

SENATE BILL NO. 368

INTRODUCED BY S. VINTON, W. GALT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CORRECTION OF MINOR MAINTENANCE ITEMS AT CERTAIN MINES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 82-4-251 AND 82-4-254, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 82-4-251, MCA, is amended to read:

"82-4-251. Noncompliance -- suspension of permits. (1) If it is determined on the basis of an inspection that the permittee is or that any condition or practice exists in violation of any requirement of this part or any permit condition required by this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the director or an authorized representative pursuant to subsection ~~(5)~~ (6). If the director or an authorized representative finds that the ordered cessation of the operation or any portion of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring any steps that the director or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and

1 imminent environmental harm to land, air, or water resources, the director or an authorized representative shall
2 issue a notice to the permittee or the permittee's agent fixing a reasonable time, not exceeding 90 days, for the
3 abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time
4 as originally fixed or subsequently extended, for good cause shown and upon the written finding of the director
5 or an authorized representative, the director or an authorized representative finds that the violation has not
6 been abated, the director or an authorized representative shall immediately order a cessation of the operation
7 or the portion of the operation relevant to the violation. The cessation order remains in effect until the director or
8 an authorized representative determines that the violation has been abated or until modified, vacated, or
9 terminated by the director or an authorized representative pursuant to subsection ~~(5)~~ (6). In the order of
10 cessation issued under this subsection, the director shall determine the steps necessary to abate the violation
11 in the most expeditious manner possible and shall include the necessary measures in the order.

12 (3) (a) When, on the basis of an inspection, the director or an authorized representative
13 determines that there is a minor maintenance item to be corrected, the director or the authorized representative
14 shall issue a minor maintenance correction letter to alert the permittee of the necessary correction and provide
15 the permittee with an opportunity to correct the item within 30-14 days. DURING THE NEXT REGULAR INSPECTION,
16 THE DIRECTOR OR THE AUTHORIZED REPRESENTATIVE SHALL VERIFY THAT THE NECESSARY CORRECTION HAS BEEN
17 COMPLETED.

18 (b) A minor maintenance item:

19 (i) is a permit violation that does not create an imminent danger to the health or safety of the
20 public, and the director or a director's designee determines the violation is not reasonably expected to cause
21 significant and imminent environmental harm to land, air, or water resources;

22 (ii) may be reasonably corrected by the permittee within 30-14 days to the satisfaction of the
23 director or a designee; and

24 (iii) does not, at the discretion of the director or a designee, necessitate a cessation order or public
25 hearing, as required in subsection (2); AND

26 (IV) IS WITHIN THE PERMIT BOUNDARY.

27 (c) If a permittee fails to correct the minor maintenance item within 30-14 days OR BY THE NEXT
28 REGULAR INSPECTION, WHICHEVER IS LATER, the director or the director's designee may SHALL issue a notice of

1 noncompliance or an order of cessation pursuant to subsections (1) and (2).

2 ~~(3)~~(4) When, on the basis of an inspection, the director or an authorized representative determines
3 that a pattern of violations of any requirements of this part or any permit conditions required by this part exists
4 or has existed and if the director or an authorized representative also finds that the violations are caused by the
5 unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that
6 the violations are willfully caused by the permittee, the director or an authorized representative shall issue an
7 order to the permittee to show cause as to why the permit should not be suspended or revoked and shall
8 provide opportunity for a public hearing. If a hearing is requested, the director shall inform all interested parties
9 of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not
10 be suspended or revoked, the director or an authorized representative shall suspend or revoke the permit. A
11 permittee may request a contested case hearing on a permit suspension or revocation by filing a request for
12 hearing, specifying the grounds for the request, within 30 days of receipt of the order of suspension or
13 revocation. The order is effective upon expiration of the period for requesting a hearing or, if a hearing is
14 requested, upon issuance of a final order by the board. The hearing must be conducted in accordance with the
15 requirements of Title 2, chapter 4, part 6. When a permit has been revoked, the department may order the
16 performance bond forfeited.

17 ~~(4)~~(5) Any additional permits held by an operator whose mining permit has been revoked must be
18 suspended, and the operator is not eligible to receive another permit or to have the suspended permits
19 reinstated until the operator has complied with all the requirements of this part with respect to former permits
20 issued to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the
21 land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into
22 the reclamation account a sum together with the value of the bond the department finds adequate to reclaim the
23 lands.

24 ~~(5)~~(6) Notices and orders issued pursuant to this section must set forth with reasonable specificity the
25 nature of the violation and the remedial action required, the period of time established for abatement, and a
26 reasonable description of the portion of the operation to which the notice or order applies. Each notice or order
27 issued under this section must be given promptly to the permittee or the permittee's agent by the department,
28 by the director, or by the authorized representative who issued the notice or order. All notices and orders must

be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the director or an authorized representative. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless an informal public hearing, if requested by the person to whom the notice or order was issued, is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of the hearing. If the department receives a request for an informal public hearing 21 days after service of the notice or order, the period for holding the informal public hearing is extended by the number of days after the 21st day that the request was received.

