



AN ACT REVISING METAL MINE RECLAMATION LAWS; ESTABLISHING STANDARDS FOR TAILINGS STORAGE FACILITIES; ESTABLISHING A FEE; DEFINING TERMS; CREATING INDEPENDENT REVIEW PANELS; PROVIDING FOR REVIEWS AND INSPECTIONS; PROVIDING ENFORCEMENT; AMENDING SECTIONS 82-4-301, 82-4-303, 82-4-305, 82-4-335, 82-4-336, 82-4-337, AND 82-4-342, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

**Section 1.** Section 82-4-301, MCA, is amended to read:

**"82-4-301. Legislative intent and findings.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted this part.

(2) It is the legislature's intent that:

(a) the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources;

(b) tailings storage facilities are designed, operated, monitored, and closed in a manner that:

(i) meets state-of-practice engineering design standards;

(ii) uses applicable, appropriate, and current technologies and techniques as are practicable given site-specific conditions and concerns; and

(iii) provides protection of human health and the environment; and

(c) the regulation of tailings storage facilities is not prescriptive in detail but allows for adaptive management using evolving best engineering practices based on the recommendations of qualified, experienced engineers.

~~(2)~~(3) The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water

conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and the specifications for reclamation specifications and tailings storage facilities must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation and tailings storage as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed."

**Section 2.** Section 82-4-303, MCA, is amended to read:

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

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

(2) "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.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Certification" means, with regard to tailings storage facilities, a statement of opinion by a professional engineer that the work on a tailings storage facility has been conducted in accordance with the normal standard of care within dam engineering practice. Certification does not constitute a warranty or guarantee of facts or conditions certified.

~~(4)~~(5) "Completeness" means that an application contains information addressing each applicable permit requirement as listed in this part or rules adopted pursuant to this part in sufficient detail for the department to make a decision as to adequacy of the application to meet the requirements of this part.

(6) "Constructor" means the company or companies constructing the built components of a tailings storage facility, including but not limited to embankment dams, surface water diversion structures, tailings distribution systems, reclaim water systems, and monitoring instrumentation.

~~(5)~~(7) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(6)~~(8) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(7)~~(9) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, load-out facilities, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(10) "Engineer of record" means a qualified engineer who is the lead designer for a tailings storage facility.

(11) "Expansion" means, with regard to tailings storage facilities, a change in the size, height, or configuration of or a contiguous addition to an existing tailings storage facility that increases or may increase the storage capacity of the impoundment above the currently permitted capacity.

~~(8)~~(12) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result 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; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(13) "Independent review engineer" means a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure.

(14) "Material deviation" means a failure to follow a condition in a design document, corrective action plan, schedule, or tailings operation, maintenance, and surveillance manual that could reasonably be expected to substantively impair a tailings storage facility from performing as intended.

(15) "Maximum credible earthquake" means the most severe earthquake that can be expected at a site based on geologic and seismological evidence, including a review of all historic earthquake data of events sufficiently nearby to influence the site, all faults in the area, and attenuations from causative faults to the site.

~~(9)~~(16) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium, that is 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.

~~(10)~~(17) "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 the aggregate of 10,000 short tons.

(18) "Observational method" means a continuous, managed, and integrated process of design, construction control, monitoring, and review enabling appropriate, previously defined modifications to be incorporated during and after construction.

(19) "Operator" means a person who has an operating permit issued under 82-4-335.

~~(11)~~(20) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(21) "Panel" means the tailings storage facility independent review panel created for each new or expanded tailings storage facility.

~~(12)~~(22) "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.

~~(13)~~(23) "Placer deposit" means:

(a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian, colluvial, or alluvial deposits lying above bedrock; or

(b) all forms of deposit except veins of quartz and other rock in place.

~~(14)~~(24) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(25) "Practicable" means available and capable of being implemented after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(26) "Professional engineer" means a registered professional engineer licensed to practice in Montana under Title 37, chapter 67, part 3.

(27) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct experience with the design and construction of tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction,

operation, and closure of a tailings storage facility.

~~(15)~~(28) "Reclamation plan" means the operator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal 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, which may include use of the land as an industrial site not necessarily related to mining;

(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 when 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 that may be reasonably required by the department; and

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

~~(16)~~(29) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and other minerals produced by typical quarrying activities or collected from or just below the ground surface.

