HOUSE BILL NO. 784

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INTRODUCED BY HOLLIDAY, HALLIGAN

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

IN THE HOUSE

February	11,	1985		Introduced and referred to Committee on Natural Resources.
February	16,	1985		Committee recommend bill do pass. Report adopted.
				Bill printed and placed on members' desks.
February	18,	1985		Second reading, do pass as amended.
February	19,	1985		Correctly engrossed.
February	20,	1985		Third reading, passed.
				Transmitted to Senate.
			IN TH	E SENATE
February	22,	1985		Introduced and referred to Committee on Natural Resources.
March 19,	198	5		Committee recommend bill be concurred in. Report adopted.
March 23,	198	35		Second reading, concurred in.
March 26,	198	35		Third reading, concurred in. Ayes, 49; Noes, 0.
				Returned to House.

IN THE HOUSE

March 27, 1985

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Received from Senate. Sent to enrolling. Reported correctly enrolled.

HB 784

HOUSE BILL NO. 784 1 2 BY REQUEST OF THE DEPARTMENT OF STATE LANDS 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE 5 STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING 6 TIME FRAMES; AMENDING SECTION 82-4-231, MCA." 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 Section 1. Section 82-4-231, MCA, is amended to read: 10 "82-4-231. Submission of and action on reclamation 11 plan. (1) As rapidly, completely, and effectively as the 12 most modern technology and the most advanced state of the 13 art will allow, each operator granted a permit under this 14 part shall reclaim and revegetate the land affected by his 15 operation, except that underground tunnels, shafts, or other 16 subsurface excavations need not be revegetated. Under the 17 provisions of this part and rules adopted by the board, an 18 operator shall prepare and carry out a method of operation, 19 of grading, backfilling, highwall reduction, plan 20 subsidence stabilization, water control, topsoiling, and a 21 reclamation plan for the area of land affected by his 22 operation. In developing a method of operation and plans of 23 backfilling, subsidence stabilization, water control, 24 grading, highwall reduction, topsoiling, and reclamation, 25



all measures shall be taken to eliminate damages to 1 landowners and members of the public, their real and 2 personal property, public roads, streams, and all other 3 public property from soil erosion, subsidence, landslides, 4 water pollution, and hazards dangerous to life and property. 5 6 (2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this 7 section and 82-4-232 through 82-4-234, as amended, and the 8 9 steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety 10 11 standards. 12 (3) The application for permit or major revision of a

13 permit, which shall contain the reclamation plan, shall be 14 submitted to the department.

(4) The department shall determine whether the 15 16 application is administratively complete. An application is administratively complete if it contains information 17 18 addressing each application requirement in 82-4-222 and the rules implementing that section and all information 19 necessary to initiate processing and public review. The 20 21 department shall notify the applicant in writing of its 22 determination no later than 90 days after submittal of the application. If the department determines that the 23 24 application is not administratively complete, it shall 25 specify in the notice those items which the application must INTRODUCED BILL -2-

address. The application shall be presumed administratively 2 complete as to those requirements not specified in the 3 notice. 4 (5) If the department determines that an environmental 5 impact statement on the application is required, it shall

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6 notify the applicant in writing at the same time it gives 7 the applicant notice pursuant to subsection (4).

8 (6) After the applicant receives notice that the 9 application is administratively complete, he shall publish 10 notice of filing of the application once a week for 4 11 consecutive weeks in a newspaper of general circulation in 12 the locality of the proposed operation. The department shall 13 notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies 14 15 in the locality in which the proposed mining will take place 16 of the application and provide a reasonable time for them to 17 submit written comments. Any person having an interest which 18 is or may be adversely affected or the officer or head of 19 any federal, state, or local governmental agency or 20 authority shall have the right to file written objections to 21 the proposed initial or revised application for permit or 22 major revision within 30 days of the applicant's published 23 notice. If written objections are filed and an objector 24 requests an informal conference, the department shall hold 25 an informal conference in the locality of the proposed

