

SENATE BILL No. 1457

November 3, 2004, Introduced by Senators ALLEN, PRUSI, BIRKHOLZ, PATTERSON, McMANUS, VAN WOERKOM, STAMAS and BRATER and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 632.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 632 NONFERROUS METALLIC MINERAL MINING

Sec. 63201. As used in this part:

(a) "Administratively complete" means an application for a mining permit under this part that is determined by the department to contain all of the documents and information required under this part and any rules promulgated under this part.

(b) "Affected area" means an area outside of the mining area where the land surface, surface water, groundwater, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations within

1 the proposed mining area.

2 (c) "Department" means the department of environmental
3 quality.

4 (d) "Emergency management coordinator" means that term as
5 defined in section 2 of the emergency management act, 1976 PA
6 390, MCL 30.402.

7 (e) "Fund" means the nonferrous metallic mineral surveillance
8 fund created in section 63217.

9 (f) "Metallic product" means a commercially salable mineral
10 produced primarily for its nonferrous metallic mineral content in
11 its final marketable form or state.

12 (g) "Mining" means the excavation or removal of more than
13 10,000 tons of earth material a year or disturbing more than 1
14 acre of land a year in the regular operation of a business for
15 the purpose of extracting a nonferrous metallic mineral or
16 minerals by 1 or both of the following:

17 (i) Removing the overburden lying above natural deposits of a
18 mineral and excavating directly from the natural deposits thus
19 exposed or by excavating directly from deposits lying exposed in
20 their natural state.

21 (ii) Excavating from below the surface of the ground by means
22 of shafts, tunnels, or other subsurface openings.

23 (h) "Mining area" means an area of land from which earth
24 material is removed in connection with nonferrous metallic
25 mineral mining, the lands on which material from that mining is
26 stored or deposited, the lands on which beneficiating or
27 treatment plants and auxiliary facilities are located, the lands

1 on which the water reservoirs used in the nonferrous metallic
2 mineral mining process are located, and auxiliary lands that are
3 used in connection with the mining.

4 (i) "Mining permit" means a permit issued under this part for
5 conducting nonferrous metallic mineral mining and reclamation
6 operations.

7 (j) "Nonferrous metallic mineral" means any ore or material
8 to be excavated from the natural deposits on or in the earth for
9 its metallic content, but not primarily for its iron or iron
10 mineral content, to be used for commercial or industrial
11 purposes.

12 (k) "Nonferrous metallic mineral operator" or "operator"
13 means a permittee or other person who is engaged in, or who is
14 preparing to engage in, mining operations for nonferrous metallic
15 minerals, whether individually or jointly, or through agents,
16 employees, or contractors.

17 (l) "Permittee" means a person who holds a mining permit.

18 (m) "Postclosure monitoring period" means a period following
19 closure of a nonferrous metallic mineral mine during which the
20 permittee is required to conduct monitoring of groundwater and
21 surface water.

22 (n) "Stockpile" means material, including, but not limited
23 to, surface overburden, rock, or lean ore, that in the process of
24 mining and beneficiation or treatment has been removed from the
25 earth and stored on the surface. Stockpile does not include
26 materials that are being treated in the production of metallic
27 products and the metallic product that has been produced by that

1 operation.

2 (o) "Tailings basin" means land on which is deposited, by
3 hydraulic or other means, the material that is separated from the
4 metallic product in the beneficiation or treatment of minerals
5 including any surrounding dikes constructed to contain the
6 material.

7 Sec. 63203. (1) The department shall administer and enforce
8 this part. In addition to other powers granted to it, the
9 department shall promulgate rules to implement and administer
10 this part, including standards for construction, operation,
11 closure, postclosure monitoring, reclamation, and remediation of
12 a mine.

13 (2) The department may do either of the following:

14 (a) Enter at all reasonable times in or upon a mining area
15 for the purpose of inspecting and investigating conditions
16 relating to the operation of a mining area.

17 (b) Conduct research or enter into contracts related to
18 mining areas and the reclamation of mining areas as may be
19 necessary to implement this part.