~~(17)~~(30) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(3) or a permit that meets the criteria of subsection ~~(17)~~(e) (30)(c) of this section, and that conducts:

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

(ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the

respective mining properties are:

- (A) the only operations engaged in by the person, firm, or corporation; and
- (B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

(i) 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; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

~~(18)~~(31) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

~~(19)~~(32) (a) "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.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(33) "Tailings" means the residual materials remaining after a milling process that separates the valuable fraction from the uneconomic fraction of an ore mined by an operator.

(34) (a) "Tailings storage facility" means a facility that temporarily or permanently stores tailings, including the impoundment, embankment, tailings distribution works, reclaim water works, monitoring devices, storm water diversions, and other ancillary structures.

(b) The term does not include a facility that:

- (i) stores 50 acre-feet or less of free water or process solution;

(ii) is wholly contained below surrounding grade with no man-made structures retaining tailings, water, or process solution or underground mines that use tailings as backfill; or

(iii) stores dry stack or filtered tailings.

~~(20)~~(35) "Underground mining" means all methods of mining other than surface mining.

~~(24)~~(36) "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. The term 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 that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(22)~~(37) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

**Section 3.** Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption -- small miners -- written agreement.** (1) Except as provided in subsections (3) through (11), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.
- (d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

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

- (a) if the small miner is an individual, that:
  - (i) no business association or partnership of which the small miner is a member or partner has a

small-miner exemption; and

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

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

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

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

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

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

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

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed \$10,000 for each operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

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

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the

small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

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

(7) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents or reagents shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of. The acreage disturbed by the operation using cyanide ore-processing reagents or other metal leaching solvents or reagents and covered by the operating permit is excluded from the 5-acre limit specified in ~~82-4-303(17)(a)(i)~~ 82-4-303(30)(a)(i) and ~~(17)(a)(ii)~~ (30)(a)(ii).

(8) (a) Except for a small miner proposing to conduct a placer or dredge mining operation, a small miner who intends to use an impoundment to store waste from ore processing shall obtain approval for the design, construction, operation, and reclamation of that impoundment and post a performance bond for that part of the small miner's operation before constructing an impoundment. The small miner shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(a).

(b) The department shall conduct a review of the adequacy of the bond posted by a small miner using an impoundment pursuant to this section at least once every 5 years and adjust the bond if necessary to ensure

reclamation of the impoundment. The acreage disturbed by the portion of the operation that uses an impoundment to store waste from ore processing is included in the 5-acre limit specified in ~~82-4-303(17)(a)(i)~~ 82-4-303(30)(a)(i) and ~~(17)(a)(ii)~~ (30)(a)(ii) and is subject to the provisions of this subsection (8).

(c) If a small miner under this subsection (8) fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(d) If a small miner under this subsection (8) fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (8)(e), before or after it incurs those costs.

(e) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (8)(d), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(f) Except for a small miner who conducts a placer or dredge mining operation, a small miner utilizing an impoundment to store waste from ore processing on or after April 28, 2005, shall obtain approval of the design, construction, operation, and reclamation of that impoundment and post a performance bond within 6 months of April 28, 2005. If the small miner has posted a bond for reclamation of that site with a federal government agency, the small miner is exempt from the requirements of this subsection (8)(f).

(9) The exemption provided in this section does not apply to a person:

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

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

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

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

(10) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(11) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."

**Section 4. Engineer of record -- duties.** (1) An operator with an existing tailings storage facility shall provide the department with written designation of an engineer of record, including contact information, within 180 days after [the effective date of this act].

(2) An application for a permit pursuant to 82-4-335 or an amendment that will include a tailings storage

facility must include the designation of an engineer of record and contact information.

(3) The engineer of record may not be an employee of an operator or permit applicant. The engineer of record shall:

(a) review designs and other documents pertaining to tailings storage facilities required by this part;  
 (b) certify and seal designs or other documents pertaining to tailings storage facilities submitted to the department;

(c) complete an annual inspection of the tailings storage facility as required in [section 10];

(d) notify the operator when credible evidence indicates the tailings storage facility is not performing as intended; and

(e) immediately notify the operator and the department when credible evidence indicates that a tailings storage facility presents an imminent threat or a high potential for imminent threat to human health or the environment.

(4) The engineer of record, operator, or permit applicant shall notify the department in writing if there is a change in the engineer of record.

(5) If the operator or permit applicant does not designate an engineer of record or replace an engineer of record within 90 days of receipt of notification that the engineer is no longer the engineer of record, the department shall order suspension of the deposition of tailings until an engineer of record is established pursuant to this section.