1 operation after--adequate--public--notice within 30 days of receipt of the request. The department shall notify the 2 3 applicant and all parties to the informal conference of its 4 decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the 5 applicant upon request by any party to the administrative 6 7 proceeding for access to the proposed mining area for the 8 purpose of gathering information relevant to the proceeding. 9 (7) The filing of written objections or a request for 10 an informal conference shall not preclude the department 11 from proceeding with its review of the application as 12 specified in subsection (8). The-department-shall-notify-the 13 applicant--by--certified--or-registered-mail-within-120-days after-receipt-of-the-complete-application-if-it-is-or-is-not 14 15 acceptable -- The--department--may--extend--the--120--days--an 16 additional--120--days--upon--notification-of-the-operator-in 17 writing--The-department-shall-make-written-findings-granting 18 or-denying-the-permit-or-revision-application-in-whole-or-in 19 part--if-the-application-is-not-acceptable---the--department shall-set-forth-the-reasons-why-it-is-not-acceptable;-and-it 20 21 may--propose--modifications,--delete--areas,--or--reject-the 22 entire-application;-A-landowner;--operator;--of--any--person 23 with-an-interest-that-is-or-may-be-adversely-affected-may-by 24 written--notice--request-a-hearing-by-the-board--The-hearing 25 shall-be-held-within-30-days-of-the-request---No-person--who

-3-

1 presided--at--the--informal-conference-may-either-preside-at the-hearing-or-participate--in--the--decision--thereon---For 2 3 purposes---of---the---hearing;--the--board--may--order--site 4 inspections-of-the-area-pertinent-to--the--application---The 5 board--shall--notify--the--person-by-certified-or-registered 6 mail-and-all-other-persons-by-regular-mail--within--20--days 7 after--the--hearing--of-its-decision--Every-reclamation-plan 8 shall-be-subject-to-annual-review-and-modification+

(8) (a) The department shall 9 review each 10 administratively complete application and determine the acceptability of the application. During the review, the 11 12 department may propose modifications to the application or 13 delete areas from the application in accordance with the requirements of 82-4-228. A complete application is 14 considered acceptable when the application is in compliance 15 16 with all of the applicable requirements of this part and the 17 regulatory program pursuant to this part.

18 (b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

25 (c) If an environmental impact statement is determined

to be necessary prior to making a permit decision, the 1 2 department shall complete and publish the final environmental impact statement within 365 days of the date 3 of notice provided pursuant to subsection (5). 4 (d) Within 120 days after it determines that an 5 6 application is administratively complete, the department notify the applicant in writing whether the 7 shall application is or is not acceptable. If the application is 8 not acceptable, the department shall set forth the reasons 9 10 why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items 11 not specified as unacceptable in the department's 12 13 notification are presumed to be acceptable. If the applicant revises the application in response to a notice of 14 unacceptability, the department shall review the revised 15 16 application and notify the applicant in writing within 120 days of the date of receipt whether the revised application 17 is acceptable. If the revision constitutes a significant 18 19 modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative 20 completeness determination. 21 22 (e) When the application is determined to be acceptable, the department shall publish notice of its 23 determination once a week for 2 consecutive weeks in a 24 25 newspaper of general circulation in the locality of the

-5-

1	proposed operation. Any person having an interest that is or
2	may be adversely affected may file a written objection to
3	the determination within 10 days of the department's last
4	published notice. If a written objection is filed and an
5	objector requests an informal conference, the department
б	shall hold an informal conference in the locality of the
7	proposed operation within 20 days of receipt of the request.
8	The department shall notify the applicant and all parties to
9	the informal conference of its decision and the reasons
10	therefor within 10 days of the informal conference.
11	(f) The department shall prepare written findings
12	granting or denying the permit or major revision application
13	in whole or in part no later than 45 days from the date the
14	application is determined acceptable or from the publication
15	of the final environmental impact statement, whichever
16	occurs later. However, if lands subject to the federal lands
17	program are included in the application for permit or major
18	revision, the department shall prepare and submit written
19	findings to the federal regulatory authority. If the
20	department's decision is to grant the permit, the department
21	shall issue the permit on the date of its written finding
22	or, if any federal concurrence is necessary, on the date
23	when such concurrence is obtained. If the application is
24	denied, specific reasons for the denial must be set forth in
25	the written notification to the applicant.

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1	(g) If the department fails to act within the times
2	specified in this subsection (8), it shall immediately
3	notify the board in writing of its failure to comply and the
4	reasons for the failure to comply.
5	(9) The applicant, a landowner, or any person with an
6	interest that is or may be adversely affected by the
· · .	department's permit decision may within 30 days of that
8	decision submit a written notice requesting a hearing by the
9	board. The notice must contain the grounds upon which the
10	requester contends that the decision is in error. The
11	hearing shall be held within 30 days of the request. For
12	purposes of a hearing, the board may order site inspections
13	of the area pertinent to the application. The board shall
14	within 20 days of the hearing notify the person who
15	requested the hearing, by certified mail, and all other
16	persons, by regular mail, of the findings and decisions. No
17	person who presided at the informal conference may either
18	preside at the hearing or participate in the decision
19	thereon.
20	<pre>(3)(10) In addition to the method of operation,</pre>
21	grading, backfilling, subsidence stabilization, water
22	control, highwall reduction, topsoiling, and reclamation
23	requirements of this part and rules adopted under this part,
24	the operator, consistent with the directives of subsection
25	(1) of this section, shall:

