

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

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(29) (a) "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 that do not contain sulfides with the potential to produce acid, toxic, or otherwise pollutive solutions.

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

(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 82-4-343 or 82-4-335 except for a permit issued under 82-4-335(2) or an operating permit that meets the criteria of subsection (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

1 exceed 100 acres at any time.

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

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

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

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

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

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

17 (i) A FACILITY that stores 50 acre-feet or less of the aggregate of tailings, free water, or and
18 process solution;

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

21 (iii) A FACILITY that is partially below the surrounding grade and partially above the surrounding
22 grade if the portion of the facility that is above the surrounding grade retains 50 acre-feet or less in the
23 aggregate of tailing, water, and process solution; or

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

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

27 (36) "Unit of surface-mined area" means that area of land and surface water included within an
28 operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the

1 date of the issuance of the permit. The term includes the area from which overburden or minerals have been
2 removed, the area covered by mining debris, and all additional areas used in surface mining or underground
3 mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding
4 undisturbed portions of land.

5 (37) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of
6 natural cover considered suitable at time of reclamation."
7

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

9 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
10 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-
11 processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
12 activities in the state without first obtaining a final operating permit from the department. Except as provided in
13 82-4-343, a separate final operating permit is required for each complex.

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

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

28 (b) (i) Subject to subsection (3)(b)(ii), a contractor shall, at the request of the applicant, directly

1 submit invoices of contractor expenses to the applicant.

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

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

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

9 (b) the minerals expected to be mined;

10 (c) a proposed reclamation plan;

11 (d) the expected starting date of operations;

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

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

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

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

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

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

27 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources
28 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 82-4-376, a panel-written report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 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. For a tailings storage facility, this requirement is met by submission of a design document pursuant to 82-4-376, a panel-written report pursuant to 82-4-377, and a tailings operation, maintenance, and surveillance manual pursuant to 82-4-379 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.

(5) Except as provided in subsection (7), 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.

(6) 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

1 permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that
2 the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in
3 Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required
4 proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock
5 mining impact review and implementation requirements.

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

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

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

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

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

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

20 (9) A person may not be issued a permit under this part unless, at the time of submission of a
21 bond, the person provides the current information required in subsection (4)(a) and:

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

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

26 (b) if the person is a partnership, corporation, or other business association, provides the
27 certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors,
28 owners of 10% or more of any class of voting stock, and business association members."

1

2 **Section 3.** Section 82-4-337, MCA, is amended to read:

3 **"82-4-337. Inspection -- issuance of operating permit -- modification, amendment, or revision.**

4 (1) (a) The department shall review all applications for operating permits for completeness and compliance with
5 the requirements of this part and rules adopted pursuant to this part within:

6 (i) for rock products, 60 days of receipt of the initial application and within 20 days of receipt of
7 responses to notices of deficiencies. If an applicant for a rock products operating permit responds to a notice of
8 deficiency more than 1 year after its receipt, the department has 60 days to review the response to the notice of
9 deficiency.

10 (ii) for all other applications not covered under subsection (1)(a)(i), 90 days of receipt of the initial
11 application and within 30 days of receipt of responses to notices of deficiencies.

12 (b) The department's initial notice must note all deficiency issues, and the department may not in a
13 later notice raise an issue pertaining to the initial application that was not raised in the initial notice. The
14 department shall notify the applicant concerning completeness and compliance as soon as possible. An
15 application is considered complete and compliant unless the applicant is notified of deficiencies within the
16 appropriate review period.

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

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

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

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

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

25 (iii) when an application submitted after October 1, 2015, includes a tailings storage facility, verify
26 the receipt of the certified design document pursuant to 82-4-376, the ~~panel-written~~ report pursuant to 82-4-377,
27 and the tailings operation, maintenance, and surveillance manual pursuant to 82-4-379; and

28 (iv) issue a draft permit. The department may, as a condition of issuing the draft permit, require that

1 the applicant obtain other permits required by law but not provided for in this part. However, the department
2 may not withhold issuance of the draft permit in the absence of those permits.

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

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

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

16 (i) Except as provided in subsection (1)(h), a final permit may not be issued until:

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

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

19 (iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(7);

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

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

24 (j) If the department decides to hire a third-party contractor to prepare an environmental impact
25 statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to
26 the department and shall provide the applicant with a copy of the list. The applicant shall provide the
27 department with a list of at least 50% of the contractors from the department's list. The department shall select
28 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)(i)(iv).

(e) Upon submission of the bond and subject to subsection (1)(i), 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 4. Section 82-4-377, MCA, is amended to read:

"82-4-377. Independent review panel -- selection -- duties. ~~(1) An independent review panel shall review the design document required by 82-4-376.~~

~~(2)(1)~~ (a) The operator or permit applicant shall ~~select~~ identify at least three independent review ~~engineers-panel members~~ to serve on the independent review panel and shall submit those names to the department. The department may reject any proposed ~~panelists~~ panel members. If the department rejects a proposed ~~panelist~~ panel member, the operator or permit applicant shall continue to select independent review ~~engineers-as panelists~~ panel members until at least three ~~panelists-panel members~~ are approved by the department.

(b) The independent review panel shall consist of a majority of licensed engineers as described in 82-4-303(13)(a).

(c) An independent review panel member, as defined 82-4-303, may not be held individually liable for any act or omission made in the course and scope of their capacity as a department-approved panel member on an independent review panel pursuant to this part.

~~(3)(2)~~ An independent review ~~engineer-panel member~~ 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)(3) The operator or permit applicant shall contract with panel members, process invoices, and pay costs.

(5)(4) 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 of the design document.

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

(7)(6) 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 members.

(8)(7) The panel members shall review the design document required pursuant to 82-4-376, underlying analysis, and assumptions for consistency with this part. The panel members shall assess the practicable application of current technology in the proposed design.

(9)(8) The panel shall submit its review and any recommended modifications to the operator or permit 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.

(10)(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

1 conclusive.

2 (11)(10) For an expansion of a tailings storage facility for which the original design document was
3 approved by the department, the operator shall make a reasonable effort to retain the previous panel members.
4 To replace a panel member, the process in subsection (2)(1) must be followed."

5

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

7 **"82-4-380. Periodic review required.** (1) ~~At least once every 5 years following~~ Following department
8 approval of a design document pursuant to 82-4-376 during mining, or as required in a reclamation plan
9 approved pursuant to 82-4-336, the operator shall assemble a panel in accordance with the panel requirements
10 in 82-4-377. A reasonable effort must be made to retain previous panel members. The operator shall assemble
11 the panel at a frequency to be determined by the panel, except that the panel shall assemble every:

12 (a) six 6 months prior to the anticipated start of initial construction of the new tailing storage facility
13 and not less than annually afterwards until construction is completed or the placement of tailings in the facility is
14 initiated; AND

15 (b) AT LEAST once every 5 years after initial construction and until completion of the tailings
16 deposition.

17 (2) The panel shall:

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

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

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

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

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

1 periodic review.

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

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

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

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

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

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

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

18

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

20 - END -