**Section 5. Tailings storage facility -- design document -- fee.** (1) An operator or a permit applicant proposing to construct a new tailings storage facility, an operator that is constructing a new tailings storage facility, or an operator proposing to expand an existing tailings storage facility shall submit to the department a design document and a \$1,500 fee.

(2) The design document must contain:  
 (a) the certification of the engineer of record;  
 (b) a detailed description of the proposed facility and site characteristics;  
 (c) maps, sections, and appurtenances design drawings in both hard copy and electronic format with sufficient detail for an independent review;

(d) the raw data files for models used in developing and evaluating the design;

(e) an evaluation indicating that the proposed tailings storage facility will be designed, operated, monitored, and closed using the most applicable, appropriate, and current technologies and techniques practicable given site-specific conditions and concerns;

(f) a site geotechnical investigation commensurate in detail and scope with the complexity of the site geology and proposed tailings storage facility design. The investigation must include a geological model of site conditions and a rationalization of the site investigation process.

(g) a demonstration through site investigation, laboratory testing, geotechnical analyses, and other appropriate means that the tailings, embankment, and foundation materials controlling slope stability are not susceptible to liquefaction or to significant strain-weakening under the anticipated static or cyclic loading conditions, to the extent that the amount of estimated deformation under the loading conditions would result in loss of containment;

(h) for a new tailings storage facility, design factors of safety against slope instability not less than:

(i) 1.5 for static loading under normal operating conditions, with appropriate use of undrained shear strength analysis for saturated, contractive materials;

(ii) 1.3 for static loading under construction conditions if the independent review panel created pursuant to [section 6] agrees that site-specific conditions justify the reduced factor of safety and that the extent and duration of the reduced factor of safety are acceptable; and

(iii) 1.2 for postearthquake, static loading conditions with appropriate use of undrained analysis and selection of shear strength parameters. Under these conditions, a postearthquake factor of safety less than 1.2 but greater than 1.0 may be accepted if the amount of estimated deformation does not result in loss of containment.

(i) for a new tailings storage facility, an analysis showing that the seismic response of the tailings storage facility does not result in the uncontrolled release of impounded materials or other undesirable consequences when subject to the ground motion associated with the 1-in-10,000-year event, or the maximum credible earthquake, whichever is larger. Any numeric analysis of the seismic response must be calculated for the normal maximum loading condition with steady-state seepage. The analysis must include, without limitation, consideration of:

(i) anticipated ground motion frequency content;

(ii) fundamental period and dynamic response;

- (iii) potential liquefaction;
- (iv) loss of material strength;
- (v) settlement;
- (vi) ground displacement;
- (vii) deformation; and
- (viii) the potential for secondary failure modes.

(j) if a pseudo-static stability analysis is performed to support the design, a justification for the use of the method with respect to the anticipated response to cyclic loading of the tailings facility structure and constituent materials. The calculations must be accompanied by a description of the assumptions used in deriving the seismic coefficient.

(k) reduced factors of safety or seismic design criteria if the independent review panel agrees that site-specific conditions justify that design to the specified requirements of factors of safety or seismic design criteria in this section is not necessary;

(l) for expansion of an existing tailings storage facility, either an analysis showing the proposed expansion meets the minimum design requirements for a new tailings storage facility under this section or an analysis showing the proposed expansion does not reduce the tailings storage facility's original design factors of safety and seismic event design criteria;

(m) a probabilistic and deterministic seismic evaluation for the area and assessment of peak horizontal ground acceleration;

(n) a dam breach analysis, a failure modes and effects analysis or other appropriate detailed risk assessment, and an observational method plan addressing residual risk;

(o) a description of the chemical and physical properties of the materials and process solutions to be stored in the tailings storage facility;

(p) when appropriate, depending on the chemical and physical properties of the materials, a detailed description of how undesirable constituents contained in the impoundment will be isolated from the environment;

(q) a description of the tailings storage facility capacity over time and the estimated ultimate capacity;

(r) specifications for impoundment construction, including the specifications for the foundation, abutments, embankment, means of containment, and the borrow materials;

(s) a construction management plan that includes, at a minimum, parameters and levels of acceptability

to be monitored during construction for quality control and quality assurance purposes. The frequency of sampling, the amount of oversight, the qualifications of the oversight personnel, and the role of the panel during and after construction must be specified and agreed to by the panel.