LC 1344/01

(a) bury under adequate fill all toxic materials,
 shale, mineral, or any other material determined by the
 department to be acid producing, toxic, undesirable, or
 creating a hazard;

5 (b) as directed by rules seal off tunnels, shafts, or 6 other openings or any breakthrough of water creating a 7 hazard;

8 (c) impound, drain, or treat all runoff or underground 9 mine waters so as to reduce soil erosion, damage to grazing 10 and agricultural lands, and pollution of surface and 11 subsurface waters;

12 (d) remove or bury all metal, lumber, and other refuse13 resulting from the operation;

(e) use explosives in connection with the operation 14 only in accordance with department regulations designed to 15 minimize noise, damage to adjacent lands, and water 16 pollution and ensure public safety and for other purposes; 17 (f) adopt measures to prevent land subsidence unless 18 the board approves a plan for inducing subsidence into an 19 abandoned operation in a predictable and controlled manner 20 with measures for grading, topsoiling, and revegetating the 21 subsided land surface. In order for a controlled subsidence 22 plan to be approved, the applicant must show that subsidence 23 will not cause a direct or indirect hazard to any public or 24 private buildings, roads, facilities, or use areas, 25

constitute a hazard to human life or health, or constitute a
 hazard to domestic livestock or to a viable agricultural
 operation, or violate any other restrictions the board may
 consider necessary.

5 (g) stockpile and protect from erosion all mining and 6 processing wastes until these wastes can be disposed of 7 according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as 9 possible back into the mine voids upon abandonment in such 10 manner as to prevent or minimize land subsidence. The 11 remaining waste material shall be disposed of as provided by 12 this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or
other openings between the surface and underground mine
workings when no longer needed;

16 (j) to the extent possible using the best technology 17 currently available, minimize disturbances and adverse 18 impacts of the operation on fish, wildlife, and related 19 environmental values and achieve enhancement of such 20 resources where practicable;

(k) minimize the disturbances to the prevailing
hydrologic balance at the mine site and in associated
offsite areas and to the quality and quantity of water in
surface-water and ground-water systems both during and after
strip- or underground-coal-mining operations and during

-10-

l reclamation by:

2 (i) avoiding acid or other toxic mine drainage by such
3 measures as, but not limited to:

4 (A) preventing or removing water from contact with
5 toxic-producing deposits;

6 (B) treating drainage to reduce toxic content which 7 adversely affects downstream water upon being released to 8 water courses;

9 (C) casing, sealing, or otherwise managing boreholes,
10 shafts, and wells and keeping acid or other toxic drainage
11 from entering ground and surface waters;

12 (ii) (A) conducting strip- or underground-mining 13 operations so as to prevent, to the extent possible using best technology currently available, additional 14 the contributions of suspended solids to streamflow or runoff 15 16 outside the permit area but in no event shall contributions 17 be in excess of requirements set by applicable state or federal law: 18

19 (B) constructing any siltation structures pursuant to 20 (ii)(A) of this subsection prior to commencement of strip-21 or underground-mining operations, such structures to be 22 certified by a qualified registered engineer to be 23 constructed as designed and as approved in the reclamation 24 plan;

25 (iii) cleaning out and removing temporary or large

settling ponds or other siltation structures from drainways
 after disturbed areas are revegetated and stabilized and
 depositing the silt and debris at a site and in a manner
 approved by the department;

5 (iv) restoring recharge capacity of the mined area to
6 approximate premining conditions;

7 (v) avoiding channel deepening or enlargement in
8 operations requiring the discharge of water from mines;

9 (vi) preserving throughout the mining and reclamation 10 process the essential hydrologic functions of alluvial 11 valley floors in the arid and semiarid areas of the country; 12 and

13 (vii) such other actions as the department may
14 prescribe;

(1) conduct strip- or underground-mine operations in
accordance with the approved coal conservation plan;

17 (m) stabilize and protect all surface areas, including18 spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and
noncombustible material in order to prevent drainage except
where the department determines that the resulting
impoundment of water in such auger holes may create a hazard
to the environment or the public health and safety;

24 (o) develop contingency plans to prevent sustained25 combustion;

(p) refrain from construction of roads or other access
 ways up a streambed or drainage channel or in such proximity
 to such channel so as to seriously alter the normal flow of
 water;

5 (q) meet such other criteria as are necessary to 6 achieve reclamation in accordance with the purposes of this 7 part, taking into consideration the physical, 8 climatological, and other characteristics of the site;

9 (r) with regard to underground mines, eliminate fire
10 hazards and otherwise eliminate conditions which constitute
11 a hazard to health and safety of the public;

12 (s) locate openings for all new drift mines working
13 acid-producing or iron-producing coal seams in such a manner
14 as to prevent a gravity discharge of water from the mine.