20 (3) A local unit of government shall not regulate or control
21 mining or reclamation activities that are subject to this part,
22 including construction, operation, closure, postclosure
23 monitoring, reclamation, and remediation activities, and does not
24 have jurisdiction concerning the issuance of permits for those
25 activities. A local unit of government may enact, maintain, and
26 enforce ordinances, regulations, or resolutions affecting mining
27 operations if the ordinances, regulations, or resolutions do not

1 duplicate, contradict, or conflict with this part.

2 Sec. 63205. (1) A person shall not engage in the mining of
3 nonferrous metallic minerals except as authorized in a mining
4 permit issued by the department.

5 (2) An application for a mining permit shall be submitted to
6 the department in a format to be developed by the department.

7 The application shall be accompanied by all of the following:

8 (a) A permit application fee of \$5,000.00. The department
9 shall forward all permit application fees received under this
10 section to the state treasurer for deposit in the fund.

11 (b) An environmental impact assessment for the proposed
12 mining operation that describes the natural and human-made
13 features, including, but not limited to, flora, fauna, hydrology,
14 geology, and geochemistry, and baseline conditions in the
15 proposed mining area and the affected area that may be impacted
16 by the mining, and the potential impacts on those features from
17 the proposed mining operation. The environmental impact
18 assessment shall define the affected area and shall address
19 feasible and prudent alternatives.

20 (c) A mining, reclamation, and environmental protection plan
21 for the proposed mining operation, including beneficiation
22 operations, that will reasonably minimize the actual and
23 potential adverse impacts on natural resources, the environment,
24 and public health and safety within the mining area and the
25 affected area. The plan shall address the unique issues
26 associated with nonferrous metallic mining and shall include all
27 of the following:

1 (i) A description of materials, methods, and techniques that
2 will be utilized.

3 (ii) Information that demonstrates that all methods,
4 materials, and techniques proposed to be utilized are capable of
5 accomplishing their stated objectives in protecting the
6 environment and public health, except that such information may
7 not be required for methods, materials, and techniques that are
8 widely used in mining or other industries and are generally
9 accepted as effective. The required information may consist of
10 results of actual testing, modeling, documentation by credible
11 independent testing and certification organizations, or
12 documented applications in similar uses and settings.

13 (iii) Plans and schedules for interim and final reclamation
14 of the mining area following cessation of mining operations.

15 (iv) A description of the geochemistry of the ore, waste
16 rock, overburden, peripheral rock, and tailings, including
17 characterization of leachability and reactivity.

18 (v) Provisions for the prevention, control, and monitoring of
19 acid-forming waste products and other waste products from the
20 mining process so as to prevent leaching into groundwater or
21 runoff into surface water.

22 (d) A contingency plan that includes an assessment of the
23 risk to the environment or public health and safety associated
24 with potential significant incidents or failures and describes
25 the operator's notification and response plans. When the
26 application is submitted to the department, the applicant shall
27 provide a copy of the contingency plan to each emergency

1 management coordinator having jurisdiction over the affected
2 area.

3 (e) Financial assurance as described in section 63211.

4 (f) A list of other state and federal permits that are
5 anticipated to be required.

6 (3) The applicant has the burden of establishing that the
7 terms and conditions set forth in the permit application; mining,
8 reclamation, and environmental protection plan; and environmental
9 impact assessment will result in a mining operation that
10 reasonably minimizes actual or potential adverse impacts on air,
11 water, and other natural resources and meets the requirements of
12 this act.

13 (4) Effective 14 days after the department receives an
14 application for a mining permit, the application shall be
15 considered to be administratively complete unless the department
16 proceeds as provided under subsection (5).

17 (5) If, before the expiration of the 14-day period under
18 subsection (4), the department notifies the applicant that the
19 application is not administratively complete, specifying the
20 information necessary to make the application administratively
21 complete, or notifies the applicant that the fee required to
22 accompany the application has not been paid, specifying the
23 amount due, the running of the 14-day period under subsection (4)
24 is tolled until the applicant submits to the department the
25 specified information or fee amount due. The notice shall be
26 given in writing or electronically.