(t) a list of quantitative performance parameters for construction, operation, and closure of the tailings storage facility. The quantitative performance parameters may be expressed as minimums or maximums for embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(u) a list of the assumptions used during the analysis and design of the facility and a description justifying the validity of each assumption;

(v) a description of how the design integrates into a closure plan that facilitates, to the extent possible, dam decommissioning resulting in a maintenance-free closure;

(w) requirements for postclosure monitoring, inspection, and review, including the frequency of engineer of record inspections, independent panel reviews, and retention of an engineer of record;

(x) a description of proposed risk management measures for each facility life-cycle stage, including construction, operation, and closure;

(y) a detailed water balance, evidence of calibration if available, and the raw data used to develop the water balance;

(z) a detailed description of how water, seepage, and process solutions are to be routed or managed during construction, operation, and closure;

(aa) a detailed description of storm water controls, including diversions, storage, freeboard, and how extreme storm events will be managed;

(bb) a design storm event for operation and closure conforming to current engineering best practices for the type of facility proposed that includes:

(i) a rationale for the selection of the design storm event;

(ii) the magnitude of the design storm event;

(iii) the magnitude of runoff generated by the design storm event to and around the impoundment; and

(iv) evidence that the dynamic nature of climatology was considered;

(cc) for a new tailings storage facility, design sufficient to store:

(i) the probable maximum flood event plus maximum operating water or solution volume plus sufficient

freeboard for wave action; or

(ii) a flood event design criterion less than the probable maximum flood but greater than the 1-in-500-year, 24-hour event if the panel agrees that site-specific conditions justify that design to the probable maximum flood standard is unnecessary;

(dd) for an expansion of an existing tailings storage facility, either an analysis that the proposed expansion meets the minimum requirements in this section to manage storm or flood events or an analysis that the expansion does not reduce the tailings storage facility's ability to store or otherwise manage the original facility design storm or flood events; and

(ee) any other information, drawings, maps, detailed descriptions, or data to assist the panel in determining if the new or expanded tailings storage facility protects human health and the environment.

(3) The design document must be submitted prior to the issuance of the draft permit pursuant to 82-4-337.

**Section 6. Independent review panel -- selection -- duties.** (1) An independent review panel shall review the design document required by [section 5].

(2) The operator or permit applicant shall select three independent review engineers to serve on the panel and shall submit those names to the department. The department may reject any proposed panelists. If the department rejects a proposed panelist, the operator or permit applicant shall continue to select independent review engineers as panelists until three panelists are approved by the department.

(3) An independent review engineer may not be an employee of:

- (a) an operator or permit applicant; or
- (b) the design consultant, the engineer of record, or the constructor.

(4) The operator or permit applicant shall contract with panel members, process invoices, and pay costs.

(5) A representative of the department and a representative of the operator or permit applicant may participate on the panel, but they are not members of the panel and their participation is nonbinding on the review.

(6) The engineer of record is not a member of the panel but shall participate in the panel review.

(7) The operator or permit applicant shall provide each panel member with a hard copy and an electronic copy of the design document and other information requested by the panel.

(8) The panel shall review the design document, underlying analysis, and assumptions for consistency

with this part. The panel shall assess the practicable application of current technology in the proposed design.

(9) The panel shall submit its review and any recommended modifications to the operator or permit applicant and the department. The panel's determination is conclusive. The report must be signed by each panel member.

(10) The engineer of record shall modify the design document to address the recommendations of the panel and shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to [section 5].

(11) For an expansion of a tailings storage facility for which the original design document was approved by the department, the operator shall make a reasonable effort to retain the previous panel members. To replace a panel member, the process in subsection (2) must be followed.

**Section 7. Quality assurance during construction.** (1) An operator constructing a new or expanded tailings storage facility shall:

(a) when indicated by the construction management plan, engage a professional engineer or other oversight specified in the plan to implement the construction management plan specified in the final design document. The professional engineer must be an employee of the engineer of record or an employee of the design firm represented by the engineer of record but may not be an employee of the constructor or the operator.

(b) ensure the collection of all records, including as-built plans and specifications, necessary to demonstrate that the tailings storage facility is constructed as specified in the final design document;

(c) when indicated by the construction management plan, secure a certification from the professional engineer for the records generated by the implementation of the quality assurance monitoring as specified in the final design document; and

(d) submit to the department the records collected during the quality assurance monitoring specified in the approved design document for all tailings storage facility construction conducted during a calendar year in the annual report required by the facility's operating permit or an independent submittal at the completion of the construction activity.