+4+(11) An operator may not throw, dump, pile, or 15 permit the dumping, piling, or throwing or otherwise placing 16 any overburden, stones, rocks, mineral, earth, soil, dirt, 17 debris, trees, wood, logs, or any other materials or 18 substances of any kind or nature beyond or outside of the 19 area of land which is under permit and for which a bond has 20 21 been posted under 82-4-223, as amended, or place the materials described in this section in such a way that 22 normal erosion or slides brought about by natural physical 23 24 causes will permit the materials to go beyond or outside of 25 that area of land. An operator shall conduct the strip- or

1 underground-mining operation in such a manner as to protect

2 areas outside the permit area."

3 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 4 existing authority of the board of land commissioners or the 5 department of state lands to make rules on the subject of 6 the provisions of this act is extended to the provisions of 7 this act.

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-14-

APPROVED BY COMM. ON NATURAL RESOURCES

HOUSE BILL NO. 784 1 INTRODUCED BY Theciental 2 BY REQUEST OF THE DEPARTMENT OF STATE LANDS 3 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE 6 STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES: REVISING TIME FRAMES; AMENDING SECTION 82-4-231, MCA." 7 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 82-4-231, MCA, is amended to read: 11 "82-4-231. Submission of and action on reclamation 12 plan. (1) As rapidly, completely, and effectively as the 13 most modern technology and the most advanced state of the 14 art will allow, each operator granted a permit under this 15 part shall reclaim and revegetate the land affected by his 16 operation, except that underground tunnels, shafts, or other 17 subsurface excavations need not be revegetated. Under the 18 provisions of this part and rules adopted by the board, an 19 operator shall prepare and carry out a method of operation, of grading, backfilling, highwall reduction, 20 plan 21 subsidence stabilization, water control, topsoiling, and a 22 reclamation plan for the area of land affected by his 23 operation. In developing a method of operation and plans of 24 backfilling, subsidence stabilization, water control, 25 grading, highwall reduction, topsoiling, and reclamation,

1 all measures shall be taken to eliminate damages to landowners and members of the public, their real and 2 personal property, public roads, streams, and all other 3 public property from soil erosion, subsidence, landslides, Δ water pollution, and hazards dangerous to life and property. 5 6 (2) The reclamation plan shall set forth in detail the 7 manner in which the applicant intends to comply with this 8 section and 82-4-232 through 82-4-234, as amended, and the 9 steps to be taken to comply with applicable air and water 10 quality laws and rules and any applicable health and safety 11 standards. (3) The application for permit or major revision of a 12 13 permit, which shall contain the reclamation plan, shall be 14 submitted to the department. 15 (4) The department shall determine whether the 16 application is administratively complete. An application is 17 administratively complete if it contains information addressing each application requirement in 82-4-222 and the 18 19 rules implementing that section and all information necessary to initiate processing and public review. The 20 department shall notify the applicant in writing of its 21 22 determination no later than 90 days after submittal of the

24 application is not administratively complete, it shall

application. If the department determines that the

25 specify in the notice those items which the application must

> -2- SECOND READING HB 794



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address. The application shall be presumed administratively
 complete as to those requirements not specified in the
 notice.

4 (5) If the department determines that an environmental 5 impact statement on the application is required, it shall 6 notify the applicant in writing at the same time it gives 7 the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the 8 9 application is administratively complete, he shall publish notice of filing of the application once a week for 4 10 consecutive weeks in a newspaper of general circulation in 11 the locality of the proposed operation. The department shall 12 notify various local governmental bodies, planning agencies, 13 sewage and water treatment authorities, and water companies 14 15 in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to 16 submit written comments. Any person having an interest which 17 18 is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or 19 authority shall have the right to file written objections to 20 21 the proposed initial or revised application for permit or major revision within 30 days of the applicant's published 22 23 notice. If written objections are filed and an objector requests an informal conference, the department shall hold 24 an informal conference in the locality of the proposed 25