27 (6) Within 42 days after an application for a mining permit

1 is determined to be administratively complete, the department
2 shall hold a public meeting on the application. The department
3 shall give notice of the public meeting not less than 14 or more
4 than 28 days before the date of the public meeting. The notice
5 shall specify the time and place of the public meeting, which
6 shall be held in the county where the proposed mining operation
7 is located, and shall include information on how to review a copy
8 of the application. The notice shall be given in writing to the
9 city, village, or township and the county where the proposed
10 mining operation is to be located and to all affected federally
11 recognized Indian tribes in this state. The notice shall also be
12 given by publication in a newspaper of local distribution in the
13 area where the proposed mining operation is to be located.

14 (7) The department shall accept written public comment on the
15 permit application for 28 days following the public meeting under
16 subsection (6). Within 28 days after the expiration of the
17 public comment period, the department shall reach a proposed
18 decision to grant or deny a mining permit and shall establish a
19 time and place for a public hearing on the proposed decision.
20 The department shall give notice of the public hearing not less
21 than 14 or more than 28 days before the date of the public
22 hearing. The notice shall be given in writing to the city,
23 village, or township and the county where the proposed mining
24 operation is to be located and to all affected federally
25 recognized Indian tribes in this state. The notice shall also be
26 given by publication in a newspaper of local distribution in the
27 area where the proposed mining operation is to be located. The

1 notice shall contain all of the following:

2 (a) A summary of the permit application.

3 (b) Information on how to review a complete copy of the
4 application. The application shall be made available at a public
5 location in the area.

6 (c) A listing of other permits and hearings that are pending
7 or anticipated under this act with respect to the proposed mining
8 operation.

9 (d) The time and place of the public hearing, which shall be
10 held in the area where the proposed mining operation is located.

11 (8) The department shall accept written public comment on the
12 proposed decision to grant or deny a mining permit for 28 days
13 following the public hearing. At the expiration of the public
14 comment period, the department shall issue a report summarizing
15 all comments received and providing the department's response to
16 the comments.

17 (9) Within 28 days after the expiration of the public comment
18 period under subsection (8), the department shall grant or deny
19 the mining permit application in writing. A determination that
20 an application is administratively complete does not preclude the
21 department from requiring additional information from the
22 applicant. The 28-day period under this subsection shall be
23 tolled until such time as the applicant submits the requested
24 information. If a mining permit is denied, the reasons shall be
25 stated in a written report to the applicant.

26 (10) A mining permit shall not be issued or transferred to a
27 person if the department has determined that person to be in

1 violation of this part, rules promulgated under this part, the
2 permit, or an order of the department under this part, unless the
3 person has corrected the violation or the person has agreed in
4 writing to correct the violation pursuant to a compliance
5 schedule approved by the department.

6 (11) Subject to subsection (10), the department shall approve
7 a mining permit if it determines both of the following:

8 (a) The permit application meets the requirements of this
9 part.

10 (b) The proposed mining operation will not pollute, impair,
11 or destroy the air, water, or other natural resources or the
12 public trust in those resources, in accordance with part 17 of
13 this act. In making this determination, the department shall
14 take into account the extent to which other permit determinations
15 afford protection to natural resources. For the purposes of this
16 subsection, excavation and removal of nonferrous metallic
17 minerals and of associated overburden and waste rock, in and of
18 itself, does not constitute pollution, impairment, or destruction
19 of those natural resources.

20 (12) The department shall deny a mining permit if it
21 determines the requirements of subsection (11) have not been
22 met.

23 (13) Terms and conditions that are set forth in the permit
24 application and the mining, reclamation, and environmental
25 protection plan and that are approved by the department shall be
26 incorporated in and become a part of the mining permit.

27 (14) A mining permit is not effective until all other permits

1 required under this act for the proposed mining operation are
2 obtained.