(2) After an appropriate investigation and consultation with the operator, the department shall, pursuant to 82-4-362, order the suspension of tailings storage facility construction activities if credible evidence is observed, submitted, or otherwise obtained that construction activities are not being conducted as specified in

the design document.

**Section 8. Tailings operation, maintenance, and surveillance manual.** (1) A tailings operation, maintenance, and surveillance manual is required for a tailings storage facility.

(2) For a tailings storage facility that exists on or before [the effective date of this act], the tailings operation, maintenance, and surveillance manual must be developed within 180 days of [the effective date of this act]. For a tailings storage facility proposed after [the effective date of this act], the tailings operation, maintenance, and surveillance manual must be developed prior to issuance of the draft permit pursuant to 82-4-337.

(3) The operator or permit applicant shall develop the manual, which must contain:

(a) an identification of the roles and responsibilities of the agents of the operator of the tailings storage facility. The specific organizational role with ultimate responsibility for the tailings storage facility must be identified as the senior ranking agent of the operator at the site of the tailings storage facility.

(b) an identification of necessary maintenance and frequency of maintenance to safely operate the tailings storage facility;

(c) an identification of training needs and training plans for persons with responsibilities identified in the manual;

(d) an identification of operational aspects employed to facilitate, to the extent possible, a maintenance-free closure;

(e) an identification of all inspections and monitoring and the frequency of inspections and monitoring to ensure that the tailings storage facility is performing as intended;

(f) an identification of monitoring and data collection necessary to maintain and calibrate the tailings storage facility's water balance;

(g) a description of how issues identified by routine inspection or monitoring will be resolved and how the progress toward resolution is tracked;

(h) a listing of quantitative performance parameters for construction, operation, and closure. The quantitative performance parameters may be expressed as minimums or maximums for parameters such as embankment crest width, embankment slopes, beach width, operating pool volume, phreatic surface elevation in the embankment and foundation, pore pressures, or other parameters appropriate for the facility and location.

(i) an emergency preparedness and response plan based on the failure modes and effects analysis or other appropriate risk assessment;

(j) an identification of specific trigger levels or events when the department and the engineer of record are immediately notified. When possible, trigger levels must be sufficiently conservative to allow time for corrective actions to be implemented.

(k) any other information necessary to ensure that the tailings storage facility is operated and maintained, is performing, and can be closed as intended.

(4) The engineer of record shall certify by seal that:

(a) the tailings operation, maintenance, and surveillance manual is consistent with the facility's design;

(b) the inspections and monitoring described in the tailings operation, maintenance, and surveillance manual are reasonably sufficient to ensure the tailings storage facility will perform as intended and will reasonably be expected to detect deviations if they occur; and

(c) the emergency preparedness and response plan describes reasonable measures that can be taken to protect human health and the environment.

(5) The operator shall review the tailings operation, maintenance, and surveillance manual annually to ensure that the manual reflects current conditions. Any revision of the manual during operation or at closure must be certified by the seal of the engineer of record.

**Section 9. Periodic review required.** (1) At least once every 5 years following department approval of a design document pursuant to [section 5] during mining, or as required in a reclamation plan approved pursuant to 82-4-336, the operator shall assemble a panel in accordance with the panel requirements in [section 6]. A reasonable effort must be made to retain previous panel members.

(2) The panel shall:

(a) inspect the tailings storage facility;

(b) review the tailings operation, maintenance, and surveillance manual and records collected in association with the manual;

(c) interview people with responsibilities identified in the tailings operation, maintenance, and surveillance manual; and

(d) review annual engineer of record inspection reports, corrective action plans, records associated with

construction, and any other aspect, plan, record, document, design, model, or report related to the tailings storage facility that the panel needs to review to ensure that the tailings storage facility is constructed, operated, and maintained as designed and is functioning, can be closed as intended, and meets acceptable engineering standards.

(3) The operator shall provide documents and records necessary for the panel to complete a periodic review.

(4) The panel shall prepare a report detailing the scope of review and include any recommendations resulting from the review.

(5) The panel shall immediately notify the department and the operator if there is an imminent threat to human health or the environment.

(6) The final review report must be signed by each panel member and provided to the department and the operator.

(7) The operator shall prepare a corrective action plan and schedule effectively implementing the recommendations included in the panel's report. The operator shall submit the corrective action plan and schedule to the panel within 60 days after receipt of the panel report.

(8) The panel shall review the corrective action plan and schedule to determine whether the corrective action plan and schedule proposed by the operator will effectively implement the recommendations included in the panel's report.