operation after--adequate--public--notice within 30 days of 1 receipt of the request. The department shall notify the 2 3 applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the 4 informal conference. The department may arrange with the 5 6 applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the 7 purpose of gathering information relevant to the proceeding. 8 9 (7) The filing of written objections or a request for 10 an informal conference shall not preclude the department from proceeding with its review of the application as 11 specified in subsection (8). The-department-shall-notify-the 12 applicant--by--certified--or-registered-mail-within-120-days 13 14 after-receipt-of-the-complete-application-if-it-is-or-is-not 15 acceptable--The--department--may--extend--the--120--days--an 16 additional--120--days--upon--notification-of-the-operator-in 17 writing--The-department-shall-make-written-findings-granting 18 or-denying-the-permit-or-revision-application-in-whole-or-in 19 part--If-the-application-is-not-acceptable,--the--department 20 shall-set-forth-the-reasons-why-it-is-not-acceptable-and-it 21 may--propose--modifications;--delete--areas;--or--reject-the 22 entire-application,-A-landowner,--operator,--or--any--person 23 with-an-interest-that-is-or-may-be-adversely-affected-may-by 24 written--notice--request-a-hearing-by-the-board--The-hearing 25 shall-be-held-within-30-days-of-the-request---No-person--who

LC 1344/01

-4-

1	presidedattheinformal-conference-may-either-preside-at
2	the-hearing-or-participateinthedecisionthereonFor
3	purposesofthehearing;theboardmayordersite
4	inspections-of-the-area-pertinent-totheapplicationThe
5	boardshallnotifytheperson-by-certified-or-registered
6	mail-and-all-other-persons-by-regular-mailwithin20days
7	afterthehearingof-its-decisionEvery-reclamation-plan
8	shall-be-subject-to-annual-review-and-modification-

9 (8) (a) The department shall review each 10 administratively complete application and determine the 11 acceptability of the application. During the review, the 12 department may propose modifications to the application or 13 delete areas from the application in accordance with the 14 requirements of B2-4-228. A complete application is 15 considered acceptable when the application is in compliance 16 with all of the applicable requirements of this part and the 17 regulatory program pursuant to this part.

18 (b) If the applicant significantly modifies the 19 application after the application has been determined 20 administratively complete in accordance with subsection (4), 21 the department shall under this section either deny the 22 application or conduct a new review, including an 23 administrative completeness determination, public notice, 24 and objection period.

25 (c) If an environmental impact statement is determined

1	to be necessary prior to making a permit decision, the
2	department shall complete and publish the final
3	environmental impact statement within 365 days of the date
4	of notice provided pursuant to subsection (5).
5	(d) Within 120 days after it determines that an
6	application is administratively complete, the department
7	shall notify the applicant in writing whether the
8	application is or is not acceptable. If the application is
9	not acceptable, the department shall set forth the reasons
10	why it is not acceptable, and it may propose modifications,
11	delete areas, or reject the entire application. All items
12	not specified as unacceptable in the department's
13	notification are presumed to be acceptable. If the applicant
14	revises the application in response to a notice of
15	unacceptability, the department shall review the revised
16	application and notify the applicant in writing within 120
17	days of the date of receipt whether the revised application
18	is acceptable. If the revision constitutes a significant
19	modification under subsection (8)(b), the department shall
20	conduct a new review, beginning with an administrative
21	completeness determination.
22	(e) When the application is determined to be
23	acceptable, the department shall publish notice of its
24	determination once a week for 2 consecutive weeks in a
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25 newspaper of general circulation in the locality of the

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	proposed operation. Any person having an interest that is or
2	may be adversely affected may file a written objection to
3	the determination within 10 days of the department's last
4	published notice. If a written objection is filed and an
5	objector requests an informal conference, the department
6	shall hold an informal conference in the locality of the
7	proposed operation within 20 days of receipt of the request.
8	The department shall notify the applicant and all parties to
9	the informal conference of its decision and the reasons
10	therefor within 10 days of the informal conference.
11	(f) The department shall prepare written findings
12	granting or denying the permit or major revision application
13	in whole or in part no later than 45 days from the date the
14	application is determined acceptable or from the publication
15	of the final environmental impact statement, whichever
16	occurs later. However, if lands subject to the federal lands
17	program are included in the application for permit or major
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1	(g) If the department fails to act within the times
2	specified in this subsection (8), it shall immediately
3	notify the board in writing of its failure to comply and the
4	reasons for the failure to comply.
5	(9) The applicant, a landowner, or any person with an
6	interest that is or may be adversely affected by the
7	department's permit decision may within 30 days of that
8	decision submit a written notice requesting a hearing by the
9	board. The notice must contain the grounds upon which the
10	requester contends that the decision is in error. The
11	hearing shall be held within 30 days of the request. For
12	purposes of a hearing, the board may order site inspections
13	of the area pertinent to the application. The board shall
14	within 20 days of the hearing notify the person who
15	requested the hearing, by certified mail, and all other
16	persons, by regular mail, of the findings and decisions. No
17	person who presided at the informal conference may either
18	preside at the hearing or participate in the decision
19	thereon.
20	(3) (10) In addition to the method of operation,
21	grading, backfilling, subsidence stabilization, water
22	control, highwall reduction, topsoiling, and reclamation
23	requirements of this part and rules adopted under this part,
24	the operator, consistent with the directives of subsection