~~(6)~~(7) A person who has been issued a notice or an order of cessation pursuant to subsection (1) or (2) or a person who has an interest that is or may be adversely affected by an order issued pursuant to subsection (1) or (2) or by modification, vacation, or termination of that order may request a hearing before the board on that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The board shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

~~(7)~~(8) Subject to the provisions of 82-4-255, whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

~~(8)~~(9) In order to protect the stability of the land, the director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 2. Section 82-4-254, MCA, is amended to read:

"82-4-254. Violation -- penalty -- waiver. (1) (a) Except as provided in subsection (2), a person or

operator who violates any of the provisions of this part, rules adopted or orders issued under this part, or term or condition of a permit and any director, officer, or agent of a corporation who purposely or knowingly authorizes, orders, or carries out a violation shall pay an administrative penalty of not less than \$100 or more than \$5,000 for the violation and an additional administrative penalty of not less than \$100 or more than \$5,000 for each day during which a violation continues and may be enjoined from continuing the violations as provided in this section. A person or operator who fails to correct a violation within the period permitted by law, rule, or order of the department must be assessed a penalty of not less than \$750 for each day, up to 30 days, during which the failure or violation continues.

(b) Penalties assessed under this section must be determined in accordance with the penalty factors in 82-4-1001.

(c) The period permitted for correction of a violation does not, in the case of any review proceeding under ~~82-4-251(6)~~ 82-4-251(7), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after the 30-day period, take appropriate action pursuant to ~~82-4-251(3)~~ 82-4-251(4) or request action under subsection (4) or (6) of this section.

(2) The department may waive the penalty for a minor violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit if the department determines that the violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The department may not waive a penalty assessed under this section if the person or operator fails to abate the violation as directed under 82-4-251. The department shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) (a) To assess an administrative penalty under this section, the department shall issue a notice of violation and penalty order to the person or operator, unless the penalty is waived pursuant to subsection (2). The notice and order must specify the provision of this part, rule adopted or order issued under this part, or term or condition of a permit that is violated and must contain findings of fact, conclusions of law, and a statement of the proposed administrative penalty. The notice and order must be served personally or by certified mail. Service by mail is complete 3 business days after the date of mailing. The notice and order become final unless, within 30 days after the order is served, the person or operator to whom the order was

1 issued requests a hearing before the board. By submitting to the board a written request within 30 days of
2 service of the notice of violation, stating the reason for the request, the person or operator is entitled to a
3 hearing before the board under 82-4-206 on the issues of whether the alleged violation has occurred and
4 whether the penalty proposed to be assessed is proper. On receipt of a request, the board shall schedule a
5 hearing. After a hearing, the board shall make findings of fact and issue a written decision as to the occurrence
6 of the violation and the amount of penalty warranted. If the board finds that the violation occurred and a penalty
7 is warranted, it shall order the payment of the penalty. If the time for requesting a hearing expires without a
8 hearing request, the person or operator shall remit the amount of the penalty within 30 days of the expiration of
9 the period for requesting a hearing.

10 (b) If the person or operator to whom a final order is issued under subsection (3)(a) wishes to
11 obtain judicial review of the order, the person or operator shall submit with any assessed penalty a statement
12 that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial
13 review is complete. Any person or operator who fails to request and submit testimony at the hearing provided
14 for in subsection (3)(a) or who fails to pay any assessed penalty under protest within 30 days of the order
15 assessing the penalty forfeits the right to seek judicial review of the violation and penalty determinations.

16 (c) Penalties provided for in this section are recoverable in an action brought by the department.
17 The action must be filed in the district court having jurisdiction over the defendant or in the first judicial district if
18 no other district court has jurisdiction.

19 (4) The department may bring an action for a restraining order or temporary or permanent
20 injunction against an operator or other person who:

21 (a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued
22 under this part;

23 (b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

24 (c) refuses to admit an authorized representative of the department to the permit area;

25 (d) refuses to permit inspection of the permit area by an authorized representative of the
26 department;

27 (e) refuses to furnish any information or report requested by the department in furtherance of the
28 provisions of this part; or

(f) refuses to permit access to and copying of records that the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of relief granted under this part unless, prior to the final determination, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order issued under this part or who purposely or knowingly violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined an amount not less than \$500 and not more than \$10,000 or be imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) A person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

(8) A person who except as permitted by law purposely or knowingly resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 1 year, or both.

(9) An employee of the department performing any function or duty under this part may not have a direct or indirect financial interest in any strip- or underground-coal-mining operation. A person who knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

(10) Within 30 days after receipt of full payment of an administrative penalty assessed under this section, the department shall issue a written release of civil liability for the violations for which the penalty was assessed."

NEW SECTION. Section 3. Severability. If a portion of [this act] is invalid, all valid portions that are severable from the invalid portion remain in effect. If a portion of [this act] is invalid in one or more of its applications, the portion remains in effect in all valid applications that are severable from the invalid applications.

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2 NEW SECTION. **Section 4. Contingent voidness.** (1) If any provision of [this act] is disapproved by

3 the United States secretary of the interior pursuant to 30 CFR 732, then that portion of [this act] is void.

4 (2) Within 15 days of the effective date of the disapproval under subsection (1), the department of

5 environmental quality shall notify the code commissioner, certifying that the disapproval under subsection (1)

6 has occurred.

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8 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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