applicable time provisions of ~~such~~ those laws. The board may extend  
 11 performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's  
 12 control, but only when the permittee is, in the opinion of the board, making every reasonable effort to  
 13 comply.

14 (3) Within 30 days after notification by the permittee and when, in the judgment of the board,  
 15 reclamation of a unit of disturbed land area is properly completed, the permittee ~~shall~~ must be notified in  
 16 writing and ~~his~~ the bond on ~~said~~ the area ~~shall~~ must be released or decreased proportionately to the acreage  
 17 included within the bond coverage.

18 (4) ~~If~~ The board shall cause the bond to be forfeited if:

19 (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the  
 20 permittee has not commenced action to rectify deficiencies within 30 days after notification by the board;  
 21 or

22 (b) if reclamation is not properly completed in conformance with the reclamation plan within 2  
 23 years after completion or abandonment of operation on any fraction of the permit area or ~~such~~ within a  
 24 longer period as that may have been authorized ~~hereunder~~ under this part; or if,

25 (c) after default by the permittee, the surety either refuses or fails to perform the work to the  
 26 satisfaction of the board within the time required ~~therefor, the board may, with the staff, equipment, and~~  
 27 ~~material under its control or by contract with others, take such actions as are necessary for required~~  
 28 ~~reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board~~  
 29 ~~shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under~~  
 30 ~~this section, including a reasonable charge for the services performed by the state's personnel and the~~

1 ~~state's equipment and materials utilized.~~

2 (5) The board shall notify the permittee and ~~his~~ the surety by order. ~~The order shall state the~~  
 3 ~~amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the~~  
 4 ~~amount is due and payable to the board by the permittee and the surety. If the amount specified in the~~  
 5 ~~order bond~~ is not paid within 30 days after receipt of the notice, the attorney general, upon request of the  
 6 board, shall bring an action on behalf of the state in district court.

7 (6) The board may, with the staff, equipment, and material under its control or by contract with  
 8 others, take any necessary actions for required reclamation of the disturbed lands. Except in an  
 9 environmental emergency, work provided for in this section must be let on the basis of competitive bidding.  
 10 The board shall keep a record of all necessary expenses incurred in carrying out the work or activity  
 11 authorized under this section, including a reasonable charge for the services performed by the state's  
 12 personnel and the state's equipment and materials used. The surety ~~shall be~~ is liable to the state to the  
 13 extent of the bond. The permittee ~~shall be~~ is liable for the remainder of the cost. Upon completion of the  
 14 reclamation, the board shall return any amount not expended.

15 ~~(6)(7)~~ In addition to the other liabilities imposed by this part, failure to commence an action to  
 16 remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to  
 17 satisfactorily complete reclamation work on any segment of the permit area within 2 years, ~~or such~~ within  
 18 a longer period as that the board may permit on the permittee's application ~~therefor~~ or on the board's own  
 19 motion, after completion or abandonment of operations on any segment of the permit area, ~~shall constitute~~  
 20 constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or  
 21 license to the applicant; ~~provided, however, that such~~ A cancellation action ~~shall~~ may not be effected while  
 22 an appeal is pending from any ruling requiring the ~~same~~ cancellation of a permit or license."

23

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

25 **"82-4-361. Violation -- penalties -- waiver.** (1) ~~A person who violates any of the provisions of this~~  
 26 ~~part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit,~~  
 27 ~~or the conditions of a small-minor exemption shall pay a civil penalty of not less than \$100 or more than~~  
 28 ~~\$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~  
 29 ~~day during which a violation continues and may be enjoined from continuing such violations as provided~~  
 30 ~~in this section. These penalties are recoverable in any action brought in the name of the state of Montana~~

1 ~~by the attorney general in the district court of the first judicial district of this state in and for the county~~  
2 ~~of Lewis and Clark or in the district court having jurisdiction of the defendant.~~ (a) Except as provided in  
3 subsections (1)(b) and (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the  
4 following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day  
5 during which the violation continues, and an injunction from continuing the violation may be imposed  
6 against:

7 (i) a person or operator who violates a provision of this part, a rule or order adopted under this part,  
8 or a term or condition of a permit; or

9 (ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a  
10 violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a  
11 permit.

12 (b) If the violation created an imminent danger to the health or safety of the public or caused  
13 significant environmental harm, the maximum penalty is \$5,000 for each day of violation.