25 (1) of this section, shall:

-8-

(a) bury under adequate fill all toxic materials,
 shale, mineral, or any other material determined by the
 department to be acid producing, toxic, undesirable, or
 creating a hazard;

5 (b) as directed by rules seal off tunnels, shafts, or 6 other openings or any breakthrough of water creating a 7 hazard;

8 (c) impound, drain, or treat all runoff or underground 9 mine waters so as to reduce soil erosion, damage to grazing 10 and agricultural lands, and pollution of surface and 11 subsurface waters;

12 (d) remove or bury all metal, lumber, and other refuse13 resulting from the operation;

(e) use explosives in connection with the operation 14 only in accordance with department regulations designed to 15 minimize noise, damage to adjacent lands, and water 16 pollution and ensure public safety and for other purposes; 17 (f) adopt measures to prevent land subsidence unless 18 the board approves a plan for inducing subsidence into an 19 abandoned operation in a predictable and controlled manner 20 with measures for grading, topsoiling, and revegetating the 21 subsided land surface. In order for a controlled subsidence 22 23 plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or 24 private buildings, roads, facilities, or use areas, 25

constitute a hazard to human life or health, or constitute a
 hazard to domestic livestock or to a viable agricultural
 operation, or violate any other restrictions the board may
 consider necessary.

5 (g) stockpile and protect from erosion all mining and 6 processing wastes until these wastes can be disposed of 7 according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as 9 possible back into the mine voids upon abandonment in such 10 manner as to prevent or minimize land subsidence. The 11 remaining waste material shall be disposed of as provided by 12 this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or
other openings between the surface and underground mine
workings when no longer needed;

(j) to the extent possible using the best technology
currently available, minimize disturbances and adverse
impacts of the operation on fish, wildlife, and related
environmental values and achieve enhancement of such
resources where practicable;

21 (k) minimize the disturbances to the prevailing 22 hydrologic balance at the mine site and in associated 23 offsite areas and to the quality and quantity of water in 24 surface-water and ground-water systems both during and after 25 strip- or underground-coal-mining operations and during

LC 1344/01

1 reclamation by:

2 (i) avoiding acid or other toxic mine drainage by such3 measures as, but not limited to:

4 (A) preventing or removing water from contact with5 toxic-producing deposits;

6 (B) treating drainage to reduce toxic content which
7 adversely affects downstream water upon being released to
8 water courses;

9 (C) casing, sealing, or otherwise managing boreholes,
10 shafts, and wells and keeping acid or other toxic drainage
11 from entering ground and surface waters;

12 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using 13 best technology currently available, additional 14 the 15 contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions 16 be in excess of requirements set by applicable state or 17 18 federal law;

(B) constructing any siltation structures pursuant to
(ii)(A) of this subsection prior to commencement of stripor underground-mining operations, such structures to be
certified by a qualified registered engineer to be
constructed as designed and as approved in the reclamation
plan;

25 (iii) cleaning out and removing temporary or large

settling ponds or other siltation structures from drainways
 after disturbed areas are revegetated and stabilized and
 depositing the silt and debris at a site and in a manner
 approved by the department;

5 (iv) restoring recharge capacity of the mined area to
6 approximate premining conditions;

7 (v) avoiding channel deepening or enlargement in
8 operations requiring the discharge of water from mines;

9 (vi) preserving throughout the mining and reclamation 10 process the essential hydrologic functions of alluvial 11 valley floors in the arid and semiarid areas of the country; 12 and

13 (vii) such other actions as the department may 14 prescribe;

15 (1) conduct strip- or underground-mine operations inaccordance with the approved coal conservation plan;

17 (m) stabilize and protect all surface areas, including18 spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and
noncombustible material in order to prevent drainage except
where the department determines that the resulting
impoundment of water in such auger holes may create a hazard
to the environment or the public health and safety;

24 (o) develop contingency plans to prevent sustained 25 combustion; 1 (p) refrain from construction of roads or other access 2 ways up a streambed or drainage channel or in such proximity 3 to such channel so as to seriously alter the normal flow of 4 water;

5 (q) meet such other criteria as are necessary to 6 achieve reclamation in accordance with the purposes of this 7 part, taking into consideration the physical, 8 climatological, and other characteristics of the site;

9 (r) with regard to underground mines, eliminate fire
10 hazards and otherwise eliminate conditions which constitute
11 a hazard to health and safety of the public;

12 (s) locate openings for all new drift mines working
13 acid-producing or iron-producing coal seams in such a manner
14 as to prevent a gravity discharge of water from the mine.

