

Amendment - 1st Reading/2nd House-blue - Requested by: Bill Mercer - (S) Natural Resources

- 2025

69th Legislature 2025

Drafter: Jason Mohr,

HB0699.001.002

HOUSE BILL NO. 699

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE METAL MINE TAILINGS IMPOUNDMENT PANEL; REVISING THE MEMBERSHIP, QUALIFICATIONS, AND DUTIES OF AN INDEPENDENT REVIEW PANEL FOR A METAL MINE TAILINGS IMPOUNDMENT PLAN; REVISING A DEFINITION; PROVIDING FOR A WRITTEN REPORT FROM A REVIEW PANEL; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 82-4-303, 82-4-335, 82-4-337, 82-4-377, AND 82-4-380, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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.

(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

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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.

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

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

(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.

(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~~ panel member" means a :

(a) a licensed engineer who is a recognized expert in tailings storage facility design, construction, operation, and closure; or

(b) a person who has the education, experience, and qualifications sufficient to be considered a

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1 recognized subject matter expert in technical disciplines relevant to tailings storage facility design, construction,
2 operation, and closure who is not a licensed engineer.

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

6 (15) "Maximum credible earthquake" means the most severe earthquake that can be expected at a
7 site based on geologic and seismological evidence, including a review of all historic earthquake data of events
8 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,
10 gravel, peat, soil materials, or uranium, that is taken from below the surface or from the surface of the earth for
11 the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or
12 processing or for stockpiling for future use, refinement, or smelting.

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

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

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

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

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

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

27 (23) "Placer deposit" means:

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- 1 (a) naturally occurring, scattered, or unconsolidated valuable minerals in gravel, glacial, eolian,
2 colluvial, or alluvial deposits lying above bedrock; or
- 3 (b) all forms of deposit except veins of quartz and other rock in place.
- 4 (24) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or
5 persons.
- 6 (25) "Practicable" means available and capable of being implemented after taking into consideration
7 cost, existing technology, and logistics in light of overall project purposes.
- 8 (26) "Professional engineer" means a registered professional engineer licensed to practice in
9 Montana under Title 37, chapter 67, part 3.
- 10 (27) "Qualified engineer" means a professional engineer who has a minimum of 10 years of direct
11 experience with the design and construction of tailings storage facilities and has the appropriate professional
12 and educational credentials to effectively determine appropriate parameters for the safe design, construction,
13 operation, and closure of a tailings storage facility.
- 14 (28) "Reclamation plan" means the operator's written proposal, as required and approved by the
15 department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical
16 at the time of application for an operating permit:
- 17 (a) a statement of the proposed subsequent use of the land after reclamation, which may include
18 use of the land as an industrial site not necessarily related to mining;
- 19 (b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of
20 the land after reclamation is completed and the proposed method of accomplishment;
- 21 (c) the manner and type of revegetation or other surface treatment of disturbed areas;
- 22 (d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of
23 public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the
24 area;
- 25 (e) the method of disposal of mining debris;
- 26 (f) the method of diverting surface waters around the disturbed areas when necessary to prevent
27 pollution of those waters or unnecessary erosion;

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

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

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

6 (29) (a) "Rock products" means decorative rock, building stone, riprap, mineral aggregates, and
7 other minerals produced by typical quarrying activities or collected from or just below the ground surface that do
8 not contain sulfides with the potential to produce acid, toxic, or otherwise pollutive solutions.

9 (b) The term does not include talc, gypsum, limestone, metalliferous ores, gemstones, or materials
10 extracted by underground mining.

11 (30) (a) "Small miner" means a person, firm, or corporation that engages in mining activity that is not
12 exempt from this part pursuant to 82-4-310, that engages in the business of reprocessing of tailings or waste
13 materials, that, except as provided in 82-4-310, knowingly allows other persons to engage in mining activities
14 on land owned or controlled by the person, firm, or corporation, that does not hold an operating permit under
15 82-4-343 or 82-4-335 except for a permit issued under 82-4-335(2) or an operating permit that meets the
16 criteria of subsection (30)(c) of this section, and that conducts:

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

19 (ii) two operations that disturb and leave unreclaimed less than 5 acres for each operation if the
20 respective mining properties are:

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

22 (B) at least 1 mile apart at their closest point.