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

18 ~~(3) (b)~~ (b) The civil penalties provided for in this section may be waived for a minor violation if it is  
19 determined that the violation does not represent potential harm to public health, public safety, or the  
20 environment and does not impair the administration of this part. The board shall adopt rules to implement  
21 and administer a procedure for waiver of a penalty under this subsection.

22 (3) The department shall notify the person or operator of the violation. The department shall issue  
23 a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by  
24 filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing  
25 on the issues of whether the alleged violation has occurred and whether the penalty proposed to be  
26 assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall  
27 make findings of fact and issue a written decision as to the occurrence of the violation and whether the  
28 amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The  
29 person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of  
30 receipt of the order. A person or operator who fails to request the hearing provided for in this subsection

1 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or  
2 operator's right to seek judicial review of the violation or penalty determinations. These penalties are  
3 recoverable in an action brought by the department."  
4

5 Section 5. Section 82-4-362, MCA, is amended to read:

6 "82-4-362. Suspension of permits -- hearing. (1) If any of the requirements of this part, of the  
7 rules adopted under this part, or of a license, or permit, or reclamation plan has not been complied with,  
8 the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the  
9 commissioner shall order the suspension of the permit. The permit may be suspended for failure to comply  
10 with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The  
11 commissioner may order immediate suspension of a permit whenever the commissioner makes a finding  
12 that a violation of this part, of the rules adopted under this part, or of a license or permit, including the  
13 reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area.  
14 The notice or order must be handed to the licensee or permittee in person or served by certified mail  
15 addressed to the permanent address shown on the application for a license or permit. The notice of  
16 noncompliance or order of suspension must specify in what respects the operator has failed to comply with  
17 this part, the rules adopted under this part, or the permit, or the reclamation plan and must, if the violation  
18 has not been abated, order abatement within a specified time period.

19 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of  
20 noncompliance or order of suspension within the time limits set in the notice or order, the permit may be  
21 revoked by order of the board and the performance bond forfeited to the department. The licensee or  
22 permittee is entitled to a hearing before the department on the revocation of a permit or license or the  
23 forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided  
24 in subsection (1). The notice must state when those measures may be undertaken and must give notice  
25 of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may  
26 not be revoked and the bond may not be forfeited until a final decision is made by the department.

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





## 1 HOUSE BILL NO. 381

2 INTRODUCED BY KNOX

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING PERMITTING AND ENFORCEMENT PROCEDURES  
6 FOR THE METAL MINE RECLAMATION LAWS; AUTHORIZING THE ADMINISTRATIVE ASSESSMENT OF  
7 CIVIL PENALTIES; ALLOWING THE PERMIT REVIEW PERIOD TO BE INCREASED FOR CERTAIN  
8 OPERATIONS; AMENDING SECTIONS 82-4-304, 82-4-337, 82-4-341, 82-4-361, AND 82-4-362, MCA;  
9 AND PROVIDING EFFECTIVE DATES."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 **Section 1.** Section 82-4-304, MCA, is amended to read:

14 **"82-4-304. Exemption -- works performed prior to promulgation of rules.** ~~No provision of this~~ This  
15 ~~part shall be~~ is not applicable to any exploration or mining work performed prior to the date of promulgation  
16 of the board's rules pursuant to 82-4-321 relating to exploration and mining. ~~No provision of this~~ This part  
17 is not applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation  
18 of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills  
19 not located at a mine site, work is performed at ~~such~~ a mill that does not use cyanide ore-processing  
20 reagent and that was constructed and operated before promulgation of those rules, this part applies only  
21 to the areas initially disturbed after promulgation of those rules."

22  
23 **Section 2.** Section 82-4-337, MCA, is amended to read:

24 **"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or**  
25 **revision.** (1) (a) The board shall ~~cause~~ review all applications for operating permits ~~to be reviewed~~ for  
26 completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses  
27 to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the  
28 department may not in a later completeness notice raise an issue pertaining to the initial application that  
29 was not raised in the initial notice. The department may, however, raise any deficiency during the  
30 adequacy review pursuant to subsection (1)(b). The board shall notify the applicant concerning

1 completeness as soon as possible. An application is considered complete unless the applicant is notified  
2 of any deficiencies within the appropriate review period.

3 (b) Unless the review period is extended as provided in this section, the board shall review the  
4 adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that  
5 the application is complete or within 60 days of receipt of the application if the board does not notify the  
6 applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or  
7 inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating  
8 permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements  
9 of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond  
10 ~~which~~ that will be required.