15 +4+(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing 16 17 any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or 18 substances of any kind or nature beyond or outside of the 19 20 area of land which is under permit and for which a bond has 21 been posted under 82-4-223, as amended, or place the materials described in this section in such a way that 22 normal erosion or slides brought about by natural physical 23 causes will permit the materials to go beyond or outside of 24 that area of land. An operator shall conduct the strip- or 25

1 underground-mining operation in such a manner as to protect

2 areas outside the permit area."

3 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 4 existing authority of the board of land commissioners or the 5 department of state lands to make rules on the subject of 6 the provisions of this act is extended to the provisions of 7 this act.

-End-

LC 1344/01

1	HOUSE BILL NO. 784
2	INTRODUCED BY HOLLIDAY, HALLIGAN
3	BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
6	STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING
7	TIME FRAMES; AMENDING SECTION 82-4-231, MCA."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 82-4-231, MCA, is amended to read:
11	"82-4-231. Submission of and action on reclamation
12	plan. (1) As rapidly, completely, and effectively as the
13	most modern technology and the most advanced state of the
14 .	art will allow, each operator granted a permit under this
15	part shall reclaim and revegetate the land affected by his
16	operation, except that underground tunnels, shafts, or other
17	subsurface excavations need not be revegetated. Under the
18	provisions of this part and rules adopted by the board, an
19	operator shall prepare and carry out a method of operation,
20	plan of grading, backfilling, highwall reduction,
21	subsidence stabilization, water control, topsoiling, and a
22	reclamation plan for the area of land affected by his
23	operation. In developing a method of operation and plans of
24	backfilling, subsidence stabilization, water control,
25	grading, highwall reduction, topsoiling, and reclamation,

1 all measures shall be taken to eliminate damages to 2 landowners and members of the public, their real and 3 personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, 4 5 water pollution, and hazards dangerous to life and property. (2) The reclamation plan shall set forth in detail the 6 7 manner in which the applicant intends to comply with this 8 section and 82-4-232 through 82-4-234, as amended, and the 9 steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety 10 standards. 11

12 (3) The application for permit or major revision of a
13 permit, which shall contain the reclamation plan, shall be
14 submitted to the department.

15 (4) The department shall determine whether the application is administratively complete. An application is 16 administratively complete if it contains information 17 · 18 addressing each application requirement in 82-4-222 and the rules implementing that section and all information 19 necessary to initiate processing and public review. The 20 21 department shall notify the applicant in writing of its determination no later than 90 days after submittal of the 22 application. If the department determines that the 23 24 application is not administratively complete, it shall specify in the notice those items which the application must 25

-2-



THIRD READING

address. The application shall be presumed administratively
 complete as to those requirements not specified in the
 notice.

(5) If the department determines that an environmental 4 impact statement on the application is required, it shall S notify the applicant in writing at the same time it gives 6 7 the applicant notice pursuant to subsection (4). 8 (6) After the applicant receives notice that the application is administratively complete, he shall publish 9 notice of filing of the application once a week for 4 10 consecutive weeks in a newspaper of general circulation in 11 the locality of the proposed operation. The department shall 12 notify various local governmental bodies, planning agencies, 13 14 sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place 15 of the application and provide a reasonable time for them to 16 17 submit written comments. Any person having an interest which

is or may be adversely affected or the officer or head of 18 any federal, state, or local governmental agency or 19 20 authority shall have the right to file written objections to the proposed initial or revised application for permit or 21 22 major revision within 30 days of the applicant's published notice. If written objections are filed and an objector 23 requests an informal conference, the department shall hold 24 an informal conference in the locality of the proposed 25