3 (15) If a person submits an application for a mining permit
4 and 1 or more other permits under this act with respect to a
5 particular mining operation, the department may process the
6 applications in a coordinated fashion to the extent feasible
7 given procedural requirements applicable to individual permits.
8 The coordinated permit process may include consolidating public
9 hearings under this part with public hearings required under
10 other parts of this act. Any notice of a consolidated public
11 hearing shall state clearly which permits are to be considered at
12 the public hearing. An applicant may waive any required
13 timelines under subsections (4) to (9) to facilitate the
14 coordination.

15 Sec. 63207. (1) A mining permit issued by the department
16 shall remain in effect until terminated or revoked by the
17 department.

18 (2) The department may terminate a mining permit under 1 or
19 more of the following conditions:

20 (a) The permittee has not commenced construction of plant
21 facilities or conducted actual mining activities covered by the
22 mining permit within 2 years after the effective date of the
23 mining permit.

24 (b) The permittee has completed final reclamation of the
25 mining area and requests the termination of the mining permit and
26 the department determines all of the following:

27 (i) The mining operation has not polluted, impaired, or

1 destroyed the air, water, or other natural resources or the
2 public trust in those resources by activities conducted within
3 the scope of the permit.

4 (ii) The permittee has otherwise fulfilled all conditions
5 determined to be necessary by the department to protect the
6 public health, safety, and welfare and the environment.

7 (iii) The requirements for the postclosure monitoring period
8 have been satisfied.

9 (3) The department may revoke a mining permit pursuant to
10 section 63221.

11 (4) A mining permit may be transferred to a new operator with
12 approval of the department after public notice as follows:

13 (a) The person acquiring the mining permit shall submit to
14 the department on forms provided by the department a request for
15 transfer of the mining permit and shall provide the financial
16 assurance required under section 63211.

17 (b) The person acquiring the mining permit shall accept the
18 conditions of the existing mining permit and adhere to the
19 requirements set forth in this part.

20 (c) If the permittee is determined by the department to be in
21 violation of this part or the rules promulgated under this part
22 at the mining site involved in the transfer, then the mining
23 permit shall not be transferred to a person until the permittee
24 has completed the necessary corrective actions or the person
25 acquiring the mining permit has entered into a written consent
26 agreement to correct all of the violations.

27 (5) Pending the transfer of an existing mining permit under

1 subsection (4), the proposed transferee shall not operate the
2 mine.

3 (6) A mining permit may be amended as follows:

4 (a) The permittee may submit to the department a request to
5 amend the mining permit to address anticipated changes in the
6 mining operation, including, if applicable, amendments to the
7 environmental impact assessment and to the mining, reclamation,
8 and environmental protection plan.

9 (b) The department may require a mining permit to be amended
10 if the department determines that the terms and conditions of the
11 mining permit are not providing the intended reasonable
12 protection of the environment, natural resources, or public
13 health and safety.

14 (c) Within 30 days after receiving a request to amend a
15 mining permit, or upon a determination by the department that an
16 amendment is necessary, the department shall determine within 30
17 days whether the request constitutes a significant change from
18 the conditions of the approved mining permit. If the department
19 determines that the request is a significant change from the
20 conditions of the approved mining permit, the department may
21 submit the request for amendment to the same review process as
22 provided for a new permit application in section 63205(4) to
23 (9). If a request to amend the mining permit is denied, the
24 reasons for denial shall be stated in a written report to the
25 permittee. If the department determines that the request for
26 amendment does not constitute a significant change from the
27 conditions of the approved mining permit, the department shall

1 provide written notice of the determination to the city, village,
2 or township and the county where the proposed mining operation is
3 to be located and to all affected federally recognized Indian
4 tribes in this state. The department shall also give notice of
5 the determination by publication in a newspaper of local
6 distribution in the area where the proposed mining operation is
7 to be located. The department shall approve the amendment within
8 14 days after publication of the notice and shall notify the
9 permittee of the approval.

10 Sec. 63209. (1) A permittee shall comply with all other
11 applicable permit standards under this act.

12 (2) A permittee shall conduct reclamation activities at a
13 mining area in accordance with the approved mining, reclamation,
14 and environmental protection plan.