(9) Within 30 days after receipt of approval from the panel, the operator shall submit the corrective action plan with an implementation schedule to the department.

(10) Failure to implement the corrective action plan pursuant to the implementation schedule is subject to the provisions of 82-4-361 and 82-4-362.

**Section 10. Annual inspections.** (1) The engineer of record shall inspect a tailings storage facility annually during operation or as required during closure pursuant to a reclamation plan under 82-4-336.

(2) (a) The engineer of record shall prepare a report describing the scope of the inspection and actions recommended to ensure the tailings storage facility is properly operated and maintained.

(b) The engineer of record shall submit the report to the operator and the department and immediately notify the department and the operator if the tailings impoundment presents an imminent threat or the potential

for an imminent threat to human health or the environment.

(3) (a) If the report contains recommendations, the operator shall prepare a corrective action plan implementing the recommendations of the engineer of record and an implementation schedule.

(b) The operator shall submit the corrective action plan and schedule to the engineer of record.

(c) The corrective actions proposed by the operator must reasonably be expected to effectively address the recommendations contained in the inspection report. The engineer of record shall verify the proposed corrective actions.

(d) The operator shall submit the corrective action plan verified by the engineer of record and the implementation schedule to the department within 120 days following the date of the inspection.

(e) The operator shall implement the corrective action plan pursuant to the implementation schedule.

(4) The department shall conduct inspections, review records, and take other actions necessary to determine if the tailings storage facility is being operated in a manner consistent with the approved design document and the tailings operation, maintenance, and surveillance manual.

(5) Failure to implement the corrective action plan and the implementation schedule or material deviations from the approved design document or the tailings operation, maintenance, and surveillance manual are subject to the provisions of 82-4-361 and 82-4-362.

**Section 11.** Section 82-4-335, MCA, is amended to read:

**"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those activities in the state without first obtaining a final operating permit from the department. Except as provided in subsection (2), a separate final operating permit is required for each complex.

(2) (a) A person who engages in the mining of rock products or a landowner who allows another person to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple sites if each of the multiple sites does not:

(i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or ground water;

(ii) have any water impounding structures other than for storm water control;

- (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions;
- (iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as threatened or endangered under the Endangered Species Act of 1973; or
- (v) impact significant historic or archaeological features.

(b) A landowner who is a permittee and who allows another person to mine on the landowner's land remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission. The performance bond required under this part is and must be conditioned upon compliance with this part, the rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the landowner's consent.

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

(4) (a) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(b) (i) Subject to subsection (4)(b)(ii), a contractor shall, at the request of the applicant, directly submit invoices of contractor expenses to the applicant.

(ii) A contractor's work is assigned, reviewed, accepted, or rejected by the department pursuant to this section.

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

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

(b) the minerals expected to be mined;

(c) a proposed reclamation plan;

(d) the expected starting date of operations;

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

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

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

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

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

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

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

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable; For a tailings storage facility, this requirement is met by submission of a design document pursuant to [section 5], a panel report pursuant to [section 6], and a tailings operation, maintenance, and surveillance manual pursuant to [section 8] prior to issuance of a draft permit.

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable

materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site; ~~and~~. For a tailings storage facility, this requirement is met by submission of a design document pursuant to [section 5], a panel report pursuant to [section 6], and a tailings operation, maintenance, and surveillance manual pursuant to [section 8] prior to issuance of a draft permit.

(o) an assessment of the potential for the postmining use of mine-related facilities for other industrial purposes, including evidence of consultation with the county commission of the county or counties where the mine or mine-related facilities will be located.

(6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(7) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

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

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

(a) that person's failure, or the failure of any firm or business association of which that person was a principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department or the completion of reclamation by the person's surety or by the department, unless that person meets the conditions described in 82-4-360;

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

(c) that person has failed to post a reclamation bond required by 82-4-305; or

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

(10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (5)(a) and:

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

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

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

**Section 12.** Section 82-4-336, MCA, is amended to read:

**"82-4-336. Reclamation plan and specific reclamation requirements.** (1) Taking into account the site-specific conditions and circumstances, including the postmining use of the mine site, disturbed lands must be reclaimed consistent with the requirements and standards set forth in this section.

(2) The reclamation plan must provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, must be conducted simultaneously with the operation and in any case must be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance.

(3) In the absence of an order by the department providing a longer period, the plan must provide that reclamation activities must be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(4) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously obtaining from the department written approval for the proposed change.

