

SENATE BILL NO. 244

INTRODUCED BY GRAHAM

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE SENATE

January 22, 1981	Introduced and referred to Committee on Natural Resources.
February 7, 1981	Committee recommend bill do pass. Report adopted.
February 9, 1981	Bill printed and placed on members' desks.
February 10, 1981	Second reading, do pass.
February 11, 1981	Correctly engrossed.
February 13, 1981	Third reading, passed. Ayes, 47; Noes, 2. Transmitted to House.

IN THE HOUSE

February 14, 1981	Introduced and referred to Committee on Natural Resources.
April 2, 1981	Committee recommend bill be concurred in. Report adopted.
April 7, 1981	Motion pass consideration.
April 9, 1981	Second reading, concurred in.  On motion rules suspended and bill placed on third reading this day.  Third reading, concurred in. Ayes, 92; Noes, 1.

**IN THE SENATE**

**April 10, 1981**

**Returned from House. Concurred  
in. Sent to enrolling.**

**Reported correctly enrolled.**

1 *Senate* BILL NO. *244*  
 2 INTRODUCED BY *Grubbs*

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
 6 STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH  
 7 THE FEDERAL STRIP MINE ACT AND CONDITIONS OF THE SECRETARY  
 8 OF INTERIOR'S APPROVAL OF THE MONTANA PROGRAM; AMENDING  
 9 SECTIONS 82-4-203, 82-4-221, 82-4-222, 82-4-251, AND  
 10 82-4-254, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 82-4-203, MCA, is amended to read:  
 14 "82-4-203. Definitions. Unless the context requires  
 15 otherwise, in this part the following definitions apply:

16 (1) "Abandoned" means an operation where no mineral is  
 17 being produced and where the department determines that the  
 18 operation will not continue or resume.

19 (2) "Alluvial valley floor" means the unconsolidated  
 20 stream-laid deposits holding streams where water  
 21 availability is sufficient for subirrigation or flood  
 22 irrigation agricultural activities; but the term does not  
 23 include upland areas which are generally overlain by a thin  
 24 veneer of colluvial deposits composed chiefly of debris from  
 25 sheet erosion, deposits by unconcentrated runoff or slope

1 wash, together with talus, other mass movement accumulation,  
 2 and windblown deposits.

3 (3) "Aquifer" means any geologic formation or natural  
 4 zone beneath the earth's surface that contains or stores  
 5 water and transmits it from one point to another in  
 6 quantities which permit or have the potential to permit  
 7 economic development as a water source.

8 (4) "Area of land affected" means the area of land  
 9 from which overburden is to be or has been removed and upon  
 10 which the overburden is to be or has been deposited and  
 11 includes all land overlying any tunnels, shafts, or other  
 12 excavations used to extract the mineral, lands affected by  
 13 the construction of new railroad loops and roads or the  
 14 improvement or use of existing railroad loops and roads to  
 15 gain access and to haul the mineral, processing facilities  
 16 at or near the mine site or other mine associated  
 17 facilities, waste deposition areas, treatment ponds, and any  
 18 other surface or subsurface disturbance associated with  
 19 strip mining or underground mining, and all activities  
 20 necessary and incident to the reclamation of such  
 21 operations.

22 (5) "Bench" means the ledge, shelf, table, or terrace  
 23 formed in the contour method of strip mining.

24 (6) "Board" means the board of land commissioners  
 25 provided for in Article X, section 4, of the constitution of

1 this state.

2 (7) "Coal conservation plan" means the planned course  
3 of conduct of a strip- or underground-mining operation to  
4 include plans for the removal and utilization of minable and  
5 marketable coal located within the area planned to be mined.

6 (8) "Commissioner" means the commissioner of state  
7 lands provided for in 2-15-3202.

8 (9) "Contour strip mining" means that strip-mining  
9 method commonly carried out in areas of rough and hilly  
10 topography in which the coal or mineral seam outcrops along  
11 the side of the slope and entrance is made to the seam by  
12 excavating a bench or table cut at and along the site of the  
13 seam outcropping with the excavated overburden commonly  
14 being cast down the slope below the mineral seam and the  
15 operating bench.

16 (10) "Degree" means from the horizontal and in each  
17 case is subject to a tolerance of 5% error.

18 (11) "Department" means the department of state lands  
19 provided for in Title 2, chapter 15, part 32.

20 (12) "Failure to conserve coal" means the nonremoval or  
21 nonutilization of ~~strippable~~ minable and marketable coal by  
22 an operation, provided that the nonremoval or nonutilization  
23 of minable and marketable coal in accordance with  
24 reclamation standards established by the department shall  
25 not be considered failure to conserve coal.

1 (13) "Fill bench" means that portion of a bench or  
2 table which is formed by depositing overburden beyond or  
3 downslope from the cut section as formed in the contour  
4 method of strip mining.

5 (14) "Imminent danger to the health and safety of the  
6 public" means the existence of any condition or practice or  
7 any violation of a permit or other requirement of this part  
8 in a strip- or underground-coal-mining and reclamation  
9 operation that could reasonably be expected to cause  
10 substantial physical harm to persons outside the permit area  
11 before such condition, practice, or violation can be abated.  
12 A reasonable expectation of death or serious injury before  
13 abatement exists if a rational person, subjected to the same  
14 conditions or practices giving rise to the peril, would not  
15 expose himself or herself to the danger during the time  
16 necessary for abatement.

17 (15) "Marketable coal" means a minable coal that is  
18 economically feasible to mine and is fit for sale in the  
19 usual course of trade.

20 (16) "Method of operation" means the method or manner  
21 by which the cut, open pit, shaft, or excavation is made,  
22 the overburden is placed or handled, water is controlled,  
23 and other acts are performed by the operator in the process  
24 of uncovering and removing the minerals that affect the  
25 reclamation of the area of land affected.

1 (17) "Minable coal" means that coal which can be  
2 removed through strip- or underground-mining methods  
3 adaptable to the location that coal is being mined or is  
4 planned to be mined.

5 (18) "Mineral" means coal and uranium.

6 (19) "Operation" means all of the premises, facilities,  
7 railroad loops, roads, and equipment used in the process of  
8 producing and removing mineral from and reclaiming a  
9 designated strip-mine or underground-mine area and all  
10 activities, including excavation incident thereto, or  
11 prospecting for the purpose of determining the location,  
12 quality, or quantity of a natural mineral deposit.

13 (20) "Operator" means a person engaged in strip mining  
14 or underground mining who removes or intends to remove more  
15 than 10,000 cubic yards of mineral or overburden or a person  
16 engaged in coal mining who removes or intends to remove more  
17 than 250 tons of coal from the earth by mining within 12  
18 consecutive calendar months in any one location.

19 (21) "Overburden" means all of the earth and other  
20 materials which lie above a natural mineral deposit and also  
21 means such earth and other material after removal from their  
22 natural state in the process of mining.

23 (22) "Person" means a person, partnership, corporation,  
24 association, or other legal entity or any political  
25 subdivision or agency of the state or federal government.

1 (23) "Prime farmland" means that land previously  
2 prescribed by the United States secretary of agriculture on  
3 the basis of such factors as moisture availability,  
4 temperature regime, chemical balance, permeability,  
5 surface-layer composition, susceptibility to flooding, and  
6 erosion characteristics and which historically has been used  
7 for intensive agricultural purposes and as defined in the  
8 Federal Register.

9 (24) "Prospecting" means the removal of overburden,  
10 core drilling, construction of roads, or any other  
11 disturbance of the surface for the purpose of determining  
12 the location, quantity, or quality of a natural mineral  
13 deposit.

14 (25) "Reclamation" means backfilling, subsidence  
15 stabilization, water control, grading, highwall reduction,  
16 topsoiling, planting, revegetation, and other work to  
17 restore an area of land affected by strip mining or  
18 underground mining under a plan approved by the department.

19 (26) "Strip mining" means any part of the process  
20 followed in the production of mineral by the open-cut method,  
21 including mining by the auger method or any similar method  
22 which penetrates a mineral deposit and removes mineral  
23 directly through a series of openings made by a machine  
24 which enters the deposit from a surface excavation or any  
25 other mining method or process in which the strata or

1 overburden is removed or displaced in order to recover the  
2 mineral.

3 (27) "Subsidence" means a vertically downward movement  
4 of overburden materials resulting from the actual mining of  
5 an underlying mineral deposit or associated underground  
6 excavations.

7 (28) "Surface owner" means a person who holds legal or  
8 equitable title to the land surface and whose principal  
9 place of residence is on the land or who personally conducts  
10 farming or ranching operations upon a farm or ranch unit to  
11 be directly affected by strip-mining operations or who  
12 receives directly a significant portion of his income, if  
13 any, from such farming or ranching operations or the state  
14 of Montana where the state owns the surface.

15 (29) "Topsoil" means the unconsolidated mineral matter  
16 naturally present on the surface of the earth that has been  
17 subjected to and influenced by genetic and environmental  
18 factors of parent material, climate, macro- and  
19 microorganisms, and topography, all acting over a period of  
20 time, and that is necessary for the growth and regeneration  
21 of vegetation on the surface of the earth.

22 (30) "Underground mining" means any part of the process  
23 followed in the production of a mineral such that vertical  
24 or horizontal shafts, slopes, drifts, or incline planes  
25 connected with excavations penetrating the mineral stratum

1 or strata are utilized and includes mining by in situ  
2 methods.

3 (31) "Unwarranted failure to comply" means the failure  
4 of a permittee to prevent the occurrence of any violation of  
5 his permit or any requirement of this part due to  
6 indifference, lack of diligence, or lack of reasonable care,  
7 or the failure to abate any violation of such permit or this  
8 part due to indifference, lack of diligence, or lack of  
9 reasonable care.

10 (32) "Waiver" means any document which demonstrates the  
11 clear intention to release rights in the surface estate for  
12 the purpose of permitting the extraction of subsurface  
13 minerals by strip-mining methods.

14 (33) "Written consent" means such written statement as  
15 is executed by the owner of the surface estate, upon a form  
16 approved by the department, demonstrating that such owner  
17 consents to entry of an operator for the purpose of  
18 conducting strip-mining operations and that such consent is  
19 given only to such strip-mining and reclamation operations  
20 which fully comply with the terms and requirements of this  
21 part."

22 Section 2. Section 82-4-221, MCA, is amended to read:  
23 "82-4-221. Mining permit required. (1) An operator may  
24 not engage in strip or underground mining without having  
25 first obtained from the department a permit designating the

1 area of land affected by the operation, which designation  
2 shall include all lands reasonably anticipated to be mined  
3 or otherwise affected during the applicable 5-year period.  
4 The permit shall authorize the operator to engage in strip  
5 or underground mining upon the area of land described in his  
6 application and designated in the permit for a period of 5  
7 years from the date of its issuance. Such permit shall be  
8 renewable upon each 5-year anniversary thereafter upon  
9 application to the department at least ~~30~~ 120 but not more  
10 than ~~60~~ 150 days prior to the renewal date so long as the  
11 operator is in compliance with the requirements of this  
12 part, the rules hereunder, and the reclamation plan provided  
13 for in 82-4-231 and agrees to comply with all applicable  
14 laws and rules in effect at the time of renewal. Such  
15 renewal shall further be subject to the denial provisions of  
16 82-4-227, 82-4-234, and 82-4-251. On application for  
17 renewal, the burden shall be on the opponents of renewal to  
18 demonstrate that the permit should not be renewed. A permit  
19 shall terminate if the permittee has not commenced strip- or  
20 underground-mining operations pursuant to the permit within  
21 3 years of the issuance of the permit. However, the  
22 department may grant reasonable extensions of time upon a  
23 showing that such extensions are necessary by reason of  
24 litigation precluding the commencement or threatening  
25 substantial economic loss to the permittee or by reason of

1 conditions beyond the control and without the fault or  
2 negligence of the permittee. With respect to coal to be  
3 mined for use in a synthetic fuel facility or specific major  
4 electric generating facility, the permittee is considered to  
5 have commenced strip- or underground-mining operations at  
6 such time as the construction of the synthetic or generating  
7 facility is initiated.

8 (2) As a condition to the issuance of every permit  
9 issued under this part, an authorized representative of the  
10 department shall, without advance notice, have the right of  
11 entry to, upon, or through a strip- or underground-mining  
12 operation or any premises in which any records required to  
13 be maintained under this part are located and may, at  
14 reasonable times and without delay, have access to copy any  
15 records and inspect any monitoring equipment or method of  
16 operation required under this part. When an inspection  
17 results from information provided to the department by any  
18 person, the department shall notify that person when the  
19 inspection is proposed to be made and that person shall be  
20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
22 submit an application for a revision of the permit, together  
23 with a revised reclamation plan, to the department. The  
24 department may not approve the application unless it finds  
25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 3. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation. Such plan shall  
 12 reflect thorough advance investigation and study by the  
 13 operator and shall include all known or readily discoverable  
 14 past and present uses of the land and water to be affected  
 15 and the approximate periods of such use and shall state:

16 (a) the location and area of land to be affected by  
 17 the operation, with a description of access to the area from  
 18 the nearest public highways;

19 (b) the names and addresses of the owners of record of  
 20 the surface of the area of land to be affected by the permit  
 21 and the owners of record of all surface area within one-half  
 22 mile of any part of the affected area;

23 (c) the names and addresses of the present owners of  
 24 record of all subsurface minerals in the land to be  
 25 affected;

1 (d) the source of the applicant's legal right to mine  
 2 the mineral on the land affected by the permit;

3 (e) the permanent and temporary post-office addresses  
 4 of the applicant;

5 (f) whether the applicant or any person associated  
 6 with the applicant holds or has held any other permits under  
 7 this part and an identification of those permits;

8 (g) whether the applicant is in compliance with  
 9 82-4-251 and, if known, whether every officer, partner,  
 10 director, or any individual owning of record or  
 11 beneficially, alone or with associates, 10% or more of any  
 12 class of stock of the applicant is subject to any of the  
 13 provisions of 82-4-251 and he shall so certify and whether  
 14 any of the foregoing parties or persons have ever had a  
 15 strip-mining or underground-mining license or permit issued  
 16 by any other state or federal agency revoked or have ever  
 17 forfeited a strip-mining or underground-mining bond or a  
 18 security deposited in lieu of a bond and, if so, a detailed  
 19 explanation of the facts involved in each case must be  
 20 attached;

21 (h) the names and addresses of any persons who are  
 22 engaged in strip or underground-mining activities on behalf  
 23 of the applicant;

24 (i) the annual rainfall and the direction and average  
 25 velocity of the prevailing winds in the area where the



1 applicant has requested a permit;

2 (j) the results of any test borings or core samplings

3 which the applicant or his agent has conducted on the land

4 to be affected, including the nature and the depth of the

5 various strata or overburden and topsoil, the quantities and

6 location of subsurface water and its quality, the thickness

7 of any mineral seam, an analysis of the chemical properties

8 of such minerals, including the acidity, sulphur content,

9 and trace mineral elements of any coal seam, as well as the

10 British thermal unit (Btu) content of such seam, and an

11 analysis of the overburden, including topsoil. If test

12 borings or core samplings are submitted, each permit

13 application shall contain two copies each of two sets of

14 geologic cross sections accurately depicting the known

15 geologic makeup beneath the surface of the affected land.

16 Each set shall depict subsurface conditions at such

17 intervals as the department requires across the surface and

18 shall run at a 90-degree angle to the other set. The

19 department may not require intervals of less than 500 feet.

20 Each cross section shall depict the thickness and geologic

21 character of all known strata beginning with the topsoil. In

22 addition, each application for an underground-mining permit

23 shall be accompanied by cross sections and maps showing the

24 proposed underground locations of all shafts, entries, and

25 haulageways or other excavations to be excavated during the

1 permit period. These cross sections shall also include all

2 existing shafts, entries, and haulageways.