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

25 (i) exclude access or haulage roads that are required by a local, state, or federal agency having
26 jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department
27 in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

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

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

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

9 (32) (a) "Surface mining" means all or any part of the process involved in mining of minerals by
10 removing the overburden and mining directly from the mineral deposits exposed, including but not limited to
11 open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all
12 similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

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

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

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

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

22 (i) a facility that stores 50 acre-feet or less of the aggregate of tailings, free water, or and process
23 solution;

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

26 (iii) a facility that is partially below the surrounding grade and partially above the surrounding grade
27 if the portion of the facility that is above the surrounding grade retains 50 acre-feet or less in the aggregate of

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1 tailing, water, and process solution; or

2 (iii)(iv) ~~stores dry stack or filtered~~ in which the portion of tailings is used as underground backfill at an
3 underground mine.

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

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

11 (37) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of
12 natural cover considered suitable at time of reclamation."
13

14 **Section 2.** Section 82-4-335, MCA, is amended to read:

15 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
16 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
17 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
18 activities in the state without first obtaining a final operating permit from the department. Except as provided in
19 82-4-343, a separate final operating permit is required for each complex.

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

23 (3) (a) Prior to receiving an operating permit from the department, a person shall pay the basic
24 permit fee of \$500. The department may require a person who is applying for a permit pursuant to subsection
25 (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the
26 normal operating expenses of the department whenever those expenses are reasonably necessary to provide
27 for timely and adequate review of the application, including any environmental review conducted under Title 75,

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applicant and the department. Following the review of the design document, the panel members shall prepare a written report signed by each panel member that summarizes the review. The written report may include recommended modifications to the design document for consistency with this part. The panel members shall provide the written report to the operator or permit applicant and the department. The panel's panel members' determination is conclusive. The report must be signed by each panel member.

(40)(9) (a) If the written report does not contain any recommended modification to a design document, the engineer of record shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to 82-4-376.

(b) If a written report contains recommended modifications to the design document, –The the engineer of record shall modify the design document to address the recommendations of the panel and shall certify the completed design document recommended modifications and shall submit the revised designed document to the panel members for review. Following written concurrence from the panel members that the revised design document adequately addresses the recommended modifications stated in the written report, the engineer of record shall certify the completed design document. The operator or permit applicant shall submit the final design document to the department pursuant to 82-4-376. The panel members' determination is conclusive.

(44)(10) 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)-(1) must be followed."

Section 5. Section 82-4-380, MCA, is amended to read:

"82-4-380. Periodic review required. (1) ~~At least once every 5 years following~~ Following department approval of a design document pursuant to 82-4-376 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 82-4-377. A reasonable effort must be made to retain previous panel members. The operator shall assemble the panel at a frequency to be determined by the panel, except that the panel shall assemble every:

(a) six-6 months prior to the anticipated start of initial construction of the new tailing storage facility

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1 and not less than annually afterwards until construction is completed or the placement of tailings in the facility is
2 initiated; and

3 (b) at least once every 5 years after initial construction and until completion of the tailings
4 deposition.

5 (2) The panel shall:

6 (a) inspect the tailings storage facility after the initiation of construction;

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

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

11 (d) review annual engineer of record inspection reports, corrective action plans, records associated
12 with construction, and any other aspect, plan, record, document, design, model, or report related to the tailings
13 storage facility that the panel needs to review to ensure that the tailings storage facility is constructed, operated,
14 and maintained as designed and is functioning, can be closed as intended, and meets acceptable engineering
15 standards.

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

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

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

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

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

27 (8) The panel shall review the corrective action plan and schedule to determine whether the

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1 corrective action plan and schedule proposed by the operator will effectively implement the recommendations
2 included in the panel's report.

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

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

7

8 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

9

- END -