15 (3) If mining operations are suspended for a continuous
16 period exceeding 90 days, the permittee shall take actions to
17 maintain, monitor, and secure the mining area and shall conduct
18 any interim sloping or stabilizing of surfaces necessary to
19 protect the environment, natural resources, or public health and
20 safety in accordance with the permit.

21 (4) Subject to subsection (5), a permittee shall begin final
22 reclamation of a mining area within 3 years of the date of
23 cessation of mining operations and shall complete reclamation
24 within the time set forth in the mining, reclamation, and
25 environmental protection plan approved by the department.

26 (5) Upon written request of a permittee, the department may
27 approve an extension of time to begin or complete final

1 reclamation.

2 (6) A permittee shall conduct groundwater and surface water
3 monitoring in accordance with the provisions of the permit during
4 mining operations and during the postclosure monitoring period.
5 The postclosure monitoring period shall be 20 years following
6 cessation of mining, subject to the following conditions:

7 (a) The permittee shall provide to the department a written
8 request to terminate the postclosure monitoring not less than 18
9 months before the proposed termination date and shall provide the
10 department with technical data and information demonstrating the
11 basis for the termination. The department shall extend the
12 postclosure monitoring period in increments of up to 20 years
13 unless the department determines, approximately 1 year before the
14 end of a postclosure monitoring period or postclosure incremental
15 monitoring period, that there is no significant potential for
16 water contamination resulting from the mining operation.

17 (b) The department may shorten the postclosure monitoring
18 period at any time upon determining that there is no significant
19 potential for water contamination resulting from the mining
20 operation.

21 (7) The department may extend or shorten the postclosure
22 monitoring period under subsection (6) only after public notice
23 and opportunity for a public hearing under section 63219(2).

24 (8) Both the mining area and the affected area shall be
25 reclaimed and remediated to achieve a self-sustaining ecosystem
26 appropriate for the region that does not require perpetual care
27 following closure and with the goal that the affected area shall

1 be returned to the ecological conditions that approximate
2 premining conditions subject to changes caused by nonmining
3 activities or other natural events. Any portion of the mining
4 area owned by the applicant may be used for any legal purposes.

5 (9) Compliance with the provisions of this part does not
6 relieve a person of the obligation to comply with all other
7 applicable tribal, state, federal, or local statutes,
8 regulations, or ordinances.

9 Sec. 63211. (1) An operator shall maintain financial
10 assurance during mining operations until the department
11 determines that all reclamation has been completed and for a
12 postclosure monitoring period as determined under section
13 63209(6) and (7), except that financial assurance shall be
14 released immediately upon termination of a mining permit under
15 section 63207(2)(a).

16 (2) The financial assurance required under subsection (1)
17 shall apply to all mining and reclamation operations subject to
18 the mining permit and be sufficient to cover the cost to
19 administer, and to hire a third party to implement, reclamation
20 under the mining, reclamation, and environmental protection plan
21 as well as necessary environmental protection measures, including
22 remediation of any contamination of the air, surface water, or
23 groundwater that is in violation of the mining permit. The
24 financial assurance shall consist of a conformance bond, escrow,
25 cash, certificate of deposit, irrevocable letter of credit, or
26 other equivalent security, or any combination thereof, covering
27 at least 75% of the total required amount. Financial assurance

1 for the balance of the required total amount, if any, shall
2 consist of a statement of financial responsibility.

3 (3) Every 3 years, or as the department considers necessary,
4 a permittee shall update the statement of financial
5 responsibility required under subsection (2) and shall adjust the
6 conformance bond, escrow, cash, certificate of deposit,
7 irrevocable letter of credit, or other security, as applicable,
8 to assure that the financial assurance is sufficient for the
9 purposes of subsection (2).

10 (4) The financial assurance mechanism required by this
11 section may be satisfied in whole or in part by financial
12 assurance provisions required by other parts of this act if those
13 provisions address the remediation activities required under this
14 part.