(5) Provision must be made to avoid accumulation of stagnant water in the development area to the extent that it serves as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

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

(7) When mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions ("objectionable effluents") on exposure to moisture, the reclamation plan must include provisions that adequately provide for:

(a) insulation of all faces from moisture or water contact by covering the faces with material or fill not susceptible itself to generation of objectionable effluents in order to mitigate the generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before they are allowed to flow or be pumped out of the pit to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the department;

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

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

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and other devices that may reasonably be required by the department.

(8) Provisions for vegetative cover must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover must meet county standards for noxious weed control.

(9) (a) With regard to disturbed land other than open pits and rock faces, the reclamation plan must provide for the reclamation of all disturbed land to comparable utility and stability as that of adjacent areas. This

standard may not be applied to require the removal of mine-related facilities that are valuable for postmining use. If the reclamation plan provides that mine-related facilities will not be removed or that the disturbed land associated with the facilities will not be reclaimed by the permittee, the following apply:

(i) The postmining use of the mine-related facilities must be approved by the department.

(ii) In the absence of a legitimate postmining use of mine-related facilities upon completion of other approved mine reclamation activities, the permittee shall comply with the reclamation requirements of this part and the reclamation plan within the time limits established in subsection (3) for mine-related facilities that had previously been identified as valuable for postmining use.

(b) With regard to open pits and rock faces, the reclamation plan must provide sufficient measures for reclamation to a condition:

(i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;

(ii) that affords some utility to humans or the environment;

(iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and

(iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

(13) The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to [section 6]."

**Section 13.** Section 82-4-337, MCA, is amended to read:

**"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.**

(1) (a) The department shall review all applications for operating permits for completeness and compliance with the requirements of this part and rules adopted pursuant to this part within 90 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial notice must note all deficiency issues, and the department may not in a later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department shall notify the applicant concerning completeness and compliance as soon as possible. An application is considered complete and compliant unless the applicant is notified of deficiencies within the appropriate review period.

(b) The review for completeness and compliance is limited to areas in regard to which the department has statutory authority.

(c) When providing notice of deficiencies, the department shall identify each section in this part or rules adopted pursuant to this part related to the deficiency.

(d) When an application is complete and compliant, the department shall:

(i) declare in writing that the application is complete and compliant;

(ii) detail in writing the substantive requirements of this part and how the application complies with those requirements; ~~and~~

(iii) when an application submitted after [the effective date of this act] includes a tailings storage facility, verify the receipt of the certified design document pursuant to [section 5], the panel report pursuant to [section 6], and the tailings operation, maintenance, and surveillance manual pursuant to [section 8]; and

~~(iii)~~(iv) issue a draft permit. The department may, as a condition of issuing the draft permit, require that the applicant obtain other permits required by law but not provided for in this part. However, the department may not withhold issuance of the draft permit in the absence of those permits.

(e) Prior to issuance of a draft permit, the department shall inspect the site. If the site is not accessible because of extended adverse weather conditions, the department shall inspect the site at the first available opportunity and may extend the time period prescribed in subsection (1)(a) by a term agreed to by the applicant.

(f) Issuance of the draft permit as a final permit is the proposed state action subject to review required by Title 75, chapter 1.

(g) If the applicant is not notified that there are deficiencies or inadequacies in the application or that the application is compliant within the time period required by subsection (1)(a), the final operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(h) of this section. The department shall promptly notify the applicant of the form and amount of bond that will be required. After the department notifies the applicant of deficiencies in the application within the time period required by subsection (1)(a), no further action by the department is required until the applicant has responded to the deficiency notification.

(h) Except as provided in subsection (1)(g), a final 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(10);

(iii) the department has found that permit issuance is not prohibited by 82-4-335(9) or 82-4-341(7);

(iv) the review pursuant to Title 75, chapter 1, is completed or 1 year has elapsed after the date the draft permit was issued, whichever is less. The applicant may by written waiver extend this time period.

(v) the department has made a determination that the application and the final permit meet the substantive requirements of this part and the rules adopted pursuant to this part.

(i) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall 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.

(2) (a) After issuance of a draft permit but prior to receiving a final permit, an applicant may propose modifications to the application. If the proposed modifications substantially change the proposed plan of operation or reclamation, the department may terminate the draft permit and review the application as modified pursuant to subsection (1) for completeness and compliance and issuance of a new draft permit.