3 (k) the name and date of a daily newspaper of general

4 circulation within the county in which the applicant will

5 prominently publish at least once a week for 4 successive

6 weeks after submission of the application an announcement of

7 his application for a strip-mining or underground-mining

8 permit and a detailed description of the area of land to be

9 affected should a permit be granted;

10 (l) a determination of the probable hydrologic

11 consequences of coal mining and reclamation operations, both

12 on and off the mine site, with respect to the hydrologic

13 regime, quantity and quality of water in surface- and

14 ground-water systems, including the dissolved and suspended

15 solids under seasonal flow conditions and the collection of

16 sufficient data for the mine site and surrounding areas, so

17 that cumulative impacts of all anticipated mining in the

18 area upon the hydrology of the area and particularly upon

19 water availability can be made. However, this determination

20 is not required until such time as hydrologic information on

21 the general area prior to mining is made available from an

22 appropriate federal or state agency. The permit may not be

23 approved until such information is available and is

24 incorporated into the application;

25 (m) a coal conservation plan; and

1 (n) such other or further information as the  
2 department may require.

3 (2) The application for a permit shall be accompanied  
4 by two copies of all maps meeting the requirements of the  
5 subsections below. The maps shall:

6 (a) identify the area to correspond with the  
7 application;

8 (b) show any adjacent deep mining or surface mining  
9 and the boundaries of surface properties and names of owners  
10 of record of the affected area and within 1,000 feet of any  
11 part of the affected area;

12 (c) show the names and locations of all streams,  
13 creeks, or other bodies of water, roads, buildings,  
14 cemeteries, oil and gas wells, and utility lines on the area  
15 of land affected and within 1,000 feet of such area;

16 (d) show by appropriate markings the boundaries of the  
17 area of land affected, any cropline of the seam or deposit  
18 of mineral to be mined, and the total number of acres  
19 involved in the area of land affected;

20 (e) show the date on which the map was prepared and  
21 the north point;

22 (f) show the final surface and underground water  
23 drainage plan on and away from the area of land affected.  
24 This plan shall indicate the directional and volume flow of  
25 water, constructed drainways, natural waterways used for

1 drainage, and the streams or tributaries receiving the  
2 discharge.

3 (g) show the proposed location of waste or refuse  
4 area;

5 (h) show the proposed location of temporary subsoil  
6 and topsoil storage area;

7 (i) show the proposed location of all facilities;

8 (j) show the location of test boring holes;

9 (k) show the surface location lines of any geologic  
10 cross sections which have been submitted;

11 (l) show a listing of plant varieties encountered in  
12 the area to be affected and their relative dominance in the  
13 area, together with an enumeration of tree varieties and the  
14 approximate number of each variety occurring per acre on the  
15 area to be affected, and the locations generally of the  
16 various kinds and varieties of plants, including but not  
17 limited to grasses, shrubs, legumes, forbs, and trees;

18 (m) be certified as follows: "I, the undersigned,  
19 hereby certify that this map is correct and shows to the  
20 best of my knowledge and belief all the information required  
21 by the mining laws of this state." The certification shall  
22 be signed and notarized. The department may reject a map as  
23 incomplete if its accuracy is not so attested.

24 (n) contain such other or further information as the  
25 department may require.

1 (3) If the department finds that the probable total  
 2 annual production at all locations of any strip- or  
 3 underground-coal-mining operation applied for will not  
 4 exceed 100,000 tons, any determination of probable  
 5 hydrologic consequences that the department requires and the  
 6 statement of result of test borings or core samplings shall,  
 7 upon written request of the operator, be performed by a  
 8 qualified public or private laboratory designated by the  
 9 department. The department shall assume the cost of the  
 10 determination and statement to the extent that it has  
 11 received federal funds for this purpose.

12 (4) In addition to the information and maps required  
 13 above, each application for a permit shall be accompanied by  
 14 detailed plans or proposals showing the method of operation,  
 15 the manner, time or distance, and estimated cost for  
 16 backfilling, subsidence stabilization, water control,  
 17 grading work, highwall reduction, topsoiling, planting,  
 18 revegetating, and a reclamation plan for the area affected  
 19 by the operation, which proposals shall meet the  
 20 requirements of this part and rules adopted under this part.  
 21 The reclamation plan shall address the life of the operation  
 22 and indicate the size, sequence, and the timing of the  
 23 subareas for which it is anticipated that individual permits  
 24 will be sought.

25 (5) Each applicant for a coal mining permit shall

1 submit as part of the application a certificate issued by an  
 2 insurance company authorized to do business in the state  
 3 certifying that the applicant has in force for the strip- or  
 4 underground-mining and reclamation operations for which the  
 5 permit is sought a public liability insurance policy, or  
 6 evidence that the applicant has satisfied other state or  
 7 federal self-insurance requirements. This policy shall  
 8 provide for personal injury and property damage protection  
 9 in an amount adequate to compensate any persons damaged as a  
 10 result of strip or underground-coal-mining and reclamation  
 11 operations, including use of explosives, and entitled to  
 12 compensation under applicable provisions of state law. The  
 13 permittee must maintain the policy in full force and effect  
 14 during the term of the permit and any renewal until all  
 15 reclamation operations have been completed.

16 (6) Each applicant for a strip-mining or  
 17 underground-mining reclamation permit shall file a copy of  
 18 his application for public inspection with the clerk and  
 19 recorder at the courthouse of the county where the major  
 20 portion of mining is proposed to occur."

21 Section 4. Section 82-4-251, MCA, is amended to read:  
 22 "82-4-251. Noncompliance -- suspension of permits. (1)  
 23 The commissioner or an authorized representative of the  
 24 department shall, if he determines on the basis of an  
 25 inspection that any condition or practices exist or that the

1     permittee is in violation of any requirement of this part or  
 2     any permit condition required by the part that creates an  
 3     imminent danger to the health or safety of the public or is  
 4     causing or can reasonably be expected to cause significant  
 5     and imminent environmental harm to land, air, or water  
 6     resources, immediately order cessation of ~~strip--or~~  
 7     ~~underground-coal-mining--and--reclamation--operations~~ the  
 8     operation or the portion thereof relevant to the condition,  
 9     practice, or violation. The cessation order remains in  
 10    effect until the commissioner or his authorized  
 11    representative determines that the condition, practice, or  
 12    violation has been abated or until modified, vacated, or  
 13    terminated by the commissioner or his authorized  
 14    representative pursuant to subsection (5). If the  
 15    commissioner or his authorized representative finds that the  
 16    ordered cessation of ~~strip--or--underground-coal-mining--and~~  
 17    ~~reclamation--operations~~ the operation, or any portion  
 18    thereof, will not completely abate the imminent danger to  
 19    the health or safety of the public or the significant and  
 20    imminent environmental harm to land, air, or water  
 21    resources, he shall in addition to the cessation order  
 22    impose affirmative obligations ~~on-the-operator~~ requiring him  
 23    ~~to-take~~ whatever steps the commissioner or his authorized  
 24    representative considers necessary to abate the imminent  
 25    danger or the significant environmental harm.

1           (2) When, on the basis of an inspection, the  
 2     department determines that any permittee is in violation of  
 3     any requirement of this part or any permit condition  
 4     required by this part which does not create an imminent  
 5     danger to the health or safety of the public or cannot be  
 6     reasonably expected to cause significant and imminent  
 7     environmental harm to land, air, or water resources, the  
 8     commissioner or authorized representative shall issue a  
 9     notice to the permittee or his agent fixing a reasonable  
 10    time, not exceeding 90 days, for the abatement of the  
 11    violation and providing opportunity for public hearing. If,  
 12    upon expiration of the period of time as originally fixed or  
 13    subsequently extended, for good cause shown and upon the  
 14    written finding of the commissioner or his authorized  
 15    representative, the commissioner or his authorized  
 16    representative finds that the violation has not been abated,  
 17    he shall immediately order a cessation of ~~strip--or~~  
 18    ~~underground-mining--and-reclamation-operations~~ the operation  
 19    or the portion thereof relevant to the violation. Such  
 20    cessation order remains in effect until the commissioner or  
 21    his authorized representative determines that the violation  
 22    has been abated or until modified, vacated, or terminated by  
 23    the commissioner or his authorized representative pursuant  
 24    to subsection (5). In the order of cessation issued under  
 25    this subsection, the commissioner shall determine the steps

1 necessary to abate the violation in the most expeditious  
2 manner possible and shall include the necessary measures in  
3 the order.

4 (3) When, on the basis of an inspection, the  
5 commissioner or his authorized representative determines  
6 that a pattern of violations of any requirements of this  
7 part or any permit conditions required by this part exists  
8 or has existed and if the commissioner or his authorized  
9 representative also finds that such violations are caused by  
10 the unwarranted failure of the permittee to comply with any  
11 requirements of this part or any permit conditions or that  
12 such violations are willfully caused by the permittee, the  
13 commissioner or his authorized representative shall  
14 forthwith issue an order to the permittee to show cause as  
15 to why the permit should not be suspended or revoked and  
16 shall provide opportunity for a public hearing. If a hearing  
17 is requested, the commissioner shall inform all interested  
18 parties of the time and place of the hearing. Upon the  
19 permittee's failure to show cause as to why the permit  
20 should not be suspended or revoked, the commissioner or his  
21 authorized representative shall forthwith suspend or the  
22 board shall revoke the permit. When a permit has been  
23 revoked, the board may order the performance bond forfeited.

24 (4) Any additional permits held by an operator whose  
25 mining permit has been revoked shall be suspended and the

1 operator is not eligible to receive another permit or to  
2 have the suspended permits reinstated until he has complied  
3 with all the requirements of this part in respect to former  
4 permits issued him. An operator who has forfeited a bond is  
5 not eligible to receive another permit unless the land for  
6 which the bond was forfeited has been reclaimed without cost  
7 to the state or the operator has paid into the reclamation  
8 account a sum together with the value of the bond the board  
9 finds adequate to reclaim the lands. The department may not  
10 issue any additional permits to an operator who has  
11 repeatedly been in noncompliance or violation of this part.

12 (5) Notices and orders issued pursuant to this section  
13 shall set forth with reasonable specificity the nature of  
14 the violation and the remedial action required, the period  
15 of time established for abatement, and a reasonable  
16 description of the portion of the strip----or  
17 ~~underground-mining--and--reclamation~~ operation to which the  
18 notice or order applies. Each notice or order issued under  
19 this section shall be given promptly to the permittee or his  
20 agent by the department or the commissioner or his  
21 authorized representative who issues the notice or order.  
22 All such notices and orders must be in writing and be signed  
23 by the authorized representatives. Any notice or order  
24 issued pursuant to this section may be modified, vacated, or  
25 terminated by the commissioner or his authorized

1 representative, provided that any notice or order issued  
 2 pursuant to this section that requires cessation of mining  
 3 by the operator expires within 30 days of actual notice to  
 4 the operator unless a public hearing is held at the site or  
 5 within such reasonable proximity to the site that any  
 6 viewings of the site can be conducted during the course of  
 7 public hearing.

8 (6) ~~An operator~~ A person issued a notice or an order  
 9 of ~~abatement cessation~~ pursuant to this section or any  
 10 person having an interest that is or may be adversely  
 11 affected by an order or by modification, vacation, or  
 12 termination of an order may apply to the department for  
 13 review of that order within 30 days of its issuance or  
 14 within 30 days of its modification, vacation, or  
 15 termination. Upon receipt of the application, the department  
 16 shall make an investigation. The investigation shall provide  
 17 an opportunity for public hearing at the request of the  
 18 applicant or the person having an interest who is or may be  
 19 adversely affected to enable the applicant or the person to  
 20 present information relating to the issuance and continuance  
 21 of the notice or order or the modification, vacation, or  
 22 termination of it. The filing of an application for review  
 23 under this subsection may not operate as a stay of any order  
 24 or notice. The department shall make findings of fact and  
 25 issue a written decision incorporating an order vacating,

1 affirming, modifying, or terminating the order.

2 (7) Whenever an order is issued under this section or  
 3 as the result of any administrative proceeding under this  
 4 part, at the request of any person, a sum equal to the  
 5 aggregate amount of all costs, expenses, and attorney fees  
 6 as determined by the department to have been reasonably  
 7 incurred by such person for or in connection with his  
 8 participation in such proceedings, including any judicial  
 9 review of agency actions, may be assessed against either  
 10 party as the court, resulting from judicial review, or the  
 11 department, resulting from administrative proceedings,  
 12 considers proper.

13 (8) In order to protect the stability of the land, the  
 14 commissioner or his authorized representative shall order  
 15 cessation of underground coal mining under urbanized areas,  
 16 cities, towns, and communities and adjacent to industrial or  
 17 commercial buildings, major impoundments, or permanent  
 18 streams if he finds imminent danger to inhabitants of the  
 19 urbanized areas, cities, towns, and communities."

20 Section 5. Section 82-4-254, MCA, is amended to read:  
 21 "82-4-254. Violation -- penalty. (1) A person or  
 22 operator who violates any of the provisions of this part,  
 23 rules or orders adopted under this part, or ~~permits~~ term, or  
 24 condition of a permit and any director, officer, or agent of  
 25 a corporation who willfully authorizes, orders, or carries

1 out a violation shall pay a civil penalty of not less than  
 2 \$100 or more than \$5,000 for the violation and an additional  
 3 civil penalty of not less than \$100 or more than \$5,000 for  
 4 each day during which a violation continues and may be  
 5 enjoined from continuing such violations as hereinafter  
 6 provided in this section. Any person or operator who fails  
 7 to correct a violation within the period permitted by law,  
 8 rule of the board or department, or order of the  
 9 commissioner shall be assessed a penalty of not less than  
 10 \$750 for each day during which such failure or violation  
 11 continues. The period permitted for correction of a  
 12 violation shall not, in the case of any review proceeding  
 13 under 82-4-251(6), end until entry of a final order  
 14 suspending the abatement requirements or until entry of an  
 15 order of court ordering suspension of the abatement  
 16 requirements.

17 (2) The department shall notify the person or operator  
 18 of the violation. The person or operator shall by filing a  
 19 written request within 20 days of receipt of the notice of  
 20 violation be entitled to a hearing on the issues of whether  
 21 the alleged violation has occurred and whether the penalty  
 22 proposed to be assessed is proper. The department shall  
 23 issue a statement of proposed penalty no more than 10 days  
 24 after notice of violation. After the hearing or after the  
 25 time for requesting a hearing has expired, the board shall

1 make findings of fact and shall issue a written decision as  
 2 to the occurrence of the violation and the amount of penalty  
 3 warranted and shall order the payment of a penalty in that  
 4 amount. The person or operator shall remit the amount of the  
 5 penalty within 30 days of the order. If the person or  
 6 operator wishes to obtain judicial review of the assessment,  
 7 he shall submit with the penalty a statement that the  
 8 penalty is being paid under protest and the department shall  
 9 hold the payment in escrow until judicial review is  
 10 complete. Any person or operator who fails to request and  
 11 submit testimony at the hearing provided for in this  
 12 subsection or who fails to pay the assessed penalty under  
 13 protest within 30 days of the order assessing the penalty  
 14 forfeits his right to seek judicial review of the violation  
 15 or penalty determinations. These penalties are recoverable  
 16 in any action brought in the name of the state of Montana by  
 17 the attorney general in the district court of the first  
 18 judicial district of this state, in and for the county of  
 19 Lewis and Clark, or the district having jurisdiction over  
 20 the defendant.

21 (3) The attorney general shall, upon request of the  
 22 commissioner, sue for the recovery of the penalties provided  
 23 for in this section and bring an action for a restraining  
 24 order or temporary or permanent injunction against an  
 25 operator or other person who:

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

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

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

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

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

13 (f) refuses to permit access to and copying of such  
14 records as the department determines to be necessary in  
15 carrying out the provisions of this part.

16 (4) Any relief granted by a court under subsection  
17 (3)(a) continues in effect until the completion or final  
18 termination of all proceedings for review of such under this  
19 part unless, prior thereto, the district court granting the  
20 relief sets it aside or modifies it.