11 (c) A permit may not be issued until:

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

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

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

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

22 (ii) If the department determines that additional time is needed for analysis to determine whether  
23 a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant  
24 shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit  
25 reasonable analysis. The applicant may by written waiver extend this period.

26 (iii) If the department determines that additional time is needed to review the application and  
27 reclamation plan for a major operation, the department and the applicant shall negotiate to extend the  
28 period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The  
29 applicant may by written waiver extend this time period.

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

1 statement on the application, the department shall prepare a list of no fewer than four contractors  
2 acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall  
3 provide the department with a list of at least 50% of the contractors from the department's list. The  
4 department shall select its contractor from the list provided by the applicant.

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

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

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

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

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

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

18 (4) During the term of an operating permit, an operator may apply for an amendment or revision  
19 to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

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

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

26 (7) If the department demonstrates that a revision may result in a significant environmental impact  
27 that was not previously and substantially evaluated in an environmental impact statement, the application  
28 must be processed in the same manner as is provided for new permits. Applications for minor amendments  
29 and other revisions must be processed within 30 days of receipt of an application."  
30

1           **Section 3.** Section 82-4-341, MCA, is amended to read:

2           "**82-4-341. Compliance with reclamation plan -- reclamation by board.** (1) ~~Following receipt of~~  
3 ~~the permittee's report and at any other reasonable time the board may elect, the~~ The board shall cause the  
4 permit area to be inspected at least annually to determine if whether the permittee has complied with ~~the~~  
5 ~~reclamation plan and the board's~~ this part, the rules adopted under this part, or the permit.

6           (2) The permittee shall proceed with reclamation as scheduled in ~~his~~ the approved reclamation plan.  
7 Following written notice by the board noting deficiencies, the permittee shall commence action within 30  
8 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, ~~provided~~  
9 ~~that deficiencies~~ Deficiencies that also violate other laws that require earlier rectification ~~shall~~ must be  
10 corrected in accordance with the applicable time provisions of ~~such~~ those laws. The board may extend  
11 performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's  
12 control, but only when the permittee is, in the opinion of the board, making every reasonable effort to  
13 comply.

14           (3) Within 30 days after notification by the permittee and when, in the judgment of the board,  
15 reclamation of a unit of disturbed land area is properly completed, the permittee ~~shall~~ must be notified in  
16 writing and ~~his~~ the bond on ~~said~~ the area ~~shall~~ must be released or decreased proportionately to the acreage  
17 included within the bond coverage.

18           (4) If The board shall cause the bond to be forfeited if:

19           (a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the  
20 permittee has not commenced action to rectify deficiencies within 30 days after notification by the board;  
21 ~~or~~

22           (b) if reclamation is not properly completed in conformance with the reclamation plan within 2  
23 years after completion or abandonment of operation on any fraction of the permit area or ~~such~~ within a  
24 longer period ~~as~~ that may have been authorized ~~hereunder~~ under this part; or if,

25           (c) after default by the permittee, the surety either refuses or fails to perform the work to the  
26 satisfaction of the board within the time required ~~therefor, the board may, with the staff, equipment, and~~  
27 ~~material under its control or by contract with others, take such actions as are necessary for required~~  
28 ~~reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board~~  
29 ~~shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under~~  
30 ~~this section, including a reasonable charge for the services performed by the state's personnel and the~~

1 ~~state's equipment and materials utilized.~~

2 (5) The board shall notify the permittee and ~~his~~ the surety by order. ~~The order shall state the~~  
 3 ~~amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the~~  
 4 ~~amount is due and payable to the board by the permittee and the surety. If the amount specified in the~~  
 5 ~~order~~ bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the  
 6 board, shall bring an action on behalf of the state in district court.

7 (6) The board may, with the staff, equipment, and material under its control or by contract with  
 8 others, take any necessary actions for required reclamation of the disturbed lands. Except in an  
 9 environmental emergency, work provided for in this section must be let on the basis of competitive bidding.  
 10 The board shall keep a record of all necessary expenses incurred in carrying out the work or activity  
 11 authorized under this section, including a reasonable charge for the services performed by the state's  
 12 personnel and the state's equipment and materials used. The surety ~~shall be~~ is liable to the state to the  
 13 extent of the bond. The permittee ~~shall be~~ is liable for the remainder of the cost. Upon completion of the  
 14 reclamation, the board shall return any amount not expended.

