

BALLOT LANGUAGE FOR INITIATIVE NO. 186 (I-186)

INITIATIVE NO. 186

A LAW PROPOSED BY INITIATIVE PETITION

I-186 requires the Department of Environmental Quality to deny a permit for any new hardrock mines in Montana unless the reclamation plan provides clear and convincing evidence that the mine will not require perpetual treatment of water polluted by acid mine drainage or other contaminants. The terms “perpetual treatment,” “perpetual leaching,” and “contaminants” within I-186 are not fully defined and would require further definition from the Montana Legislature or through Department of Environmental Quality rulemaking.

I-186 will cost \$115,360 in its first fiscal year, increasing to \$118,767 by fiscal year 2021. These costs are associated with more staff for environmental review for mining permit applications and anticipated litigation.

YES ON INITIATIVE I-186

NO ON INITIATIVE I-186

THE COMPLETE TEXT OF INITIATIVE NO. 186 (I-186)

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

Section 1. 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)(a) The reclamation plan must contain measures sufficient to prevent the pollution of water without the need for perpetual treatment.

(b) For purposes of this subsection (13), the term "perpetual treatment" includes activities necessary to treat acid mine drainage or perpetual leaching of contaminants, including arsenic, mercury and lead.

(c) This subsection (13) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018.

~~(13)~~ (14) The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to 82-4-377."

Section 2. Section 82-4-351, MCA, is amended to read:

"82-4-351. Reasons for denial of permit. (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) ~~(A)~~ Except as stated in subsection 3, a denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

(3) The department shall deny an application for a permit or an application for an amendment to a permit unless the department finds, in writing and based on clear and convincing evidence, that the reclamation plan meets the requirements of 82-4-336(13). This subsection (3) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018."

NEW SECTION. Section 3. {standard} Effective dates. [This Act] is effective upon approval by the electorate.

NEW SECTION. Section 4. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. {standard} Applicability. [This act] applies after November 6, 2018.