21 (5) A person who violates any of the provisions of  
22 this part or any determination or order adopted under this  
23 part, or who willfully violates any permit condition issued  
24 under this part is guilty of a misdemeanor and shall be  
25 fined not less than \$500 and not more than \$10,000 or

1 imprisoned for not more than 1 year, or both. Each day on  
2 which the violation occurs constitutes a separate offense.

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

11 (7) Any person who except as permitted by law  
12 willfully resists, prevents, impedes, or interferes with the  
13 department or its agents in the performance of duties  
14 pursuant to this part shall be punished by a fine of not  
15 more than \$5,000 or by imprisonment for not more than 1  
16 year, or both.

17 (8) No employee of the department performing any  
18 function or duty under this part shall have a direct or  
19 indirect financial interest in any strip- or  
20 underground-coal-mining operation. Whoever knowingly  
21 violates the provisions of this subsection shall, upon  
22 conviction, be punished by a fine of not more than \$2,500 or  
23 by imprisonment of not more than 1 year, or both."

-End-



Approved by Committee  
on Natural Resources

*Senate* BILL NO. 244

INTRODUCED BY *Grubbs*

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH THE FEDERAL STRIP MINE ACT AND CONDITIONS OF THE SECRETARY OF INTERIOR'S APPROVAL OF THE MONTANA PROGRAM; AMENDING SECTIONS 82-4-203, 82-4-221, 82-4-222, 82-4-251, AND 82-4-254, MCA."

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

Section 1. Section 82-4-203, MCA, is amended to read:

"82-4-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope

wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of

1 this state.

2 (7) "Coal conservation plan" means the planned course  
3 of conduct of a strip- or underground-mining operation to  
4 include plans for the removal and utilization of minable and  
5 marketable coal located within the area planned to be mined.

6 (8) "Commissioner" means the commissioner of state  
7 lands provided for in 2-15-3202.

8 (9) "Contour strip mining" means that strip-mining  
9 method commonly carried out in areas of rough and hilly  
10 topography in which the coal or mineral seam outcrops along  
11 the side of the slope and entrance is made to the seam by  
12 excavating a bench or table cut at and along the site of the  
13 seam outcropping with the excavated overburden commonly  
14 being cast down the slope below the mineral seam and the  
15 operating bench.

16 (10) "Degree" means from the horizontal and in each  
17 case is subject to a tolerance of 5% error.

18 (11) "Department" means the department of state lands  
19 provided for in Title 2, chapter 15, part 32.

20 (12) "Failure to conserve coal" means the nonremoval or  
21 nonutilization of ~~stripable~~ minable and marketable coal by  
22 an operation, provided that the nonremoval or nonutilization  
23 of minable and marketable coal in accordance with  
24 reclamation standards established by the department shall  
25 not be considered failure to conserve coal.

1 (13) "Fill bench" means that portion of a bench or  
2 table which is formed by depositing overburden beyond or  
3 downslope from the cut section as formed in the contour  
4 method of strip mining.

5 (14) "Imminent danger to the health and safety of the  
6 public" means the existence of any condition or practice or  
7 any violation of a permit or other requirement of this part  
8 in a strip- or underground-coal-mining and reclamation  
9 operation that could reasonably be expected to cause  
10 substantial physical harm to persons outside the permit area  
11 before such condition, practice, or violation can be abated.  
12 A reasonable expectation of death or serious injury before  
13 abatement exists if a rational person, subjected to the same  
14 conditions or practices giving rise to the peril, would not  
15 expose himself or herself to the danger during the time  
16 necessary for abatement.

17 (15) "Marketable coal" means a minable coal that is  
18 economically feasible to mine and is fit for sale in the  
19 usual course of trade.

20 (16) "Method of operation" means the method or manner  
21 by which the cut, open pit, shaft, or excavation is made,  
22 the overburden is placed or handled, water is controlled,  
23 and other acts are performed by the operator in the process  
24 of uncovering and removing the minerals that affect the  
25 reclamation of the area of land affected.

1 (17) "Minable coal" means that coal which can be  
2 removed through strip- or underground-mining methods  
3 adaptable to the location that coal is being mined or is  
4 planned to be mined.

5 (18) "Mineral" means coal and uranium.

6 (19) "Operation" means all of the premises, facilities,  
7 railroad loops, roads, and equipment used in the process of  
8 producing and removing mineral from and reclaiming a  
9 designated strip-mine or underground-mine area and all  
10 activities, including excavation incident thereto, or  
11 prospecting for the purpose of determining the location,  
12 quality, or quantity of a natural mineral deposit.

13 (20) "Operator" means a person engaged in strip mining  
14 or underground mining who removes or intends to remove more  
15 than 10,000 cubic yards of mineral or overburden or a person  
16 engaged in coal mining who removes or intends to remove more  
17 than 250 tons of coal from the earth by mining within 12  
18 consecutive calendar months in any one location.

19 (21) "Overburden" means all of the earth and other  
20 materials which lie above a natural mineral deposit and also  
21 means such earth and other material after removal from their  
22 natural state in the process of mining.

23 (22) "Person" means a person, partnership, corporation,  
24 association, or other legal entity or any political  
25 subdivision or agency of the state or federal government.

1 (23) "Prime farmland" means that land previously  
2 prescribed by the United States secretary of agriculture on  
3 the basis of such factors as moisture availability,  
4 temperature regime, chemical balance, permeability,  
5 surface-layer composition, susceptibility to flooding, and  
6 erosion characteristics and which historically has been used  
7 for intensive agricultural purposes and as defined in the  
8 Federal Register.

9 (24) "Prospecting" means the removal of overburden,  
10 core drilling, construction of roads, or any other  
11 disturbance of the surface for the purpose of determining  
12 the location, quantity, or quality of a natural mineral  
13 deposit.

14 (25) "Reclamation" means backfilling, subsidence  
15 stabilization, water control, grading, highwall reduction,  
16 topsoiling, planting, revegetation, and other work to  
17 restore an area of land affected by strip mining or  
18 underground mining under a plan approved by the department.

19 (26) "Strip mining" means any part of the process  
20 followed in the production of mineral by the open-cut method,  
21 including mining by the auger method or any similar method  
22 which penetrates a mineral deposit and removes mineral  
23 directly through a series of openings made by a machine  
24 which enters the deposit from a surface excavation or any  
25 other mining method or process in which the strata or

1 overburden is removed or displaced in order to recover the  
2 mineral.

3 (27) "Subsidence" means a vertically downward movement  
4 of overburden materials resulting from the actual mining of  
5 an underlying mineral deposit or associated underground  
6 excavations.

7 (28) "Surface owner" means a person who holds legal or  
8 equitable title to the land surface and whose principal  
9 place of residence is on the land or who personally conducts  
10 farming or ranching operations upon a farm or ranch unit to  
11 be directly affected by strip-mining operations or who  
12 receives directly a significant portion of his income, if  
13 any, from such farming or ranching operations or the state  
14 of Montana where the state owns the surface.

15 (29) "Topsoil" means the unconsolidated mineral matter  
16 naturally present on the surface of the earth that has been  
17 subjected to and influenced by genetic and environmental  
18 factors of parent material, climate, macro- and  
19 microorganisms, and topography, all acting over a period of  
20 time, and that is necessary for the growth and regeneration  
21 of vegetation on the surface of the earth.

22 (30) "Underground mining" means any part of the process  
23 followed in the production of a mineral such that vertical  
24 or horizontal shafts, slopes, drifts, or incline planes  
25 connected with excavations penetrating the mineral stratum

1 or strata are utilized and includes mining by in situ  
2 methods.

3 (31) "Unwarranted failure to comply" means the failure  
4 of a permittee to prevent the occurrence of any violation of  
5 his permit or any requirement of this part due to  
6 indifference, lack of diligence, or lack of reasonable care,  
7 or the failure to abate any violation of such permit or this  
8 part due to indifference, lack of diligence, or lack of  
9 reasonable care.

10 (32) "Waiver" means any document which demonstrates the  
11 clear intention to release rights in the surface estate for  
12 the purpose of permitting the extraction of subsurface  
13 minerals by strip-mining methods.

14 (33) "Written consent" means such written statement as  
15 is executed by the owner of the surface estate, upon a form  
16 approved by the department, demonstrating that such owner  
17 consents to entry of an operator for the purpose of  
18 conducting strip-mining operations and that such consent is  
19 given only to such strip-mining and reclamation operations  
20 which fully comply with the terms and requirements of this  
21 part."

22 Section 2. Section 82-4-221, MCA, is amended to read:  
23 "82-4-221. Mining permit required. (1) An operator may  
24 not engage in strip or underground mining without having  
25 first obtained from the department a permit designating the

1 area of land affected by the operation, which designation  
2 shall include all lands reasonably anticipated to be mined  
3 or otherwise affected during the applicable 5-year period.  
4 The permit shall authorize the operator to engage in strip  
5 or underground mining upon the area of land described in his  
6 application and designated in the permit for a period of 5  
7 years from the date of its issuance. Such permit shall be  
8 renewable upon each 5-year anniversary thereafter upon  
9 application to the department at least ~~90~~ 120 but not more  
10 than ~~60~~ 150 days prior to the renewal date so long as the  
11 operator is in compliance with the requirements of this  
12 part, the rules hereunder, and the reclamation plan provided  
13 for in 82-4-231 and agrees to comply with all applicable  
14 laws and rules in effect at the time of renewal. Such  
15 renewal shall further be subject to the denial provisions of  
16 82-4-227, 82-4-234, and 82-4-251. On application for  
17 renewal, the burden shall be on the opponents of renewal to  
18 demonstrate that the permit should not be renewed. A permit  
19 shall terminate if the permittee has not commenced strip- or  
20 underground-mining operations pursuant to the permit within  
21 3 years of the issuance of the permit. However, the  
22 department may grant reasonable extensions of time upon a  
23 showing that such extensions are necessary by reason of  
24 litigation precluding the commencement or threatening  
25 substantial economic loss to the permittee or by reason of

1 conditions beyond the control and without the fault or  
2 negligence of the permittee. With respect to coal to be  
3 mined for use in a synthetic fuel facility or specific major  
4 electric generating facility, the permittee is considered to  
5 have commenced strip- or underground-mining operations at  
6 such time as the construction of the synthetic or generating  
7 facility is initiated.

8 (2) As a condition to the issuance of every permit  
9 issued under this part, an authorized representative of the  
10 department shall, without advance notice, have the right of  
11 entry to, upon, or through a strip- or underground-mining  
12 operation or any premises in which any records required to  
13 be maintained under this part are located and may, at  
14 reasonable times and without delay, have access to copy any  
15 records and inspect any monitoring equipment or method of  
16 operation required under this part. When an inspection  
17 results from information provided to the department by any  
18 person, the department shall notify that person when the  
19 inspection is proposed to be made and that person shall be  
20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
22 submit an application for a revision of the permit, together  
23 with a revised reclamation plan, to the department. The  
24 department may not approve the application unless it finds  
25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 3. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation. Such plan shall  
 12 reflect thorough advance investigation and study by the  
 13 operator and shall include all known or readily discoverable  
 14 past and present uses of the land and water to be affected  
 15 and the approximate periods of such use and shall state:

16 (a) the location and area of land to be affected by  
 17 the operation, with a description of access to the area from  
 18 the nearest public highways;

19 (b) the names and addresses of the owners of record of  
 20 the surface of the area of land to be affected by the permit  
 21 and the owners of record of all surface area within one-half  
 22 mile of any part of the affected area;

23 (c) the names and addresses of the present owners of  
 24 record of all subsurface minerals in the land to be  
 25 affected;

1 (d) the source of the applicant's legal right to mine  
 2 the mineral on the land affected by the permit;

3 (e) the permanent and temporary post-office addresses  
 4 of the applicant;

5 (f) whether the applicant or any person associated  
 6 with the applicant holds or has held any other permits under  
 7 this part and an identification of those permits;

8 (g) whether the applicant is in compliance with  
 9 82-4-251 and, if known, whether every officer, partner,  
 10 director, or any individual owning of record or  
 11 beneficially, alone or with associates, 10% or more of any  
 12 class of stock of the applicant is subject to any of the  
 13 provisions of 82-4-251 and he shall so certify and whether  
 14 any of the foregoing parties or persons have ever had a  
 15 strip-mining or underground-mining license or permit issued  
 16 by any other state or federal agency revoked or have ever  
 17 forfeited a strip-mining or underground-mining bond or a  
 18 security deposited in lieu of a bond and, if so, a detailed  
 19 explanation of the facts involved in each case must be  
 20 attached;

21 (h) the names and addresses of any persons who are  
 22 engaged in strip or underground-mining activities on behalf  
 23 of the applicant;

24 (i) the annual rainfall and the direction and average  
 25 velocity of the prevailing winds in the area where the

1 applicant has requested a permit;

2 (j) the results of any test borings or core samplings  
3 which the applicant or his agent has conducted on the land  
4 to be affected, including the nature and the depth of the  
5 various strata or overburden and topsoil, the quantities and  
6 location of subsurface water and its quality, the thickness  
7 of any mineral seam, an analysis of the chemical properties  
8 of such minerals, including the acidity, sulphur content,  
9 and trace mineral elements of any coal seam, as well as the  
10 British thermal unit (Btu) content of such seam, and an  
11 analysis of the overburden, including topsoil. If test  
12 borings or core samplings are submitted, each permit  
13 application shall contain two copies each of two sets of  
14 geologic cross sections accurately depicting the known  
15 geologic makeup beneath the surface of the affected land.  
16 Each set shall depict subsurface conditions at such  
17 intervals as the department requires across the surface and  
18 shall run at a 90-degree angle to the other set. The  
19 department may not require intervals of less than 500 feet.  
20 Each cross section shall depict the thickness and geologic  
21 character of all known strata beginning with the topsoil. In  
22 addition, each application for an underground-mining permit  
23 shall be accompanied by cross sections and maps showing the  
24 proposed underground locations of all shafts, entries, and  
25 haulageways or other excavations to be excavated during the

1 permit period. These cross sections shall also include all  
2 existing shafts, entries, and haulageways.

3 (k) the name and date of a daily newspaper of general  
4 circulation within the county in which the applicant will  
5 prominently publish at least once a week for 4 successive  
6 weeks after submission of the application an announcement of  
7 his application for a strip-mining or underground-mining  
8 permit and a detailed description of the area of land to be  
9 affected should a permit be granted;

10 (l) a determination of the probable hydrologic  
11 consequences of coal mining and reclamation operations, both  
12 on and off the mine site, with respect to the hydrologic  
13 regime, quantity and quality of water in surface- and  
14 ground-water systems, including the dissolved and suspended  
15 solids under seasonal flow conditions and the collection of  
16 sufficient data for the mine site and surrounding areas, so  
17 that cumulative impacts of all anticipated mining in the  
18 area upon the hydrology of the area and particularly upon  
19 water availability can be made. However, this determination  
20 is not required until such time as hydrologic information on  
21 the general area prior to mining is made available from an  
22 appropriate federal or state agency. The permit may not be  
23 approved until such information is available and is  
24 incorporated into the application;

25 (m) a coal conservation plan; and

1 (n) such other or further information as the  
2 department may require.

3 (2) The application for a permit shall be accompanied  
4 by two copies of all maps meeting the requirements of the  
5 subsections below. The maps shall:

6 (a) identify the area to correspond with the  
7 application;

8 (b) show any adjacent deep mining or surface mining  
9 and the boundaries of surface properties and names of owners  
10 of record of the affected area and within 1,000 feet of any  
11 part of the affected area;

12 (c) show the names and locations of all streams,  
13 creeks, or other bodies of water, roads, buildings,  
14 cemeteries, oil and gas wells, and utility lines on the area  
15 of land affected and within 1,000 feet of such area;

16 (d) show by appropriate markings the boundaries of the  
17 area of land affected, any cropline of the seam or deposit  
18 of mineral to be mined, and the total number of acres  
19 involved in the area of land affected;

20 (e) show the date on which the map was prepared and  
21 the north point;

22 (f) show the final surface and underground water  
23 drainage plan on and away from the area of land affected.  
24 This plan shall indicate the directional and volume flow of  
25 water, constructed drainways, natural waterways used for

1 drainage, and the streams or tributaries receiving the  
2 discharge.