15 (5) Failure to provide financial assurance under this
16 section constitutes grounds for the department to order immediate
17 suspension of activities at a mining operation, including the
18 removal of metallic product from the site, pursuant to section
19 63221.

20 Sec. 63213. (1) A permittee shall file with the department
21 a mining and reclamation report on or before March 15 of each
22 year, during the period the mine is operating and during the
23 postclosure monitoring period. The mining and reclamation report
24 shall contain all of the following:

25 (a) A description of the status of mining and reclamation
26 operations.

27 (b) An update of the contingency plan. The permittee shall

1 provide a copy of the update to the emergency management
2 coordinator.

3 (c) A report of monitoring results for the preceding calendar
4 year.

5 (d) A report of the total tons of material mined from the
6 mining area, and the amount of metallic product by weight,
7 produced from the nonferrous metallic mineral mine for the
8 preceding calendar year.

9 (e) A list of the reports required under subsection (2) for
10 the preceding calendar year.

11 (2) A permittee shall promptly notify the department of any
12 incident, act of nature, or exceedance of a permit standard or
13 condition at a mining operation that has created, or may create,
14 a threat to the environment, natural resources, or public health
15 and safety.

16 (3) Records upon which the mining and reclamation reports are
17 based shall be preserved by the permittee for 3 years and made
18 available to the department upon request.

19 (4) Records upon which incident reports under subsection (2)
20 are based shall be preserved by the permittee for 3 years or
21 until the end of the postclosure monitoring period, whichever is
22 later.

23 Sec. 63215. (1) For purposes of surveillance, monitoring,
24 administration, and enforcement of this part, the department
25 shall assess a permittee a nonferrous metallic mineral
26 surveillance fee of not more than 5 cents per ton of material
27 mined from the mining area as reported under section 63213(1)(d),

1 but not less than \$5,000.00, for each calendar year the mine is
2 in operation and during the postclosure monitoring period.
3 Surveillance fees collected under this section shall be forwarded
4 to the state treasurer for deposit in the nonferrous metallic
5 mineral surveillance fund created in section 63217. The
6 surveillance fee rate shall be calculated each year as follows:

7 (a) The department shall determine the total tons of material
8 mined from mining areas in this state in the prior calendar
9 year.

10 (b) The department shall calculate the adjusted appropriation
11 by deducting any unexpended money in the fund at the close of the
12 prior fiscal year from the amount appropriated for the current
13 fiscal year for surveillance, monitoring, administration, and
14 enforcement of this part.

15 (c) The fee rate shall be the ratio, to the nearest 1/100 of
16 1%, of the adjusted appropriation to the total tons of material
17 mined.

18 (2) The nonferrous metallic mineral surveillance fee
19 described in subsection (1) is due by 30 days after the
20 department sends written notice to the permittee of the amount
21 due.

22 (3) A penalty equal to 10% of the amount due, or \$1,000.00,
23 whichever is greater, shall be assessed against the permittee for
24 a metallic mineral surveillance fee that is not paid when due.
25 The department may file an action in the circuit court for Ingham
26 county to collect the unpaid fee and penalty. The unpaid fee and
27 penalty shall constitute a debt and become the basis of a

1 judgment against the permittee.

2 (4) Penalties paid pursuant to this section shall be used for
3 the implementation, administration, and enforcement of this
4 part.

5 Sec. 63217. (1) The nonferrous metallic mineral
6 surveillance fund is created within the state treasury.

7 (2) The state treasurer may receive money or other assets
8 from any source for deposit into the fund. The state treasurer
9 shall direct the investment of the fund. The state treasurer
10 shall credit to the fund interest and earnings from fund
11 investments.

12 (3) Unexpended money in the fund at the close of the fiscal
13 year shall remain in the fund and be carried over to the
14 succeeding fiscal year.

15 (4) The department shall expend money from the fund, upon
16 appropriation, only for surveillance, monitoring, administration,
17 and enforcement under this part.