15 ~~(6)(7)~~ (7) In addition to the other liabilities imposed by this part, failure to commence an action to  
 16 remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to  
 17 satisfactorily complete reclamation work on any segment of the permit area within 2 years, ~~or such~~ within  
 18 a longer period as that the board may permit on the permittee's application ~~therefor~~ or on the board's own  
 19 motion, after completion or abandonment of operations on any segment of the permit area, ~~shall constitute~~  
 20 constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or  
 21 license to the applicant; ~~provided, however, that such~~ A cancellation action ~~shall~~ may not be effected while  
 22 an appeal is pending from any ruling requiring the ~~same~~ cancellation of a permit or license."

23

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

25 **"82-4-361. Violation -- penalties -- waiver.** (1) ~~A person who violates any of the provisions of this~~  
 26 ~~part, the rules or orders adopted under this part (except 82-4-339), the provisions of any license or permit,~~  
 27 ~~or the conditions of a small miner exemption shall pay a civil penalty of not less than \$100 or more than~~  
 28 ~~\$1,000 for the violations and an additional civil penalty of not less than \$100 or more than \$1,000 for each~~  
 29 ~~day during which a violation continues and may be enjoined from continuing such violations as provided~~  
 30 ~~in this section. These penalties are recoverable in any action brought in the name of the state of Montana~~

1 ~~by the attorney general in the district court of the first judicial district of this state in and for the county~~  
2 ~~of Lewis and Clark or in the district court having jurisdiction of the defendant. (a) Except as provided in~~  
3 ~~subsections (1)(b) and (2), a civil penalty of not less than \$100 or more than \$1,000 for each of the~~  
4 ~~following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day~~  
5 ~~during which the violation continues, and an injunction from continuing the violation may be imposed~~  
6 ~~against:~~

7 ~~(i) a person or operator who violates a provision of this part, a rule or order adopted under this part,~~  
8 ~~or a term or condition of a permit; or~~

9 ~~(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a~~  
10 ~~violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a~~  
11 ~~permit.~~

12 ~~(b) If the violation created an imminent danger to the health or safety of the public or caused~~  
13 ~~significant environmental harm, the maximum penalty is \$5,000 for each day of violation.~~

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

18 ~~(3) (b) The civil penalties provided for in this section may be waived for a minor violation if it is~~  
19 ~~determined that the violation does not represent potential harm to public health, public safety, or the~~  
20 ~~environment and does not impair the administration of this part. The board shall adopt rules to implement~~  
21 ~~and administer a procedure for waiver of a penalty under this subsection.~~

22 ~~(3) The department shall notify the person or operator of the violation. The department shall issue~~  
23 ~~a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by~~  
24 ~~filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing~~  
25 ~~on the issues of whether the alleged violation has occurred and whether the penalty proposed to be~~  
26 ~~assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall~~  
27 ~~make findings of fact and issue a written decision as to the occurrence of the violation and whether the~~  
28 ~~amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The~~  
29 ~~person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of~~  
30 ~~receipt of the order. A person or operator who fails to request the hearing provided for in this subsection~~

1 or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or  
2 operator's right to seek judicial review of the violation or penalty determinations. These penalties are  
3 recoverable in an action brought by the department."

4  
5 **Section 5.** Section 82-4-362, MCA, is amended to read:

6 **"82-4-362. Suspension of permits -- hearing.** (1) If any of the requirements of this part, of the  
7 rules adopted under this part, or of a license, or permit, or reclamation plan has not been complied with,  
8 the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the  
9 commissioner shall order the suspension of the permit. The permit may be suspended for failure to comply  
10 with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The  
11 commissioner may order immediate suspension of a permit whenever the commissioner makes a finding  
12 that a violation of this part, of the rules adopted under this part, or of a license or permit, including the  
13 reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area.  
14 The notice or order must be handed to the licensee or permittee in person or served by certified mail  
15 addressed to the permanent address shown on the application for a license or permit. The notice of  
16 noncompliance or order of suspension must specify in what respects the operator has failed to comply with  
17 this part, the rules adopted under this part, or the permit, or the reclamation plan and must, if the violation  
18 has not been abated, order abatement within a specified time period.

19 (2) If the licensee or permittee has not complied with the requirements set forth in the notice of  
20 noncompliance or order of suspension within the time limits set in the notice or order, the permit may be  
21 revoked by order of the board and the performance bond forfeited to the department. The licensee or  
22 permittee is entitled to a hearing before the department on the revocation of a permit or license or the  
23 forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided  
24 in subsection (1). The notice must state when those measures may be undertaken and must give notice  
25 of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may  
26 not be revoked and the bond may not be forfeited until a final decision is made by the department.

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