3 (g) show the proposed location of waste or refuse  
4 area;

5 (h) show the proposed location of temporary subsoil  
6 and topsoil storage area;

7 (i) show the proposed location of all facilities;

8 (j) show the location of test boring holes;

9 (k) show the surface location lines of any geologic  
10 cross sections which have been submitted;

11 (l) show a listing of plant varieties encountered in  
12 the area to be affected and their relative dominance in the  
13 area, together with an enumeration of tree varieties and the  
14 approximate number of each variety occurring per acre on the  
15 area to be affected, and the locations generally of the  
16 various kinds and varieties of plants, including but not  
17 limited to grasses, shrubs, legumes, forbs, and trees;

18 (m) be certified as follows: "I, the undersigned,  
19 hereby certify that this map is correct and shows to the  
20 best of my knowledge and belief all the information required  
21 by the mining laws of this state." The certification shall  
22 be signed and notarized. The department may reject a map as  
23 incomplete if its accuracy is not so attested.

24 (n) contain such other or further information as the  
25 department may require.



1 (3) If the department finds that the probable total  
 2 annual production at all locations of any strip- or  
 3 underground-coal-mining operation applied for will not  
 4 exceed 100,000 tons, any determination of probable  
 5 hydrologic consequences that the department requires and the  
 6 statement of result of test borings or core samplings shall,  
 7 upon written request of the operator, be performed by a  
 8 qualified public or private laboratory designated by the  
 9 department. The department shall assume the cost of the  
 10 determination and statement to the extent that it has  
 11 received federal funds for this purpose.

12 (4) In addition to the information and maps required  
 13 above, each application for a permit shall be accompanied by  
 14 detailed plans or proposals showing the method of operation,  
 15 the manner, time or distance, and estimated cost for  
 16 backfilling, subsidence stabilization, water control,  
 17 grading work, highwall reduction, topsoiling, planting,  
 18 revegetating, and a reclamation plan for the area affected  
 19 by the operation, which proposals shall meet the  
 20 requirements of this part and rules adopted under this part.  
 21 The reclamation plan shall address the life of the operation  
 22 and indicate the size, sequence, and the timing of the  
 23 subareas for which it is anticipated that individual permits  
 24 will be sought.

25 (5) Each applicant for a coal mining permit shall

1 submit as part of the application a certificate issued by an  
 2 insurance company authorized to do business in the state  
 3 certifying that the applicant has in force for the strip- or  
 4 underground-mining and reclamation operations for which the  
 5 permit is sought a public liability insurance policy, or  
 6 evidence that the applicant has satisfied other state or  
 7 federal self-insurance requirements. This policy shall  
 8 provide for personal injury and property damage protection  
 9 in an amount adequate to compensate any persons damaged as a  
 10 result of strip or underground-coal-mining and reclamation  
 11 operations, including use of explosives, and entitled to  
 12 compensation under applicable provisions of state law. The  
 13 permittee must maintain the policy in full force and effect  
 14 during the term of the permit and any renewal until all  
 15 reclamation operations have been completed.

16 (6) Each applicant for a strip-mining or  
 17 underground-mining reclamation permit shall file a copy of  
 18 his application for public inspection with the clerk and  
 19 recorder at the courthouse of the county where the major  
 20 portion of mining is proposed to occur."

21 Section 4. Section 82-4-251, MCA, is amended to read:  
 22 "82-4-251. Noncompliance -- suspension of permits. (1)  
 23 The commissioner or an authorized representative of the  
 24 department shall, if he determines on the basis of an  
 25 inspection that any condition or practices exist or that the

1 permittee is in violation of any requirement of this part or  
 2 any permit condition required by the part that creates an  
 3 imminent danger to the health or safety of the public or is  
 4 causing or can reasonably be expected to cause significant  
 5 and imminent environmental harm to land, air, or water  
 6 resources, immediately order cessation of ~~strip--or~~  
 7 ~~underground-coal-mining--and--reclamation--operations~~ the  
 8 operation or the portion thereof relevant to the condition,  
 9 practice, or violation. The cessation order remains in  
 10 effect until the commissioner or his authorized  
 11 representative determines that the condition, practice, or  
 12 violation has been abated or until modified, vacated, or  
 13 terminated by the commissioner or his authorized  
 14 representative pursuant to subsection (5). If the  
 15 commissioner or his authorized representative finds that the  
 16 ordered cessation of ~~strip--or--underground-coal-mining--and~~  
 17 ~~reclamation--operations~~ the operation, or any portion  
 18 thereof, will not completely abate the imminent danger to  
 19 the health or safety of the public or the significant and  
 20 imminent environmental harm to land, air, or water  
 21 resources, he shall in addition to the cessation order  
 22 impose affirmative obligations ~~on-the-operator~~ requiring him  
 23 ~~to-take~~ whatever steps the commissioner or his authorized  
 24 representative considers necessary to abate the imminent  
 25 danger or the significant environmental harm.

1 (2) When, on the basis of an inspection, the  
 2 department determines that any permittee is in violation of  
 3 any requirement of this part or any permit condition  
 4 required by this part which does not create an imminent  
 5 danger to the health or safety of the public or cannot be  
 6 reasonably expected to cause significant and imminent  
 7 environmental harm to land, air, or water resources, the  
 8 commissioner or authorized representative shall issue a  
 9 notice to the permittee or his agent fixing a reasonable  
 10 time, not exceeding 90 days, for the abatement of the  
 11 violation and providing opportunity for public hearing. If,  
 12 upon expiration of the period of time as originally fixed or  
 13 subsequently extended, for good cause shown and upon the  
 14 written finding of the commissioner or his authorized  
 15 representative, the commissioner or his authorized  
 16 representative finds that the violation has not been abated,  
 17 he shall immediately order a cessation of ~~strip--or~~  
 18 ~~underground-mining--and-reclamation-operations~~ the operation  
 19 or the portion thereof relevant to the violation. Such  
 20 cessation order remains in effect until the commissioner or  
 21 his authorized representative determines that the violation  
 22 has been abated or until modified, vacated, or terminated by  
 23 the commissioner or his authorized representative pursuant  
 24 to subsection (5). In the order of cessation issued under  
 25 this subsection, the commissioner shall determine the steps

1 necessary to abate the violation in the most expeditious  
2 manner possible and shall include the necessary measures in  
3 the order.

4 (3) When, on the basis of an inspection, the  
5 commissioner or his authorized representative determines  
6 that a pattern of violations of any requirements of this  
7 part or any permit conditions required by this part exists  
8 or has existed and if the commissioner or his authorized  
9 representative also finds that such violations are caused by  
10 the unwarranted failure of the permittee to comply with any  
11 requirements of this part or any permit conditions or that  
12 such violations are willfully caused by the permittee, the  
13 commissioner or his authorized representative shall  
14 forthwith issue an order to the permittee to show cause as  
15 to why the permit should not be suspended or revoked and  
16 shall provide opportunity for a public hearing. If a hearing  
17 is requested, the commissioner shall inform all interested  
18 parties of the time and place of the hearing. Upon the  
19 permittee's failure to show cause as to why the permit  
20 should not be suspended or revoked, the commissioner or his  
21 authorized representative shall forthwith suspend or the  
22 board shall revoke the permit. When a permit has been  
23 revoked, the board may order the performance bond forfeited.

24 (4) Any additional permits held by an operator whose  
25 mining permit has been revoked shall be suspended and the

1 operator is not eligible to receive another permit or to  
2 have the suspended permits reinstated until he has complied  
3 with all the requirements of this part in respect to former  
4 permits issued him. An operator who has forfeited a bond is  
5 not eligible to receive another permit unless the land for  
6 which the bond was forfeited has been reclaimed without cost  
7 to the state or the operator has paid into the reclamation  
8 account a sum together with the value of the bond the board  
9 finds adequate to reclaim the lands. The department may not  
10 issue any additional permits to an operator who has  
11 repeatedly been in noncompliance or violation of this part.

12 (5) Notices and orders issued pursuant to this section  
13 shall set forth with reasonable specificity the nature of  
14 the violation and the remedial action required, the period  
15 of time established for abatement, and a reasonable  
16 description of the portion of the ~~strip~~ or  
17 ~~underground-mining-and-reclamation~~ operation to which the  
18 notice or order applies. Each notice or order issued under  
19 this section shall be given promptly to the permittee or his  
20 agent by the department or the commissioner or his  
21 authorized representative who issues the notice or order.  
22 All such notices and orders must be in writing and be signed  
23 by the authorized representatives. Any notice or order  
24 issued pursuant to this section may be modified, vacated, or  
25 terminated by the commissioner or his authorized

1 representative, provided that any notice or order issued  
 2 pursuant to this section that requires cessation of mining  
 3 by the operator expires within 30 days of actual notice to  
 4 the operator unless a public hearing is held at the site or  
 5 within such reasonable proximity to the site that any  
 6 viewings of the site can be conducted during the course of  
 7 public hearing.

8 (6) ~~An operator~~ A person issued a notice or an order  
 9 of ~~abatement cessation~~ pursuant to this section or any  
 10 person having an interest that is or may be adversely  
 11 affected by an order or by modification, vacation, or  
 12 termination of an order may apply to the department for  
 13 review of that order within 30 days of its issuance or  
 14 within 30 days of its modification, vacation, or  
 15 termination. Upon receipt of the application, the department  
 16 shall make an investigation. The investigation shall provide  
 17 an opportunity for public hearing at the request of the  
 18 applicant or the person having an interest who is or may be  
 19 adversely affected to enable the applicant or the person to  
 20 present information relating to the issuance and continuance  
 21 of the notice or order or the modification, vacation, or  
 22 termination of it. The filing of an application for review  
 23 under this subsection may not operate as a stay of any order  
 24 or notice. The department shall make findings of fact and  
 25 issue a written decision incorporating an order vacating,

1 affirming, modifying, or terminating the order.

2 (7) Whenever an order is issued under this section or  
 3 as the result of any administrative proceeding under this  
 4 part, at the request of any person, a sum equal to the  
 5 aggregate amount of all costs, expenses, and attorney fees  
 6 as determined by the department to have been reasonably  
 7 incurred by such person for or in connection with his  
 8 participation in such proceedings, including any judicial  
 9 review of agency actions, may be assessed against either  
 10 party as the court, resulting from judicial review, or the  
 11 department, resulting from administrative proceedings,  
 12 considers proper.

13 (8) In order to protect the stability of the land, the  
 14 commissioner or his authorized representative shall order  
 15 cessation of underground coal mining under urbanized areas,  
 16 cities, towns, and communities and adjacent to industrial or  
 17 commercial buildings, major impoundments, or permanent  
 18 streams if he finds imminent danger to inhabitants of the  
 19 urbanized areas, cities, towns, and communities."

20 Section 5. Section 82-4-254, MCA, is amended to read:  
 21 "82-4-254. Violation -- penalty. (1) A person or  
 22 operator who violates any of the provisions of this part,  
 23 rules or orders adopted under this part, or ~~permits~~ term, or  
 24 condition of a permit and any director, officer, or agent of  
 25 a corporation who willfully authorizes, orders, or carries

1 out a violation shall pay a civil penalty of not less than  
 2 \$100 or more than \$5,000 for the violation and an additional  
 3 civil penalty of not less than \$100 or more than \$5,000 for  
 4 each day during which a violation continues and may be  
 5 enjoined from continuing such violations as hereinafter  
 6 provided in this section. Any person or operator who fails  
 7 to correct a violation within the period permitted by law,  
 8 rule of the board or department, or order of the  
 9 commissioner shall be assessed a penalty of not less than  
 10 \$750 for each day during which such failure or violation  
 11 continues. The period permitted for correction of a  
 12 violation shall not, in the case of any review proceeding  
 13 under 82-4-251(6), end until entry of a final order  
 14 suspending the abatement requirements or until entry of an  
 15 order of court ordering suspension of the abatement  
 16 requirements.

17 (2) The department shall notify the person or operator  
 18 of the violation. The person or operator shall by filing a  
 19 written request within 20 days of receipt of the notice of  
 20 violation be entitled to a hearing on the issues of whether  
 21 the alleged violation has occurred and whether the penalty  
 22 proposed to be assessed is proper. The department shall  
 23 issue a statement of proposed penalty no more than 10 days  
 24 after notice of violation. After the hearing or after the  
 25 time for requesting a hearing has expired, the board shall

1 make findings of fact and shall issue a written decision as  
 2 to the occurrence of the violation and the amount of penalty  
 3 warranted and shall order the payment of a penalty in that  
 4 amount. The person or operator shall remit the amount of the  
 5 penalty within 30 days of the order. If the person or  
 6 operator wishes to obtain judicial review of the assessment,  
 7 he shall submit with the penalty a statement that the  
 8 penalty is being paid under protest and the department shall  
 9 hold the payment in escrow until judicial review is  
 10 complete. Any person or operator who fails to request and  
 11 submit testimony at the hearing provided for in this  
 12 subsection or who fails to pay the assessed penalty under  
 13 protest within 30 days of the order assessing the penalty  
 14 forfeits his right to seek judicial review of the violation  
 15 or penalty determinations. These penalties are recoverable  
 16 in any action brought in the name of the state of Montana by  
 17 the attorney general in the district court of the first  
 18 judicial district of this state, in and for the county of  
 19 Lewis and Clark, or the district having jurisdiction over  
 20 the defendant.

21 (3) The attorney general shall, upon request of the  
 22 commissioner, sue for the recovery of the penalties provided  
 23 for in this section and bring an action for a restraining  
 24 order or temporary or permanent injunction against an  
 25 operator or other person who:

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

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

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

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

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

13 (f) refuses to permit access to and copying of such  
14 records as the department determines to be necessary in  
15 carrying out the provisions of this part.

16 (4) Any relief granted by a court under subsection  
17 (3)(a) continues in effect until the completion or final  
18 termination of all proceedings for review of such under this  
19 part unless, prior thereto, the district court granting the  
20 relief sets it aside or modifies it.

21 (5) A person who violates any of the provisions of  
22 this part or any determination or order adopted under this  
23 part, or who willfully violates any permit condition issued  
24 under this part is guilty of a misdemeanor and shall be  
25 fined not less than \$500 and not more than \$10,000 or

1 imprisoned for not more than 1 year, or both. Each day on  
2 which the violation occurs constitutes a separate offense.

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

11 (7) Any person who except as permitted by law  
12 willfully resists, prevents, impedes, or interferes with the  
13 department or its agents in the performance of duties  
14 pursuant to this part shall be punished by a fine of not  
15 more than \$5,000 or by imprisonment for not more than 1  
16 year, or both.

17 (8) No employee of the department performing any  
18 function or duty under this part shall have a direct or  
19 indirect financial interest in any strip- or  
20 underground-coal-mining operation. Whoever knowingly  
21 violates the provisions of this subsection shall, upon  
22 conviction, be punished by a fine of not more than \$2,500 or  
23 by imprisonment of not more than 1 year, or both."

-End-

1 *Senate* BILL NO. *244*  
 2 INTRODUCED BY *Hyman*

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
 6 STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH  
 7 THE FEDERAL STRIP MINE ACT AND CONDITIONS OF THE SECRETARY  
 8 OF INTERIOR'S APPROVAL OF THE MONTANA PROGRAM; AMENDING  
 9 SECTIONS 82-4-203, 82-4-221, 82-4-222, 82-4-251, AND  
 10 82-4-254, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 82-4-203, MCA, is amended to read:  
 14 "82-4-203. Definitions. Unless the context requires  
 15 otherwise, in this part the following definitions apply:

16 (1) "Abandoned" means an operation where no mineral is  
 17 being produced and where the department determines that the  
 18 operation will not continue or resume.