18 Sec. 63219. (1) A person who is aggrieved by an order,
19 action, or inaction of the department or by the issuance, denial,
20 revocation, or amendment of a mining permit under this part may
21 file a petition with the department requesting a contested case
22 hearing, under the administrative procedures act of 1969, 1969 PA
23 306, MCL 24.201 to 24.328. A petition filed more than 60 days
24 after an order, action, or inaction of the department or an
25 action on a mining permit may be rejected as being untimely.

26 (2) Any hearing under this part shall be held pursuant to the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328. The department shall provide notice of the hearing and
2 shall mail copies of the notice to the person requesting the
3 hearing and to the city, village, or township and the county
4 where the proposed mining operation is to be located and to all
5 affected federally recognized Indian tribes in this state. The
6 department shall publish notice of the hearing in a newspaper of
7 local distribution in the area of the mining operation at least
8 10 days before the hearing.

9 Sec. 63221. (1) If the department determines that an
10 operator has violated this part, a rule promulgated under this
11 part, or a mining permit issued under this part, the department
12 shall require the operator to correct the violation.

13 (2) If the department determines that a violation under
14 subsection (1) is causing or resulting in an imminent and
15 substantial endangerment to the public health or safety,
16 environment, or natural resources, the department shall take
17 action necessary to abate or eliminate the endangerment. Such
18 action may include 1 or more of the following:

19 (a) Revoking the mining permit.

20 (b) Issuing an order to the operator requiring immediate
21 suspension of activities at the mining operation, including the
22 removal of metallic product from the site.

23 (c) Issuing an order to the operator to undertake such other
24 response actions as may be necessary to abate or eliminate the
25 endangerment.

26 (3) Before taking action under this section to suspend
27 operations or revoke a mining permit, or to otherwise prevent the

1 continuation of mining operations, the department shall give
2 written notice, in person or by mail, to the operator. Subject
3 to subsection (4), the department shall provide the operator an
4 opportunity for an evidentiary hearing.

5 (4) If the department finds that emergency action is required
6 to protect the public health, safety, or welfare, or to protect
7 the environment, the department may issue an emergency order
8 without a public hearing to require an operator to suspend
9 operations or to take other corrective actions. An emergency
10 order shall remain in force and effect for not more than 21
11 days.

12 (5) If the operator or surety fails or neglects to correct
13 the violation or take corrective actions as specified under an
14 order of the department, the department may, after giving written
15 notice to the operator and surety, enter in or upon the mining
16 area and upon and across any private or public property necessary
17 to reach the mining area and take whatever action is necessary to
18 curtail and remediate any damage to the environment and public
19 health resulting from the violation, and the operator and surety
20 are jointly and severally liable for all expenses incurred by the
21 department. The claim shall be paid by the operator or surety
22 within 30 days, and, if the claim is not paid within that time,
23 the department may bring suit against the operator or surety,
24 jointly or severally, for the collection of the claim in any
25 court of competent jurisdiction. This part does not limit the
26 department's authority to take whatever response activities it
27 determines necessary to protect the public health, safety, and

1 welfare and the environment.

2 (6) The revocation of a mining permit or suspension of
3 activities under subsection (2) does not relieve a permittee of
4 the responsibility to complete reclamation, maintain financial
5 assurance required under section 63211, and undertake all
6 appropriate measures to protect the environment, natural
7 resources, and public health and safety.

8 (7) If the department receives an allegation of improper
9 action under or a violation of this part, a rule promulgated
10 under this part, or a condition of a permit issued under this
11 part, and the person making the allegation provides evidence or
12 corroboration sufficient to support the allegation, as determined
13 by the department, the department shall do all of the following:

14 (a) Make a record of the allegation.

15 (b) Conduct an inspection of the mining operation to
16 investigate the allegation not more than 5 business days after
17 receipt of the complaint or allegation. If the complaint or
18 allegation is of a highly serious nature, as determined by the
19 department, the mining operation shall be inspected as quickly as
20 possible.

21 (c) Not more than 15 business days after completing an
22 investigation of the allegation, make a written report of the
23 allegation and the results of the investigation to the operator
24 and the person who made the allegation.