(b) The department shall consult with the applicant before placing stipulations in a draft or final permit. Permit stipulations in a draft or final permit may, unless the applicant consents, address only compliance issues within the substantive requirements of this part or rules adopted pursuant to this part. For a stipulation imposed without the applicant's consent, the department shall provide to the applicant in writing the reason for the stipulation, a citation to the statute or rule that gives the department the authority to impose the stipulation, and,

for a stipulation imposed in the final permit that was not contained in the draft permit, the reason that the stipulation was not contained in the draft permit.

(c) Within 40 days of the completion of the review required by Title 75, chapter 1, or 1 year from the date the draft permit is issued, whichever is less, the department shall issue its bond determination.

(d) When the department prepares an environmental review jointly with a federal agency acting under the National Environmental Policy Act, the applicant may by written waiver extend the 1-year deadline contained in subsection (1)(h)(iv).

(e) Upon submission of the bond and subject to subsection (1)(h), the department shall issue the final permit.

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

(4) The final operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or 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 that 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 not permitted under the terms of regulatory permits held by the permittee are revealed by field inspection and the department has the authority to address them under the provisions of this part.

(5) (a) The modification of a final operating permit may be a major or minor permit amendment or a permit revision. A modification of the operating permit, including a modification necessary to comply with the requirements of existing law as interpreted by a court of competent jurisdiction must be processed in accordance with the procedures for an application for a permit amendment or revision that are established pursuant to 82-4-342 and this section.

(b) The modification of an operating permit may not be finalized and an existing bond amount may not be increased until the permit modification procedures and analysis described in subsection (5)(a) are completed."

**Section 14.** Section 82-4-342, MCA, is amended to read:

**"82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for a permit revision as described in subsections (5)(g) through (5)(j) or an amendment 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) The board may by rule establish criteria for the classification of amendments as major or minor. The board shall adopt rules establishing requirements for the content of applications for revisions and major and minor amendments and the procedures for processing revisions and minor amendments.

(b) An amendment must be considered minor if:

- (i) it is for the purpose of retention of mine-related facilities that are valuable for postmining use;
- (ii) evidence is submitted showing that a local government has requested retention of the mine-related facilities for a postmining use; and
- (iii) the postmining use of the mine-related facilities meets the requirements provided for in 82-4-336.

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

(4) The department shall review an application for a revision or a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised or amended in accordance with the application.

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

(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 25 acres or 10% of the permitted area, whichever is less;

(h) changes to an approved reclamation plan if the changes are consistent with this part and rules adopted pursuant to this part;

(i) changes in an approved operating plan for an activity that was previously permitted if the changes will be insignificant relative to the entire operation and the changes are consistent with subsection (5)(g); ~~and~~

(j) changes in a permit for the purpose of retention of mine-related facilities that are valuable for postmining use; ~~and~~

(k) modifications to a tailings storage facility that result in a minor expansion to the facility if:

(i) the proposed modification is certified by the seal of the engineer of record;

(ii) the capacity increase resulting from the expansion is no greater than 15% of the capacity of the existing tailings storage facility; and

(iii) the modification complies with [section 5(2)(l) and (2)(dd)] and is exempt under subsection (5)(g), (5)(h), or (5)(i) of this section."

**Section 15. Codification instruction.** [Sections 4 through 10] 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 4 through 10].

**Section 16. Applicability.** [This act] applies to:

(1) operators producing or milling ore under an existing operating permit on or after [the effective date of this act];

(2) applicants who submit an application for an operating permit after [the effective date of this act]; and

(3) a tailings storage facility constructed after [the effective date of this act].

- END -

I hereby certify that the within bill,  
SB 0409, originated in the Senate.

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

SENATE BILL NO. 409

INTRODUCED BY C. VINCENT, B. HAMLETT, L. JONES, R. LYNCH, P. NOONAN, A. REDFIELD,  
R. SHAW, G. VUCKOVICH, J. WELBORN

AN ACT REVISING METAL MINE RECLAMATION LAWS; ESTABLISHING STANDARDS FOR TAILINGS STORAGE FACILITIES; ESTABLISHING A FEE; DEFINING TERMS; CREATING INDEPENDENT REVIEW PANELS; PROVIDING FOR REVIEWS AND INSPECTIONS; PROVIDING ENFORCEMENT; AMENDING SECTIONS 82-4-301, 82-4-303, 82-4-305, 82-4-335, 82-4-336, 82-4-337, AND 82-4-342, MCA; AND PROVIDING AN APPLICABILITY DATE.