19 (2) "Alluvial valley floor" means the unconsolidated  
 20 stream-laid deposits holding streams where water  
 21 availability is sufficient for subirrigation or flood  
 22 irrigation agricultural activities; but the term does not  
 23 include upland areas which are generally overlain by a thin  
 24 veneer of colluvial deposits composed chiefly of debris from  
 25 sheet erosion, deposits by unconcentrated runoff or slope

1 wash, together with talus, other mass movement accumulation,  
 2 and windblown deposits.

3 (3) "Aquifer" means any geologic formation or natural  
 4 zone beneath the earth's surface that contains or stores  
 5 water and transmits it from one point to another in  
 6 quantities which permit or have the potential to permit  
 7 economic development as a water source.

8 (4) "Area of land affected" means the area of land  
 9 from which overburden is to be or has been removed and upon  
 10 which the overburden is to be or has been deposited and  
 11 includes all land overlying any tunnels, shafts, or other  
 12 excavations used to extract the mineral, lands affected by  
 13 the construction of new railroad loops and roads or the  
 14 improvement or use of existing railroad loops and roads to  
 15 gain access and to haul the mineral, processing facilities  
 16 at or near the mine site or other mine associated  
 17 facilities, waste deposition areas, treatment ponds, and any  
 18 other surface or subsurface disturbance associated with  
 19 strip mining or underground mining, and all activities  
 20 necessary and incident to the reclamation of such  
 21 operations.

22 (5) "Bench" means the ledge, shelf, table, or terrace  
 23 formed in the contour method of strip mining.

24 (6) "Board" means the board of land commissioners  
 25 provided for in Article X, section 4, of the constitution of

1 this state.

2 (7) "Coal conservation plan" means the planned course  
3 of conduct of a strip- or underground-mining operation to  
4 include plans for the removal and utilization of minable and  
5 marketable coal located within the area planned to be mined.

6 (8) "Commissioner" means the commissioner of state  
7 lands provided for in 2-15-3202.

8 (9) "Contour strip mining" means that strip-mining  
9 method commonly carried out in areas of rough and hilly  
10 topography in which the coal or mineral seam outcrops along  
11 the side of the slope and entrance is made to the seam by  
12 excavating a bench or table cut at and along the site of the  
13 seam outcropping with the excavated overburden commonly  
14 being cast down the slope below the mineral seam and the  
15 operating bench.

16 (10) "Degree" means from the horizontal and in each  
17 case is subject to a tolerance of 5% error.

18 (11) "Department" means the department of state lands  
19 provided for in Title 2, chapter 15, part 32.

20 (12) "Failure to conserve coal" means the nonremoval or  
21 nonutilization of ~~strippable~~ minable and marketable coal by  
22 an operation, provided that the nonremoval or nonutilization  
23 of minable and marketable coal in accordance with  
24 reclamation standards established by the department shall  
25 not be considered failure to conserve coal.

1 (13) "Fill bench" means that portion of a bench or  
2 table which is formed by depositing overburden beyond or  
3 downslope from the cut section as formed in the contour  
4 method of strip mining.

5 (14) "Imminent danger to the health and safety of the  
6 public" means the existence of any condition or practice or  
7 any violation of a permit or other requirement of this part  
8 in a strip- or underground-coal-mining and reclamation  
9 operation that could reasonably be expected to cause  
10 substantial physical harm to persons outside the permit area  
11 before such condition, practice, or violation can be abated.  
12 A reasonable expectation of death or serious injury before  
13 abatement exists if a rational person, subjected to the same  
14 conditions or practices giving rise to the peril, would not  
15 expose himself or herself to the danger during the time  
16 necessary for abatement.

17 (15) "Marketable coal" means a minable coal that is  
18 economically feasible to mine and is fit for sale in the  
19 usual course of trade.

20 (16) "Method of operation" means the method or manner  
21 by which the cut, open pit, shaft, or excavation is made,  
22 the overburden is placed or handled, water is controlled,  
23 and other acts are performed by the operator in the process  
24 of uncovering and removing the minerals that affect the  
25 reclamation of the area of land affected.



1 (17) "Minable coal" means that coal which can be  
2 removed through strip- or underground-mining methods  
3 adaptable to the location that coal is being mined or is  
4 planned to be mined.

5 (18) "Mineral" means coal and uranium.

6 (19) "Operation" means all of the premises, facilities,  
7 railroad loops, roads, and equipment used in the process of  
8 producing and removing mineral from and reclaiming a  
9 designated strip-mine or underground-mine area and all  
10 activities, including excavation incident thereto, or  
11 prospecting for the purpose of determining the location,  
12 quality, or quantity of a natural mineral deposit.

13 (20) "Operator" means a person engaged in strip mining  
14 or underground mining who removes or intends to remove more  
15 than 10,000 cubic yards of mineral or overburden or a person  
16 engaged in coal mining who removes or intends to remove more  
17 than 250 tons of coal from the earth by mining within 12  
18 consecutive calendar months in any one location.

19 (21) "Overburden" means all of the earth and other  
20 materials which lie above a natural mineral deposit and also  
21 means such earth and other material after removal from their  
22 natural state in the process of mining.

23 (22) "Person" means a person, partnership, corporation,  
24 association, or other legal entity or any political  
25 subdivision or agency of the state or federal government.

1 (23) "Prime farmland" means that land previously  
2 prescribed by the United States secretary of agriculture on  
3 the basis of such factors as moisture availability,  
4 temperature regime, chemical balance, permeability,  
5 surface-layer composition, susceptibility to flooding, and  
6 erosion characteristics and which historically has been used  
7 for intensive agricultural purposes and as defined in the  
8 Federal Register.

9 (24) "Prospecting" means the removal of overburden,  
10 core drilling, construction of roads, or any other  
11 disturbance of the surface for the purpose of determining  
12 the location, quantity, or quality of a natural mineral  
13 deposit.

14 (25) "Reclamation" means backfilling, subsidence  
15 stabilization, water control, grading, highwall reduction,  
16 topsoiling, planting, revegetation, and other work to  
17 restore an area of land affected by strip mining or  
18 underground mining under a plan approved by the department.

19 (26) "Strip mining" means any part of the process  
20 followed in the production of mineral by the opencut method,  
21 including mining by the auger method or any similar method  
22 which penetrates a mineral deposit and removes mineral  
23 directly through a series of openings made by a machine  
24 which enters the deposit from a surface excavation or any  
25 other mining method or process in which the strata or

1 overburden is removed or displaced in order to recover the  
2 mineral.

3 (27) "Subsidence" means a vertically downward movement  
4 of overburden materials resulting from the actual mining of  
5 an underlying mineral deposit or associated underground  
6 excavations.

7 (28) "Surface owner" means a person who holds legal or  
8 equitable title to the land surface and whose principal  
9 place of residence is on the land or who personally conducts  
10 farming or ranching operations upon a farm or ranch unit to  
11 be directly affected by strip-mining operations or who  
12 receives directly a significant portion of his income, if  
13 any, from such farming or ranching operations or the state  
14 of Montana where the state owns the surface.

15 (29) "Topsoil" means the unconsolidated mineral matter  
16 naturally present on the surface of the earth that has been  
17 subjected to and influenced by genetic and environmental  
18 factors of parent material, climate, macro- and  
19 microorganisms, and topography, all acting over a period of  
20 time, and that is necessary for the growth and regeneration  
21 of vegetation on the surface of the earth.

22 (30) "Underground mining" means any part of the process  
23 followed in the production of a mineral such that vertical  
24 or horizontal shafts, slopes, drifts, or incline planes  
25 connected with excavations penetrating the mineral stratum

1 or strata are utilized and includes mining by in situ  
2 methods.

3 (31) "Unwarranted failure to comply" means the failure  
4 of a permittee to prevent the occurrence of any violation of  
5 his permit or any requirement of this part due to  
6 indifference, lack of diligence, or lack of reasonable care,  
7 or the failure to abate any violation of such permit or this  
8 part due to indifference, lack of diligence, or lack of  
9 reasonable care.

10 (32) "Waiver" means any document which demonstrates the  
11 clear intention to release rights in the surface estate for  
12 the purpose of permitting the extraction of subsurface  
13 minerals by strip-mining methods.

14 (33) "Written consent" means such written statement as  
15 is executed by the owner of the surface estate, upon a form  
16 approved by the department, demonstrating that such owner  
17 consents to entry of an operator for the purpose of  
18 conducting strip-mining operations and that such consent is  
19 given only to such strip-mining and reclamation operations  
20 which fully comply with the terms and requirements of this  
21 part."

22 Section 2. Section 82-4-221, MCA, is amended to read:  
23 "82-4-221. Mining permit required. (1) An operator may  
24 not engage in strip or underground mining without having  
25 first obtained from the department a permit designating the

1 area of land affected by the operation, which designation  
 2 shall include all lands reasonably anticipated to be mined  
 3 or otherwise affected during the applicable 5-year period.  
 4 The permit shall authorize the operator to engage in strip  
 5 or underground mining upon the area of land described in his  
 6 application and designated in the permit for a period of 5  
 7 years from the date of its issuance. Such permit shall be  
 8 renewable upon each 5-year anniversary thereafter upon  
 9 application to the department at least 90 ~~120~~ but not more  
 10 than 60 ~~150~~ days prior to the renewal date so long as the  
 11 operator is in compliance with the requirements of this  
 12 part, the rules hereunder, and the reclamation plan provided  
 13 for in 82-4-231 and agrees to comply with all applicable  
 14 laws and rules in effect at the time of renewal. Such  
 15 renewal shall further be subject to the denial provisions of  
 16 82-4-227, 82-4-234, and 82-4-251. On application for  
 17 renewal, the burden shall be on the opponents of renewal to  
 18 demonstrate that the permit should not be renewed. A permit  
 19 shall terminate if the permittee has not commenced strip- or  
 20 underground-mining operations pursuant to the permit within  
 21 3 years of the issuance of the permit. However, the  
 22 department may grant reasonable extensions of time upon a  
 23 showing that such extensions are necessary by reason of  
 24 litigation precluding the commencement or threatening  
 25 substantial economic loss to the permittee or by reason of

1 conditions beyond the control and without the fault or  
 2 negligence of the permittee. With respect to coal to be  
 3 mined for use in a synthetic fuel facility or specific major  
 4 electric generating facility, the permittee is considered to  
 5 have commenced strip- or underground-mining operations at  
 6 such time as the construction of the synthetic or generating  
 7 facility is initiated.

8 (2) As a condition to the issuance of every permit  
 9 issued under this part, an authorized representative of the  
 10 department shall, without advance notice, have the right of  
 11 entry to, upon, or through a strip- or underground-mining  
 12 operation or any premises in which any records required to  
 13 be maintained under this part are located and may, at  
 14 reasonable times and without delay, have access to copy any  
 15 records and inspect any monitoring equipment or method of  
 16 operation required under this part. When an inspection  
 17 results from information provided to the department by any  
 18 person, the department shall notify that person when the  
 19 inspection is proposed to be made and that person shall be  
 20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
 22 submit an application for a revision of the permit, together  
 23 with a revised reclamation plan, to the department. The  
 24 department may not approve the application unless it finds  
 25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures."

6 Section 3. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation. Such plan shall  
 12 reflect thorough advance investigation and study by the  
 13 operator and shall include all known or readily discoverable  
 14 past and present uses of the land and water to be affected  
 15 and the approximate periods of such use and shall state:

16 (a) the location and area of land to be affected by  
 17 the operation, with a description of access to the area from  
 18 the nearest public highways;

19 (b) the names and addresses of the owners of record of  
 20 the surface of the area of land to be affected by the permit  
 21 and the owners of record of all surface area within one-half  
 22 mile of any part of the affected area;

23 (c) the names and addresses of the present owners of  
 24 record of all subsurface minerals in the land to be  
 25 affected;

1 (d) the source of the applicant's legal right to mine  
 2 the mineral on the land affected by the permit;

3 (e) the permanent and temporary post-office addresses  
 4 of the applicant;

5 (f) whether the applicant or any person associated  
 6 with the applicant holds or has held any other permits under  
 7 this part and an identification of those permits;

8 (g) whether the applicant is in compliance with  
 9 82-4-251 and, if known, whether every officer, partner,  
 10 director, or any individual owning of record or  
 11 beneficially, alone or with associates, 10% or more of any  
 12 class of stock of the applicant is subject to any of the  
 13 provisions of 82-4-251 and he shall so certify and whether  
 14 any of the foregoing parties or persons have ever had a  
 15 strip-mining or underground-mining license or permit issued  
 16 by any other state or federal agency revoked or have ever  
 17 forfeited a strip-mining or underground-mining bond or a  
 18 security deposited in lieu of a bond and, if so, a detailed  
 19 explanation of the facts involved in each case must be  
 20 attached;

21 (h) the names and addresses of any persons who are  
 22 engaged in strip or underground-mining activities on behalf  
 23 of the applicant;

24 (i) the annual rainfall and the direction and average  
 25 velocity of the prevailing winds in the area where the

1 applicant has requested a permit;

2 (j) the results of any test borings or core samplings  
3 which the applicant or his agent has conducted on the land  
4 to be affected, including the nature and the depth of the  
5 various strata or overburden and topsoil, the quantities and  
6 location of subsurface water and its quality, the thickness  
7 of any mineral seam, an analysis of the chemical properties  
8 of such minerals, including the acidity, sulphur content,  
9 and trace mineral elements of any coal seam, as well as the  
10 British thermal unit (Btu) content of such seam, and an  
11 analysis of the overburden, including topsoil. If test  
12 borings or core samplings are submitted, each permit  
13 application shall contain two copies each of two sets of  
14 geologic cross sections accurately depicting the known  
15 geologic makeup beneath the surface of the affected land.  
16 Each set shall depict subsurface conditions at such  
17 intervals as the department requires across the surface and  
18 shall run at a 90-degree angle to the other set. The  
19 department may not require intervals of less than 500 feet.  
20 Each cross section shall depict the thickness and geologic  
21 character of all known strata beginning with the topsoil. In  
22 addition, each application for an underground-mining permit  
23 shall be accompanied by cross sections and maps showing the  
24 proposed underground locations of all shafts, entries, and  
25 haulageways or other excavations to be excavated during the

1 permit period. These cross sections shall also include all  
2 existing shafts, entries, and haulageways.

3 (k) the name and date of a daily newspaper of general  
4 circulation within the county in which the applicant will  
5 prominently publish at least once a week for 4 successive  
6 weeks after submission of the application an announcement of  
7 his application for a strip-mining or underground-mining  
8 permit and a detailed description of the area of land to be  
9 affected should a permit be granted;

10 (l) a determination of the probable hydrologic  
11 consequences of coal mining and reclamation operations, both  
12 on and off the mine site, with respect to the hydrologic  
13 regime, quantity and quality of water in surface- and  
14 ground-water systems, including the dissolved and suspended  
15 solids under seasonal flow conditions and the collection of  
16 sufficient data for the mine site and surrounding areas, so  
17 that cumulative impacts of all anticipated mining in the  
18 area upon the hydrology of the area and particularly upon  
19 water availability can be made. However, this determination  
20 is not required until such time as hydrologic information on  
21 the general area prior to mining is made available from an  
22 appropriate federal or state agency. The permit may not be  
23 approved until such information is available and is  
24 incorporated into the application;

25 (m) a coal conservation plan; and

1 (n) such other or further information as the  
2 department may require.

3 (2) The application for a permit shall be accompanied  
4 by two copies of all maps meeting the requirements of the  
5 subsections below. The maps shall:

6 (a) identify the area to correspond with the  
7 application;

8 (b) show any adjacent deep mining or surface mining  
9 and the boundaries of surface properties and names of owners  
10 of record of the affected area and within 1,000 feet of any  
11 part of the affected area;

12 (c) show the names and locations of all streams,  
13 creeks, or other bodies of water, roads, buildings,  
14 cemeteries, oil and gas wells, and utility lines on the area  
15 of land affected and within 1,000 feet of such area;

16 (d) show by appropriate markings the boundaries of the  
17 area of land affected, any cropline of the seam or deposit  
18 of mineral to be mined, and the total number of acres  
19 involved in the area of land affected;

20 (e) show the date on which the map was prepared and  
21 the north point;

22 (f) show the final surface and underground water  
23 drainage plan on and away from the area of land affected.  
24 This plan shall indicate the directional and volume flow of  
25 water, constructed drainways, natural waterways used for

1 drainage, and the streams or tributaries receiving the  
2 discharge.