25 (8) The department shall comply with the administrative
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in its
27 actions under this section.

1 Sec. 63223. (1) The department may request the attorney
2 general to commence a civil action for appropriate relief,
3 including a permanent or temporary injunction, for a violation of
4 this part or a provision of a permit or order issued or rule
5 promulgated under this part. An action under this subsection may
6 be brought in the circuit court for the county of Ingham or for
7 the county in which the defendant is located, resides, or is
8 doing business. The court has jurisdiction to restrain the
9 violation and to require compliance. In addition to any other
10 relief granted under this subsection, the court may impose a
11 civil fine of not less than \$2,500.00, and the court may award
12 reasonable attorney fees and costs to the prevailing party. The
13 maximum fine imposed by the court shall be not more than
14 \$25,000.00 per day of violation.

15 (2) Upon a finding by the court that an operator has violated
16 this part or a provision of a permit or order issued or rule
17 promulgated under this part, and that the violation poses or
18 posed a substantial endangerment to the public health, safety, or
19 welfare, the court shall impose, in addition to the sanctions set
20 forth in subsection (1), a fine of not less than \$500,000.00 and
21 not more than \$5,000,000.00.

22 (3) The attorney general may file a civil suit in a court of
23 competent jurisdiction to recover, in addition to a fine, the
24 full value of the injuries done to the natural resources of this
25 state and the costs of surveillance and enforcement by the state
26 resulting from the violation.

27 (4) A person who intentionally makes a false statement,

1 representation, or certification in an application for or form
2 pertaining to a permit under this part or in a notice or report
3 required by the terms and conditions of a permit issued under
4 this part is guilty of a felony and may be imprisoned for not
5 more than 2 years and shall be fined not less than \$2,500.00 or
6 more than \$25,000.00 for each violation. If the conviction is
7 for a violation committed after a first conviction of the person
8 under this subsection, the court shall impose a fine of not less
9 than \$25,000.00 per day and not more than \$50,000.00 per day of
10 violation. With the exception of the issuance of criminal
11 complaints, issuance of warrants, and the holding of an
12 arraignment, the circuit court for the county in which the
13 violation occurred has exclusive jurisdiction. Knowledge
14 possessed by a person other than the defendant under this
15 subsection may be attributable to the defendant if the defendant
16 took affirmative steps to shield himself or herself from the
17 relevant information.

18 (5) Upon a finding by the court that the actions of a
19 criminal defendant pose or posed a substantial endangerment to
20 the public health, safety, or welfare, the court shall impose, in
21 addition to the penalties set forth in subsection (2), a sentence
22 of 5 years' imprisonment and a fine of not less than
23 \$1,000,000.00.

24 (6) To find a defendant civilly or criminally liable for
25 substantial endangerment under subsection (2) or (5), the court
26 shall determine that the defendant knowingly or recklessly acted
27 in such a manner as to cause a danger of death or serious bodily

1 injury and that either of the following occurred:

2 (a) The defendant had an actual awareness, belief, or
3 understanding that his or her conduct would cause a substantial
4 danger of death or serious bodily injury.

5 (b) The defendant acted in gross disregard of the standard of
6 care that any reasonable person should observe in similar
7 circumstances.

8 (7) A civil fine or other civil award imposed under this
9 section is payable to this state and shall be credited to the
10 general fund. The fine constitutes a lien on any property, of
11 any nature or kind, owned by the defendant.

12 (8) A lien under subsection (7) is effective and has priority
13 over all other liens and encumbrances except those filed or
14 recorded prior to the date of judgment only if notice of the lien
15 is filed or recorded as required by state or federal law.

16 (9) A lien filed or recorded pursuant to subsection (8) shall
17 be terminated according to the procedures required by state or
18 federal law within 14 days after the fine or other award ordered
19 to be paid is paid.

20 (10) If a violation of this part also constitutes a violation
21 of another part of this act, a court may apply a civil fine or
22 penalty for the violation, and each day of continued violation,
23 in accordance with and subject to the penalty limits of the other
24 part.