3 (g) show the proposed location of waste or refuse  
4 area;

5 (h) show the proposed location of temporary subsoil  
6 and topsoil storage area;

7 (i) show the proposed location of all facilities;

8 (j) show the location of test boring holes;

9 (k) show the surface location lines of any geologic  
10 cross sections which have been submitted;

11 (l) show a listing of plant varieties encountered in  
12 the area to be affected and their relative dominance in the  
13 area, together with an enumeration of tree varieties and the  
14 approximate number of each variety occurring per acre on the  
15 area to be affected, and the locations generally of the  
16 various kinds and varieties of plants, including but not  
17 limited to grasses, shrubs, legumes, forbs, and trees;

18 (m) be certified as follows: "I, the undersigned,  
19 hereby certify that this map is correct and shows to the  
20 best of my knowledge and belief all the information required  
21 by the mining laws of this state." The certification shall  
22 be signed and notarized. The department may reject a map as  
23 incomplete if its accuracy is not so attested.

24 (n) contain such other or further information as the  
25 department may require.

1 (3) If the department finds that the probable total  
 2 annual production at all locations of any strip- or  
 3 underground-coal-mining operation applied for will not  
 4 exceed 100,000 tons, any determination of probable  
 5 hydrologic consequences that the department requires and the  
 6 statement of result of test borings or core samplings shall,  
 7 upon written request of the operator, be performed by a  
 8 qualified public or private laboratory designated by the  
 9 department. The department shall assume the cost of the  
 10 determination and statement to the extent that it has  
 11 received federal funds for this purpose.

12 (4) In addition to the information and maps required  
 13 above, each application for a permit shall be accompanied by  
 14 detailed plans or proposals showing the method of operation,  
 15 the manner, time or distance, and estimated cost for  
 16 backfilling, subsidence stabilization, water control,  
 17 grading work, highwall reduction, topsoiling, planting,  
 18 revegetating, and a reclamation plan for the area affected  
 19 by the operations, which proposals shall meet the  
 20 requirements of this part and rules adopted under this part.  
 21 The reclamation plan shall address the life of the operation  
 22 and indicate the size, sequence, and the timing of the  
 23 subareas for which it is anticipated that individual permits  
 24 will be sought.

25 (5) Each applicant for a coal mining permit shall

1 submit as part of the application a certificate issued by an  
 2 insurance company authorized to do business in the state  
 3 certifying that the applicant has in force for the strip- or  
 4 underground-mining and reclamation operations for which the  
 5 permit is sought a public liability insurance policy, or  
 6 evidence that the applicant has satisfied other state or  
 7 federal self-insurance requirements. This policy shall  
 8 provide for personal injury and property damage protection  
 9 in an amount adequate to compensate any persons damaged as a  
 10 result of strip or underground-coal-mining and reclamation  
 11 operations, including use of explosives, and entitled to  
 12 compensation under applicable provisions of state law. The  
 13 permittee must maintain the policy in full force and effect  
 14 during the term of the permit and any renewal until all  
 15 reclamation operations have been completed.

16 (6) Each applicant for a strip-mining or  
 17 underground-mining reclamation permit shall file a copy of  
 18 his application for public inspection with the clerk and  
 19 recorder at the courthouse of the county where the major  
 20 portion of mining is proposed to occur."

21 Section 4. Section 82-4-251, MCA, is amended to read:  
 22 "82-4-251. Noncompliance -- suspension of permits. (1)  
 23 The commissioner or an authorized representative of the  
 24 department shall, if he determines on the basis of an  
 25 inspection that any condition or practices exist or that the

1 permittee is in violation of any requirement of this part or  
 2 any permit condition required by the part that creates an  
 3 imminent danger to the health or safety of the public or is  
 4 causing or can reasonably be expected to cause significant  
 5 and imminent environmental harm to land, air, or water  
 6 resources, immediately order cessation of ~~strip--or~~  
 7 ~~underground-coal-mining--and--reclamation--operations~~ the  
 8 operation or the portion thereof relevant to the condition,  
 9 practice, or violation. The cessation order remains in  
 10 effect until the commissioner or his authorized  
 11 representative determines that the condition, practice, or  
 12 violation has been abated or until modified, vacated, or  
 13 terminated by the commissioner or his authorized  
 14 representative pursuant to subsection (5). If the  
 15 commissioner or his authorized representative finds that the  
 16 ordered cessation of ~~strip--or--underground-coal-mining--and~~  
 17 ~~reclamation--operations~~ the operation, or any portion  
 18 thereof, will not completely abate the imminent danger to  
 19 the health or safety of the public or the significant and  
 20 imminent environmental harm to land, air, or water  
 21 resources, he shall in addition to the cessation order  
 22 impose affirmative obligations ~~on-the-operator~~ requiring ~~him~~  
 23 ~~to-take~~ whatever steps the commissioner or his authorized  
 24 representative considers necessary to abate the imminent  
 25 danger or the significant environmental harm.

1 (2) When, on the basis of an inspection, the  
 2 department determines that any permittee is in violation of  
 3 any requirement of this part or any permit condition  
 4 required by this part which does not create an imminent  
 5 danger to the health or safety of the public or cannot be  
 6 reasonably expected to cause significant and imminent  
 7 environmental harm to land, air, or water resources, the  
 8 commissioner or authorized representative shall issue a  
 9 notice to the permittee or his agent fixing a reasonable  
 10 time, not exceeding 90 days, for the abatement of the  
 11 violation and providing opportunity for public hearing. If,  
 12 upon expiration of the period of time as originally fixed or  
 13 subsequently extended, for good cause shown and upon the  
 14 written finding of the commissioner or his authorized  
 15 representative, the commissioner or his authorized  
 16 representative finds that the violation has not been abated,  
 17 he shall immediately order a cessation of ~~strip--or~~  
 18 ~~underground-mining--and--reclamation-operations~~ the operation  
 19 or the portion thereof relevant to the violation. Such  
 20 cessation order remains in effect until the commissioner or  
 21 his authorized representative determines that the violation  
 22 has been abated or until modified, vacated, or terminated by  
 23 the commissioner or his authorized representative pursuant  
 24 to subsection (5). In the order of cessation issued under  
 25 this subsection, the commissioner shall determine the steps



1 necessary to abate the violation in the most expeditious  
2 manner possible and shall include the necessary measures in  
3 the order.

4 (3) When, on the basis of an inspection, the  
5 commissioner or his authorized representative determines  
6 that a pattern of violations of any requirements of this  
7 part or any permit conditions required by this part exists  
8 or has existed and if the commissioner or his authorized  
9 representative also finds that such violations are caused by  
10 the unwarranted failure of the permittee to comply with any  
11 requirements of this part or any permit conditions or that  
12 such violations are willfully caused by the permittee, the  
13 commissioner or his authorized representative shall  
14 forthwith issue an order to the permittee to show cause as  
15 to why the permit should not be suspended or revoked and  
16 shall provide opportunity for a public hearing. If a hearing  
17 is requested, the commissioner shall inform all interested  
18 parties of the time and place of the hearing. Upon the  
19 permittee's failure to show cause as to why the permit  
20 should not be suspended or revoked, the commissioner or his  
21 authorized representative shall forthwith suspend or the  
22 board shall revoke the permit. When a permit has been  
23 revoked, the board may order the performance bond forfeited.

24 (4) Any additional permits held by an operator whose  
25 mining permit has been revoked shall be suspended and the

1 operator is not eligible to receive another permit or to  
2 have the suspended permits reinstated until he has complied  
3 with all the requirements of this part in respect to former  
4 permits issued him. An operator who has forfeited a bond is  
5 not eligible to receive another permit unless the land for  
6 which the bond was forfeited has been reclaimed without cost  
7 to the state or the operator has paid into the reclamation  
8 account a sum together with the value of the bond the board  
9 finds adequate to reclaim the lands. The department may not  
10 issue any additional permits to an operator who has  
11 repeatedly been in noncompliance or violation of this part.

12 (5) Notices and orders issued pursuant to this section  
13 shall set forth with reasonable specificity the nature of  
14 the violation and the remedial action required, the period  
15 of time established for abatement, and a reasonable  
16 description of the portion of the ~~strip~~ or  
17 ~~underground-mining--and--reclamation~~ operation to which the  
18 notice or order applies. Each notice or order issued under  
19 this section shall be given promptly to the permittee or his  
20 agent by the department or the commissioner or his  
21 authorized representative who issues the notice or order.  
22 All such notices and orders must be in writing and be signed  
23 by the authorized representatives. Any notice or order  
24 issued pursuant to this section may be modified, vacated, or  
25 terminated by the commissioner or his authorized

1 representative, provided that any notice or order issued  
 2 pursuant to this section that requires cessation of mining  
 3 by the operator expires within 30 days of actual notice to  
 4 the operator unless a public hearing is held at the site or  
 5 within such reasonable proximity to the site that any  
 6 viewings of the site can be conducted during the course of  
 7 public hearing.

8 (6) An--operator A person issued a notice or an order  
 9 of abatement cessation pursuant to this section or any  
 10 person having an interest that is or may be adversely  
 11 affected by an order or by modification, vacation, or  
 12 termination of an order may apply to the department for  
 13 review of that order within 30 days of its issuance or  
 14 within 30 days of its modification, vacation, or  
 15 termination. Upon receipt of the application, the department  
 16 shall make an investigation. The investigation shall provide  
 17 an opportunity for public hearing at the request of the  
 18 applicant or the person having an interest who is or may be  
 19 adversely affected to enable the applicant or the person to  
 20 present information relating to the issuance and continuance  
 21 of the notice or order or the modification, vacation, or  
 22 termination of it. The filing of an application for review  
 23 under this subsection may not operate as a stay of any order  
 24 or notice. The department shall make findings of fact and  
 25 issue a written decision incorporating an order vacating,

1 affirming, modifying, or terminating the order.

2 (7) Whenever an order is issued under this section or  
 3 as the result of any administrative proceeding under this  
 4 part, at the request of any person, a sum equal to the  
 5 aggregate amount of all costs, expenses, and attorney fees  
 6 as determined by the department to have been reasonably  
 7 incurred by such person for or in connection with his  
 8 participation in such proceedings, including any judicial  
 9 review of agency actions, may be assessed against either  
 10 party as the court, resulting from judicial review, or the  
 11 department, resulting from administrative proceedings,  
 12 considers proper.

13 (8) In order to protect the stability of the land, the  
 14 commissioner or his authorized representative shall order  
 15 cessation of underground coal mining under urbanized areas,  
 16 cities, towns, and communities and adjacent to industrial or  
 17 commercial buildings, major impoundments, or permanent  
 18 streams if he finds imminent danger to inhabitants of the  
 19 urbanized areas, cities, towns, and communities."

20 Section 5. Section 82-4-254, MCA, is amended to read:  
 21 "82-4-254. Violation -- penalty. (1) A person or  
 22 operator who violates any of the provisions of this part,  
 23 rules or orders adopted under this part, or ~~permit~~ term, or  
 24 condition of a permit and any director, officer, or agent of  
 25 a corporation who willfully authorizes, orders, or carries

1 out a violation shall pay a civil penalty of not less than  
 2 \$100 or more than \$5,000 for the violation and an additional  
 3 civil penalty of not less than \$100 or more than \$5,000 for  
 4 each day during which a violation continues and may be  
 5 enjoined from continuing such violations as hereinafter  
 6 provided in this section. Any person or operator who fails  
 7 to correct a violation within the period permitted by law,  
 8 rule of the board or department, or order of the  
 9 commissioner shall be assessed a penalty of not less than  
 10 \$750 for each day during which such failure or violation  
 11 continues. The period permitted for correction of a  
 12 violation shall not, in the case of any review proceeding  
 13 under 82-4-251(6), end until entry of a final order  
 14 suspending the abatement requirements or until entry of an  
 15 order of court ordering suspension of the abatement  
 16 requirements.

17 (2) The department shall notify the person or operator  
 18 of the violation. The person or operator shall by filing a  
 19 written request within 20 days of receipt of the notice of  
 20 violation be entitled to a hearing on the issues of whether  
 21 the alleged violation has occurred and whether the penalty  
 22 proposed to be assessed is proper. The department shall  
 23 issue a statement of proposed penalty no more than 10 days  
 24 after notice of violation. After the hearing or after the  
 25 time for requesting a hearing has expired, the board shall

1 make findings of fact and shall issue a written decision as  
 2 to the occurrence of the violation and the amount of penalty  
 3 warranted and shall order the payment of a penalty in that  
 4 amount. The person or operator shall remit the amount of the  
 5 penalty within 30 days of the order. If the person or  
 6 operator wishes to obtain judicial review of the assessment,  
 7 he shall submit with the penalty a statement that the  
 8 penalty is being paid under protest and the department shall  
 9 hold the payment in escrow until judicial review is  
 10 complete. Any person or operator who fails to request and  
 11 submit testimony at the hearing provided for in this  
 12 subsection or who fails to pay the assessed penalty under  
 13 protest within 30 days of the order assessing the penalty  
 14 forfeits his right to seek judicial review of the violation  
 15 or penalty determinations. These penalties are recoverable  
 16 in any action brought in the name of the state of Montana by  
 17 the attorney general in the district court of the first  
 18 judicial district of this state, in and for the county of  
 19 Lewis and Clark, or the district having jurisdiction over  
 20 the defendant.

21 (3) The attorney general shall, upon request of the  
 22 commissioner, sue for the recovery of the penalties provided  
 23 for in this section and bring an action for a restraining  
 24 order or temporary or permanent injunction against an  
 25 operator or other person who:

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

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

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

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

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

13 (f) refuses to permit access to and copying of such  
14 records as the department determines to be necessary in  
15 carrying out the provisions of this part.

16 (4) Any relief granted by a court under subsection  
17 (3)(a) continues in effect until the completion or final  
18 termination of all proceedings for review of such under this  
19 part unless, prior thereto, the district court granting the  
20 relief sets it aside or modifies it.

21 (5) A person who violates any of the provisions of  
22 this part or any determination or order adopted under this  
23 part, or who willfully violates any permit condition issued  
24 under this part is guilty of a misdemeanor and shall be  
25 fined not less than \$500 and not more than \$10,000 or

1 imprisoned for not more than 1 year, or both. Each day on  
2 which the violation occurs constitutes a separate offense.

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

11 (7) Any person who except as permitted by law  
12 willfully resists, prevents, impedes, or interferes with the  
13 department or its agents in the performance of duties  
14 pursuant to this part shall be punished by a fine of not  
15 more than \$5,000 or by imprisonment for not more than 1  
16 year, or both.

17 (8) No employee of the department performing any  
18 function or duty under this part shall have a direct or  
19 indirect financial interest in any strip- or  
20 underground-coal-mining operation. Whoever knowingly  
21 violates the provisions of this subsection shall, upon  
22 conviction, be punished by a fine of not more than \$2,500 or  
23 by imprisonment of not more than 1 year, or both."

-End-

1 SENATE BILL NO. 244

2 INTRODUCED BY GRAHAM

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE MONTANA  
6 STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH  
7 THE FEDERAL STRIP MINE ACT AND CONDITIONS OF THE SECRETARY  
8 OF INTERIOR'S APPROVAL OF THE MONTANA PROGRAM; AMENDING  
9 SECTIONS 82-4-203, 82-4-221, 82-4-222, 82-4-251, AND  
10 82-4-254, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 82-4-203, MCA, is amended to read:

14 "82-4-203. Definitions. Unless the context requires  
15 otherwise, in this part the following definitions apply:

16 (1) "Abandoned" means an operation where no mineral is  
17 being produced and where the department determines that the  
18 operation will not continue or resume.

19 (2) "Alluvial valley floor" means the unconsolidated  
20 stream-laid deposits holding streams where water  
21 availability is sufficient for subirrigation or flood  
22 irrigation agricultural activities; but the term does not  
23 include upland areas which are generally overlain by a thin  
24 veneer of colluvial deposits composed chiefly of debris from  
25 sheet erosion, deposits by unconcentrated runoff or slope

1 wash, together with talus, other mass movement accumulation,  
2 and windblown deposits.

3 (3) "Aquifer" means any geologic formation or natural  
4 zone beneath the earth's surface that contains or stores  
5 water and transmits it from one point to another in  
6 quantities which permit or have the potential to permit  
7 economic development as a water source.

8 (4) "Area of land affected" means the area of land  
9 from which overburden is to be or has been removed and upon  
10 which the overburden is to be or has been deposited and  
11 includes all land overlying any tunnels, shafts, or other  
12 excavations used to extract the mineral, lands affected by  
13 the construction of new railroad loops and roads or the  
14 improvement or use of existing railroad loops and roads to  
15 gain access and to haul the mineral, processing facilities  
16 at or near the mine site or other mine associated  
17 facilities, waste deposition areas, treatment ponds, and any  
18 other surface or subsurface disturbance associated with  
19 strip mining or underground mining, and all activities  
20 necessary and incident to the reclamation of such  
21 operations.

22 (5) "Bench" means the ledge, shelf, table, or terrace  
23 formed in the contour method of strip mining.

24 (6) "Board" means the board of land commissioners  
25 provided for in Article X, section 4, of the constitution of

1 this state.

2 (7) "Coal conservation plan" means the planned course  
3 of conduct of a strip- or underground-mining operation to  
4 include plans for the removal and utilization of minable and  
5 marketable coal located within the area planned to be mined.

6 (8) "Commissioner" means the commissioner of state  
7 lands provided for in 2-15-3202.

8 (9) "Contour strip mining" means that strip-mining  
9 method commonly carried out in areas of rough and hilly  
10 topography in which the coal or mineral seam outcrops along  
11 the side of the slope and entrance is made to the seam by  
12 excavating a bench or table cut at and along the site of the  
13 seam outcropping with the excavated overburden commonly  
14 being cast down the slope below the mineral seam and the  
15 operating bench.

16 (10) "Degree" means from the horizontal and in each  
17 case is subject to a tolerance of 5% error.

18 (11) "Department" means the department of state lands  
19 provided for in Title 2, chapter 15, part 32.

20 (12) "Failure to conserve coal" means the nonremoval or  
21 nonutilization of ~~strippable~~ minable and marketable coal by  
22 an operation provided that the nonremoval or nonutilization  
23 of minable and marketable coal in accordance with  
24 reclamation standards established by the department shall  
25 not be considered failure to conserve coal.

1 (13) "Fill bench" means that portion of a bench or  
2 table which is formed by depositing overburden beyond or  
3 downslope from the cut section as formed in the contour  
4 method of strip mining.

5 (14) "Imminent danger to the health and safety of the  
6 public" means the existence of any condition or practice or  
7 any violation of a permit or other requirement of this part  
8 in a strip- or underground-coal-mining and reclamation  
9 operation that could reasonably be expected to cause  
10 substantial physical harm to persons outside the permit area  
11 before such condition, practice, or violation can be abated.  
12 A reasonable expectation of death or serious injury before  
13 abatement exists if a rational person, subjected to the same  
14 conditions or practices giving rise to the peril, would not  
15 expose himself or herself to the danger during the time  
16 necessary for abatement.

17 (15) "Marketable coal" means a minable coal that is  
18 economically feasible to mine and is fit for sale in the  
19 usual course of trade.

20 (16) "Method of operation" means the method or manner  
21 by which the cut, open pit, shaft, or excavation is made,  
22 the overburden is placed or handled, water is controlled,  
23 and other acts are performed by the operator in the process  
24 of uncovering and removing the minerals that affect the  
25 reclamation of the area of land affected.

1 (17) "Minable coal" means that coal which can be  
2 removed through strip- or underground-mining methods  
3 adaptable to the location that coal is being mined or is  
4 planned to be mined.

5 (18) "Mineral" means coal and uranium.

6 (19) "Operation" means all of the premises, facilities,  
7 railroad loops, roads, and equipment used in the process of  
8 producing and removing mineral from and reclaiming a  
9 designated strip-mine or underground-mine area and all  
10 activities, including excavation incident thereto, or  
11 prospecting for the purpose of determining the location,  
12 quality, or quantity of a natural mineral deposit.

13 (20) "Operator" means a person engaged in strip mining  
14 or underground mining who removes or intends to remove more  
15 than 10,000 cubic yards of mineral or overburden or a person  
16 engaged in coal mining who removes or intends to remove more  
17 than 250 tons of coal from the earth by mining within 12  
18 consecutive calendar months in any one location.

19 (21) "Overburden" means all of the earth and other  
20 materials which lie above a natural mineral deposit and also  
21 means such earth and other material after removal from their  
22 natural state in the process of mining.

23 (22) "Person" means a person, partnership, corporation,  
24 association, or other legal entity or any political  
25 subdivision or agency of the state or federal government.

1 (23) "Prime farmland" means that land previously  
2 prescribed by the United States secretary of agriculture on  
3 the basis of such factors as moisture availability,  
4 temperature regime, chemical balance, permeability,  
5 surface-layer composition, susceptibility to flooding, and  
6 erosion characteristics and which historically has been used  
7 for intensive agricultural purposes and as defined in the  
8 Federal Register.

9 (24) "Prospecting" means the removal of overburden,  
10 core drilling, construction of roads, or any other  
11 disturbance of the surface for the purpose of determining  
12 the location, quantity, or quality of a natural mineral  
13 deposit.

14 (25) "Reclamation" means backfilling, subsidence  
15 stabilization, water control, grading, highwall reduction,  
16 topsoiling, planting, revegetation, and other work to  
17 restore an area of land affected by strip mining or  
18 underground mining under a plan approved by the department.

19 (26) "Strip mining" means any part of the process  
20 followed in the production of mineral by the opencut method,  
21 including mining by the auger method or any similar method  
22 which penetrates a mineral deposit and removes mineral  
23 directly through a series of openings made by a machine  
24 which enters the deposit from a surface excavation or any  
25 other mining method or process in which the strata or

1 overburden is removed or displaced in order to recover the  
2 mineral.

3 (27) "Subsidence" means a vertically downward movement  
4 of overburden materials resulting from the actual mining of  
5 an underlying mineral deposit or associated underground  
6 excavations.

7 (28) "Surface owner" means a person who holds legal or  
8 equitable title to the land surface and whose principal  
9 place of residence is on the land or who personally conducts  
10 farming or ranching operations upon a farm or ranch unit to  
11 be directly affected by strip-mining operations or who  
12 receives directly a significant portion of his income, if  
13 any, from such farming or ranching operations or the state  
14 of Montana where the state owns the surface.

15 (29) "Topsoil" means the unconsolidated mineral matter  
16 naturally present on the surface of the earth that has been  
17 subjected to and influenced by genetic and environmental  
18 factors of parent material, climate, macro- and  
19 microorganisms, and topography, all acting over a period of  
20 time, and that is necessary for the growth and regeneration  
21 of vegetation on the surface of the earth.

22 (30) "Underground mining" means any part of the process  
23 followed in the production of a mineral such that vertical  
24 or horizontal shafts, slopes, drifts, or incline planes  
25 connected with excavations penetrating the mineral stratum

1 or strata are utilized and includes mining by in situ  
2 methods.

3 (31) "Unwarranted failure to comply" means the failure  
4 of a permittee to prevent the occurrence of any violation of  
5 his permit or any requirement of this part due to  
6 indifference, lack of diligence, or lack of reasonable care,  
7 or the failure to abate any violation of such permit or this  
8 part due to indifference, lack of diligence, or lack of  
9 reasonable care.

10 (32) "Waiver" means any document which demonstrates the  
11 clear intention to release rights in the surface estate for  
12 the purpose of permitting the extraction of subsurface  
13 minerals by strip-mining methods.

14 (33) "Written consent" means such written statement as  
15 is executed by the owner of the surface estate, upon a form  
16 approved by the department, demonstrating that such owner  
17 consents to entry of an operator for the purpose of  
18 conducting strip-mining operations and that such consent is  
19 given only to such strip-mining and reclamation operations  
20 which fully comply with the terms and requirements of this  
21 part."

22 Section 2. Section 82-4-221, MCA, is amended to read:  
23 "82-4-221. Mining permit required. (1) An operator may  
24 not engage in strip or underground mining without having  
25 first obtained from the department a permit designating the



1 area of land affected by the operation, which designation  
 2 shall include all lands reasonably anticipated to be mined  
 3 or otherwise affected during the applicable 5-year period.  
 4 The permit shall authorize the operator to engage in strip  
 5 or underground mining upon the area of land described in his  
 6 application and designated in the permit for a period of 5  
 7 years from the date of its issuance. Such permit shall be  
 8 renewable upon each 5-year anniversary thereafter upon  
 9 application to the department at least 30 120 but not more  
 10 than 60 150 days prior to the renewal date so long as the  
 11 operator is in compliance with the requirements of this  
 12 part, the rules hereunder, and the reclamation plan provided  
 13 for in 82-4-231 and agrees to comply with all applicable  
 14 laws and rules in effect at the time of renewal. Such  
 15 renewal shall further be subject to the denial provisions of  
 16 82-4-227, 82-4-234, and 82-4-251. On application for  
 17 renewal, the burden shall be on the opponents of renewal to  
 18 demonstrate that the permit should not be renewed. A permit  
 19 shall terminate if the permittee has not commenced strip- or  
 20 underground-mining operations pursuant to the permit within  
 21 3 years of the issuance of the permit. However, the  
 22 department may grant reasonable extensions of time upon a  
 23 showing that such extensions are necessary by reason of  
 24 litigation precluding the commencement or threatening  
 25 substantial economic loss to the permittee or by reason of

1 conditions beyond the control and without the fault or  
 2 negligence of the permittee. With respect to coal to be  
 3 mined for use in a synthetic fuel facility or specific major  
 4 electric generating facility, the permittee is considered to  
 5 have commenced strip- or underground-mining operations at  
 6 such time as the construction of the synthetic or generating  
 7 facility is initiated.

8 (2) As a condition to the issuance of every permit  
 9 issued under this part, an authorized representative of the  
 10 department shall, without advance notice, have the right of  
 11 entry to, upon, or through a strip- or underground-mining  
 12 operation or any premises in which any records required to  
 13 be maintained under this part are located and may, at  
 14 reasonable times and without delay, have access to copy any  
 15 records and inspect any monitoring equipment or method of  
 16 operation required under this part. When an inspection  
 17 results from information provided to the department by any  
 18 person, the department shall notify that person when the  
 19 inspection is proposed to be made and that person shall be  
 20 allowed to accompany the inspector during the inspection.

21 (3) During the term of the permit, the permittee may  
 22 submit an application for a revision of the permit, together  
 23 with a revised reclamation plan, to the department. The  
 24 department may not approve the application unless it finds  
 25 that reclamation in accordance with this part would be

1 accomplished. Application for minor revision shall be  
 2 approved or disapproved within a reasonable time, depending  
 3 on the scope and complexity, but in no case longer than 120  
 4 days. Applications for major revisions are subject to all  
 5 the permit application requirements and procedures.\*

6 Section 3. Section 82-4-222, MCA, is amended to read:

7 "82-4-222. Permit application. (1) An operator  
 8 desiring a permit shall file an application which shall  
 9 contain a complete and detailed plan for the mining,  
 10 reclamation, revegetation, and rehabilitation of the land  
 11 and water to be affected by the operation. Such plan shall  
 12 reflect thorough advance investigation and study by the  
 13 operator and shall include all known or readily discoverable  
 14 past and present uses of the land and water to be affected  
 15 and the approximate periods of such use and shall state:

16 (a) the location and area of land to be affected by  
 17 the operation, with a description of access to the area from  
 18 the nearest public highways;

19 (b) the names and addresses of the owners of record of  
 20 the surface of the area of land to be affected by the permit  
 21 and the owners of record of all surface area within one-half  
 22 mile of any part of the affected area;

23 (c) the names and addresses of the present owners of  
 24 record of all subsurface minerals in the land to be  
 25 affected;

1 (d) the source of the applicant's legal right to mine  
 2 the mineral on the land affected by the permit;

3 (e) the permanent and temporary post-office addresses  
 4 of the applicant;

5 (f) whether the applicant or any person associated  
 6 with the applicant holds or has held any other permits under  
 7 this part and an identification of those permits;

8 (g) whether the applicant is in compliance with  
 9 82-4-251 and, if known, whether every officer, partner,  
 10 director, or any individual owning of record or  
 11 beneficially, alone or with associates, 10% or more of any  
 12 class of stock of the applicant is subject to any of the  
 13 provisions of 82-4-251 and he shall so certify and whether  
 14 any of the foregoing parties or persons have ever had a  
 15 strip-mining or underground-mining license or permit issued  
 16 by any other state or federal agency revoked or have ever  
 17 forfeited a strip-mining or underground-mining bond or a  
 18 security deposited in lieu of a bond and, if so, a detailed  
 19 explanation of the facts involved in each case must be  
 20 attached;

21 (h) the names and addresses of any persons who are  
 22 engaged in strip or underground-mining activities on behalf  
 23 of the applicant;

24 (i) the annual rainfall and the direction and average  
 25 velocity of the prevailing winds in the area where the

1 applicant has requested a permit;

2 (j) the results of any test borings or core samplings  
3 which the applicant or his agent has conducted on the land  
4 to be affected, including the nature and the depth of the  
5 various strata or overburden and topsoil, the quantities and  
6 location of subsurface water and its quality, the thickness  
7 of any mineral seam, an analysis of the chemical properties  
8 of such minerals, including the acidity, sulphur content,  
9 and trace mineral elements of any coal seam, as well as the  
10 British thermal unit (Btu) content of such seam, and an  
11 analysis of the overburden, including topsoil. If test  
12 borings or core samplings are submitted, each permit  
13 application shall contain two copies each of two sets of  
14 geologic cross sections accurately depicting the known  
15 geologic makeup beneath the surface of the affected land.  
16 Each set shall depict subsurface conditions at such  
17 intervals as the department requires across the surface and  
18 shall run at a 90-degree angle to the other set. The  
19 department may not require intervals of less than 500 feet.  
20 Each cross section shall depict the thickness and geologic  
21 character of all known strata beginning with the topsoil. In  
22 addition, each application for an underground-mining permit  
23 shall be accompanied by cross sections and maps showing the  
24 proposed underground locations of all shafts, entries, and  
25 haulageways or other excavations to be excavated during the

1 permit period. These cross sections shall also include all  
2 existing shafts, entries, and haulageways.

3 (k) the name and date of a daily newspaper of general  
4 circulation within the county in which the applicant will  
5 prominently publish at least once a week for 4 successive  
6 weeks after submission of the application an announcement of  
7 his application for a strip-mining or underground-mining  
8 permit and a detailed description of the area of land to be  
9 affected should a permit be granted;

10 (l) a determination of the probable hydrologic  
11 consequences of coal mining and reclamation operations, both  
12 on and off the mine site, with respect to the hydrologic  
13 regime, quantity and quality of water in surface- and  
14 ground-water systems, including the dissolved and suspended  
15 solids under seasonal flow conditions and the collection of  
16 sufficient data for the mine site and surrounding areas, so  
17 that cumulative impacts of all anticipated mining in the  
18 area upon the hydrology of the area and particularly upon  
19 water availability can be made. However, this determination  
20 is not required until such time as hydrologic information on  
21 the general area prior to mining is made available from an  
22 appropriate federal or state agency. The permit may not be  
23 approved until such information is available and is  
24 incorporated into the application;

25 (m) a coal conservation plan; and

1 (n) such other or further information as the  
2 department may require.

3 (2) The application for a permit shall be accompanied  
4 by two copies of all maps meeting the requirements of the  
5 subsections below. The maps shall:

6 (a) identify the area to correspond with the  
7 application;

8 (b) show any adjacent deep mining or surface mining  
9 and the boundaries of surface properties and names of owners  
10 of record of the affected area and within 1,000 feet of any  
11 part of the affected area;

12 (c) show the names and locations of all streams,  
13 creeks, or other bodies of water, roads, buildings,  
14 cemeteries, oil and gas wells, and utility lines on the area  
15 of land affected and within 1,000 feet of such area;

16 (d) show by appropriate markings the boundaries of the  
17 area of land affected, any cropline of the seam or deposit  
18 of mineral to be mined, and the total number of acres  
19 involved in the area of land affected;

20 (e) show the date on which the map was prepared and  
21 the north point;

22 (f) show the final surface and underground water  
23 drainage plan on and away from the area of land affected.  
24 This plan shall indicate the directional and volume flow of  
25 water, constructed drainways, natural waterways used for

1 drainage, and the streams or tributaries receiving the  
2 discharge.

3 (g) show the proposed location of waste or refuse  
4 area;

5 (h) show the proposed location of temporary subsoil  
6 and topsoil storage area;

7 (i) show the proposed location of all facilities;

8 (j) show the location of test boring holes;

9 (k) show the surface location lines of any geologic  
10 cross sections which have been submitted;

11 (l) show a listing of plant varieties encountered in  
12 the area to be affected and their relative dominance in the  
13 area, together with an enumeration of tree varieties and the  
14 approximate number of each variety occurring per acre on the  
15 area to be affected, and the locations generally of the  
16 various kinds and varieties of plants, including but not  
17 limited to grasses, shrubs, legumes, forbs, and trees;

18 (m) be certified as follows: "I, the undersigned,  
19 hereby certify that this map is correct and shows to the  
20 best of my knowledge and belief all the information required  
21 by the mining laws of this state." The certification shall  
22 be signed and notarized. The department may reject a map as  
23 incomplete if its accuracy is not so attested.

24 (n) contain such other or further information as the  
25 department may require.

1 (3) If the department finds that the probable total  
 2 annual production at all locations of any strip- or  
 3 underground-coal-mining operation applied for will not  
 4 exceed 100,000 tons, any determination of probable  
 5 hydrologic consequences that the department requires and the  
 6 statement of result of test borings or core samplings shall,  
 7 upon written request of the operator, be performed by a  
 8 qualified public or private laboratory designated by the  
 9 department. The department shall assume the cost of the  
 10 determination and statement to the extent that it has  
 11 received federal funds for this purpose.

12 (4) In addition to the information and maps required  
 13 above, each application for a permit shall be accompanied by  
 14 detailed plans or proposals showing the method of operation,  
 15 the manner, time or distance, and estimated cost for  
 16 backfilling, subsidence stabilization, water control,  
 17 grading work, highwall reduction, topsoiling, planting,  
 18 revegetating, and a reclamation plan for the area affected  
 19 by the operation, which proposals shall meet the  
 20 requirements of this part and rules adopted under this part.  
 21 The reclamation plan shall address the life of the operation  
 22 and indicate the size, sequence, and the timing of the  
 23 subareas for which it is anticipated that individual permits  
 24 will be sought.

25 (5) Each applicant for a coal mining permit shall

1 submit as part of the application a certificate issued by an  
 2 insurance company authorized to do business in the state  
 3 certifying that the applicant has in force for the strip- or  
 4 underground-mining and reclamation operations for which the  
 5 permit is sought a public liability insurance policy, or  
 6 evidence that the applicant has satisfied other state or  
 7 federal self-insurance requirements. This policy shall  
 8 provide for personal injury and property damage protection  
 9 in an amount adequate to compensate any persons damaged as a  
 10 result of strip or underground-coal-mining and reclamation  
 11 operations, including use of explosives, and entitled to  
 12 compensation under applicable provisions of state law. The  
 13 permittee must maintain the policy in full force and effect  
 14 during the term of the permit and any renewal until all  
 15 reclamation operations have been completed.

16 (6) Each applicant for a strip-mining or  
 17 underground-mining reclamation permit shall file a copy of  
 18 his application for public inspection with the clerk and  
 19 recorder at the courthouse of the county where the major  
 20 portion of mining is proposed to occur."

21 Section 4. Section 82-4-251, MCA, is amended to read:  
 22 "82-4-251. Noncompliance -- suspension of permits. (1)  
 23 The commissioner or an authorized representative of the  
 24 department shall, if he determines on the basis of an  
 25 inspection that any condition or practices exist or that the

1 permittee is in violation of any requirement of this part or  
 2 any permit condition required by the part that creates an  
 3 imminent danger to the health or safety of the public or is  
 4 causing or can reasonably be expected to cause significant  
 5 and imminent environmental harm to land, air, or water  
 6 resources, immediately order cessation of ~~strip--or~~  
 7 ~~underground-coal-mining--and--reclamation--operations~~ the  
 8 operation or the portion thereof relevant to the condition,  
 9 practice, or violation. The cessation order remains in  
 10 effect until the commissioner or his authorized  
 11 representative determines that the condition, practice, or  
 12 violation has been abated or until modified, vacated, or  
 13 terminated by the commissioner or his authorized  
 14 representative pursuant to subsection (5). If the  
 15 commissioner or his authorized representative finds that the  
 16 ordered cessation of ~~strip--or--underground-coal-mining--and~~  
 17 ~~reclamation--operations~~ the operation, or any portion  
 18 thereof, will not completely abate the imminent danger to  
 19 the health or safety of the public or the significant and  
 20 imminent environmental harm to land, air, or water  
 21 resources, he shall in addition to the cessation order  
 22 impose affirmative obligations ~~on-the-operator~~ requiring him  
 23 to take whatever steps the commissioner or his authorized  
 24 representative considers necessary to abate the imminent  
 25 danger or the significant environmental harm.

1 (2) When, on the basis of an inspection, the  
 2 department determines that any permittee is in violation of  
 3 any requirement of this part or any permit condition  
 4 required by this part which does not create an imminent  
 5 danger to the health or safety of the public or cannot be  
 6 reasonably expected to cause significant and imminent  
 7 environmental harm to land, air, or water resources, the  
 8 commissioner or authorized representative shall issue a  
 9 notice to the permittee or his agent fixing a reasonable  
 10 time, not exceeding 90 days, for the abatement of the  
 11 violation and providing opportunity for public hearing. If,  
 12 upon expiration of the period of time as originally fixed or  
 13 subsequently extended, for good cause shown and upon the  
 14 written finding of the commissioner or his authorized  
 15 representative, the commissioner or his authorized  
 16 representative finds that the violation has not been abated,  
 17 he shall immediately order a cessation of ~~strip--or~~  
 18 ~~underground-mining--and--reclamation-operations~~ the operation  
 19 or the portion thereof relevant to the violation. Such  
 20 cessation order remains in effect until the commissioner or  
 21 his authorized representative determines that the violation  
 22 has been abated or until modified, vacated, or terminated by  
 23 the commissioner or his authorized representative pursuant  
 24 to subsection (5). In the order of cessation issued under  
 25 this subsection, the commissioner shall determine the steps

1 necessary to abate the violation in the most expeditious  
2 manner possible and shall include the necessary measures in  
3 the order.

4 (3) When, on the basis of an inspection, the  
5 commissioner or his authorized representative determines  
6 that a pattern of violations of any requirements of this  
7 part or any permit conditions required by this part exists  
8 or has existed and if the commissioner or his authorized  
9 representative also finds that such violations are caused by  
10 the unwarranted failure of the permittee to comply with any  
11 requirements of this part or any permit conditions or that  
12 such violations are willfully caused by the permittee, the  
13 commissioner or his authorized representative shall  
14 forthwith issue an order to the permittee to show cause as  
15 to why the permit should not be suspended or revoked and  
16 shall provide opportunity for a public hearing. If a hearing  
17 is requested, the commissioner shall inform all interested  
18 parties of the time and place of the hearing. Upon the  
19 permittee's failure to show cause as to why the permit  
20 should not be suspended or revoked, the commissioner or his  
21 authorized representative shall forthwith suspend or the  
22 board shall revoke the permit. When a permit has been  
23 revoked, the board may order the performance bond forfeited.

24 (4) Any additional permits held by an operator whose  
25 mining permit has been revoked shall be suspended and the

1 operator is not eligible to receive another permit or to  
2 have the suspended permits reinstated until he has complied  
3 with all the requirements of this part in respect to former  
4 permits issued him. An operator who has forfeited a bond is  
5 not eligible to receive another permit unless the land for  
6 which the bond was forfeited has been reclaimed without cost  
7 to the state or the operator has paid into the reclamation  
8 account a sum together with the value of the bond the board  
9 finds adequate to reclaim the lands. The department may not  
10 issue any additional permits to an operator who has  
11 repeatedly been in noncompliance or violation of this part.

12 (5) Notices and orders issued pursuant to this section  
13 shall set forth with reasonable specificity the nature of  
14 the violation and the remedial action required, the period  
15 of time established for abatement, and a reasonable  
16 description of the portion of the ~~strip~~ or  
17 ~~underground-mining--and--reclamation~~ operation to which the  
18 notice or order applies. Each notice or order issued under  
19 this section shall be given promptly to the permittee or his  
20 agent by the department or the commissioner or his  
21 authorized representative who issues the notice or order.  
22 All such notices and orders must be in writing and be signed  
23 by the authorized representatives. Any notice or order  
24 issued pursuant to this section may be modified, vacated, or  
25 terminated by the commissioner or his authorized

1 representative, provided that any notice or order issued  
 2 pursuant to this section that requires cessation of mining  
 3 by the operator expires within 30 days of actual notice to  
 4 the operator unless a public hearing is held at the site or  
 5 within such reasonable proximity to the site that any  
 6 viewings of the site can be conducted during the course of  
 7 public hearing.

8 (6) An operator A person issued a notice or an order  
 9 of abatement cessation pursuant to this section or any  
 10 person having an interest that is or may be adversely  
 11 affected by an order or by modification, vacation, or  
 12 termination of an order may apply to the department for  
 13 review of that order within 30 days of its issuance or  
 14 within 30 days of its modification, vacation, or  
 15 termination. Upon receipt of the application, the department  
 16 shall make an investigation. The investigation shall provide  
 17 an opportunity for public hearing at the request of the  
 18 applicant or the person having an interest who is or may be  
 19 adversely affected to enable the applicant or the person to  
 20 present information relating to the issuance and continuance  
 21 of the notice or order or the modification, vacation, or  
 22 termination of it. The filing of an application for review  
 23 under this subsection may not operate as a stay of any order  
 24 or notice. The department shall make findings of fact and  
 25 issue a written decision incorporating an order vacating,

1 affirming, modifying, or terminating the order.

2 (7) Whenever an order is issued under this section or  
 3 as the result of any administrative proceeding under this  
 4 part, at the request of any person, a sum equal to the  
 5 aggregate amount of all costs, expenses, and attorney fees  
 6 as determined by the department to have been reasonably  
 7 incurred by such person for or in connection with his  
 8 participation in such proceedings, including any judicial  
 9 review of agency actions, may be assessed against either  
 10 party as the court, resulting from judicial review, or the  
 11 department, resulting from administrative proceedings,  
 12 considers proper.

13 (8) In order to protect the stability of the land, the  
 14 commissioner or his authorized representative shall order  
 15 cessation of underground coal mining under urbanized areas,  
 16 cities, towns, and communities and adjacent to industrial or  
 17 commercial buildings, major impoundments, or permanent  
 18 streams if he finds imminent danger to inhabitants of the  
 19 urbanized areas, cities, towns, and communities."

20 Section 5. Section 82-4-254, MCA, is amended to read:  
 21 "82-4-254. Violation -- penalty. (1) A person or  
 22 operator who violates any of the provisions of this part,  
 23 rules or orders adopted under this part, or permit, term, or  
 24 condition of a permit and any director, officer, or agent of  
 25 a corporation who willfully authorizes, orders, or carries



1 out a violation shall pay a civil penalty of not less than  
 2 \$100 or more than \$5,000 for the violation and an additional  
 3 civil penalty of not less than \$100 or more than \$5,000 for  
 4 each day during which a violation continues and may be  
 5 enjoined from continuing such violations as hereinafter  
 6 provided in this section. Any person or operator who fails  
 7 to correct a violation within the period permitted by law,  
 8 rule of the board or department, or order of the  
 9 commissioner shall be assessed a penalty of not less than  
 10 \$750 for each day during which such failure or violation  
 11 continues. The period permitted for correction of a  
 12 violation shall not, in the case of any review proceeding  
 13 under 82-4-251(6), end until entry of a final order  
 14 suspending the abatement requirements or until entry of an  
 15 order of court ordering suspension of the abatement  
 16 requirements.

17 (2) The department shall notify the person or operator  
 18 of the violation. The person or operator shall by filing a  
 19 written request within 20 days of receipt of the notice of  
 20 violation be entitled to a hearing on the issues of whether  
 21 the alleged violation has occurred and whether the penalty  
 22 proposed to be assessed is proper. The department shall  
 23 issue a statement of proposed penalty no more than 10 days  
 24 after notice of violation. After the hearing or after the  
 25 time for requesting a hearing has expired, the board shall

1 make findings of fact and shall issue a written decision as  
 2 to the occurrence of the violation and the amount of penalty  
 3 warranted and shall order the payment of a penalty in that  
 4 amount. The person or operator shall remit the amount of the  
 5 penalty within 30 days of the order. If the person or  
 6 operator wishes to obtain judicial review of the assessment,  
 7 he shall submit with the penalty a statement that the  
 8 penalty is being paid under protest and the department shall  
 9 hold the payment in escrow until judicial review is  
 10 complete. Any person or operator who fails to request and  
 11 submit testimony at the hearing provided for in this  
 12 subsection or who fails to pay the assessed penalty under  
 13 protest within 30 days of the order assessing the penalty  
 14 forfeits his right to seek judicial review of the violation  
 15 or penalty determinations. These penalties are recoverable  
 16 in any action brought in the name of the state of Montana by  
 17 the attorney general in the district court of the first  
 18 judicial district of this state, in and for the county of  
 19 Lewis and Clark, or the district having jurisdiction over  
 20 the defendant.

21 (3) The attorney general shall, upon request of the  
 22 commissioner, sue for the recovery of the penalties provided  
 23 for in this section and bring an action for a restraining  
 24 order or temporary or permanent injunction against an  
 25 operator or other person who:

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

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

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

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

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

13 (f) refuses to permit access to and copying of such  
14 records as the department determines to be necessary in  
15 carrying out the provisions of this part.

16 (4) Any relief granted by a court under subsection  
17 (3)(a) continues in effect until the completion or final  
18 termination of all proceedings for review of such under this  
19 part unless, prior thereto, the district court granting the  
20 relief sets it aside or modifies it.

21 (5) A person who violates any of the provisions of  
22 this part or any determination or order adopted under this  
23 part, or who willfully violates any permit condition issued  
24 under this part is guilty of a misdemeanor and shall be  
25 fined not less than \$500 and not more than \$10,000 or

1 imprisoned for not more than 1 year, or both. Each day on  
2 which the violation occurs constitutes a separate offense.

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

11 (7) Any person who except as permitted by law  
12 willfully resists, prevents, impedes, or interferes with the  
13 department or its agents in the performance of duties  
14 pursuant to this part shall be punished by a fine of not  
15 more than \$5,000 or by imprisonment for not more than 1  
16 year, or both.

17 (8) No employee of the department performing any  
18 function or duty under this part shall have a direct or  
19 indirect financial interest in any strip- or  
20 underground-coal-mining operation. Whoever knowingly  
21 violates the provisions of this subsection shall, upon  
22 conviction, be punished by a fine of not more than \$2,500 or  
23 by imprisonment of not more than 1 year, or both."

-End-