operation after--adequate--public--notice within 30 days of 1 receipt of the request. The department shall notify the 2 applicant and all parties to the informal conference of its 3 decision and the reasons therefor within 60 days of the . 4 5 informal conference. The department may arrange with the applicant upon request by any party to the administrative 6 7 proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding. ß 9 (7) The filing of written objections or a request for an informal conference shall not preclude the department 10 from proceeding with its review of the application as 11 12 specified in subsection (8). The-department-shall-notify-the applicant--by--certified--or-registered-mail-within-120-days 13 14 after-receipt-of-the-complete-application-if-it-is-or-is-not acceptable--The--department--may--extend--the--120--days--an 15 16 additional--120--days--upon--notification-of-the-operator-in 17 writing.-The-department-shall-make-written-findings-granting 18 or-denying-the-permit-or-revision-application-in-whole-or-in 19 part:-if-the-application-is-not-acceptable,--the--department 20 shall-set-forth-the-reasons-why-it-is-not-acceptable;-and-it 21 may--propose--modifications7--delete--areas7--or--reject-the entire-application-A-landowner7--operator7--or--any--person 22 23 with-an-interest-that-is-or-may-be-adversely-affected-may-by 24 written--notice--request-a-hearing-by-the-board--The-hearing 25 shall-be-held-within-30-days-of-the-request---No-person--who

-4-

-3-

HB 784

HB 0784/02

HB 784

1	presidedattheinformal-conference-may-cither-preside-at
2	the-hearing-or-participateinthedecisionthereonPor
3	purposesofthehearing;theboardmayordersite
4	inspections-of-the-area-pertinent-totheapplicationThe
5	boardshallnotifytheperson-by-certified-or-registered
6	mail-and-all-other-persons-by-regular-mailwithin20days
7	afterthehearingof-its-decisionEvery-reclamation-plan
8	shall-be-subject-to-annual-review-and-modification-
9	(8) (a) The department shall review each
10	administratively complete application and determine the
11	acceptability of the application. During the review, the
12	department may propose modifications to the application or
13	delete areas from the application in accordance with the
14	requirements of 82-4-228 82-4-227. A complete application is
15	considered acceptable when the application is in compliance
16	with all of the applicable requirements of this part and the
17	regulatory program pursuant to this part.
18	(b) If the applicant significantly modifies the
19	application after the application has been determined
20	administratively complete in accordance with subsection (4),
21	the department shall under this section either deny the
22	application or conduct a new review, including an
23	administrative completeness determination, public notice,
24	and objection period.

25 (c) If an environmental impact statement is determined

-5-

HB 784

to be necessary prior to making a permit decision, the 1 2 department shall complete and publish the final environmental impact statement within 365 days of the date 3 4 of notice provided pursuant to subsection (5). (d) Within 120 days after it determines that an 5 6 application is administratively complete, the department 7 shall notify the applicant in writing whether the application is or is not acceptable. If the application is 8 9 not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, 10 delete areas, or reject the entire application. All items 11 not specified as unacceptable in the department's 12 notification are presumed to be acceptable. If the applicant 13 revises the application in response to a notice of 14 15 unacceptability, the department shall review the revised application and notify the applicant in writing within 120 16 17 days of the date of receipt whether the revised application 18 is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall 19 conduct a new review, beginning with an administrative 20 21 completeness determination. (e) When the application is determined to be 22 23 acceptable, the department shall publish notice of its 24 determination once a week for 2 consecutive weeks in a

25 newspaper of general circulation in the locality of the

-6-

HB 784

HB 0784/02

1	proposed operation. Any person having an interest that is or
2	may be adversely affected may file a written objection to
3	the determination within 10 days of the department's last
4	published notice. If a written objection is filed and an
5	objector requests an informal conference, the department
6	shall hold an informal conference in the locality of the
7	proposed operation within 20 days of receipt of the request.
8	The department shall notify the applicant and all parties to
9	the informal conference of its decision and the reasons
10	therefor within 10 days of the informal conference.
11	(f) The department shall prepare written findings
12	granting or denying the permit or major revision application
13	in whole or in part no later than 45 days from the date the
14	application is determined acceptable or from the publication
15	of the final environmental impact statement, whichever
16	occurs later. However, if lands subject to the federal lands
17	program are included in the application for permit or major
18	revision, the department shall prepare and submit written
19	findings to the federal regulatory authority. If the
20	department's decision is to grant the permit, the department
21	shall issue the permit on the date of its written finding
22	or, if any federal concurrence is necessary, on the date
23	when such concurrence is obtained. If the application is
24	denied, specific reasons for the denial must be set forth in
25	the written notification to the applicant.

(q) If the department fails to act within the times 1 specified in this subsection (8), it shall immediately 2 3 notify the board in writing of its failure to comply and the 4 reasons for the failure to comply. (9) The applicant, a landowner, or any person with an 5 6 interest that is or may be adversely affected by the department's permit decision may within 30 days of that 7 decision submit a written notice requesting a hearing by the 8 9 board. The notice must contain the grounds upon which the 10 requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For 11 purposes of a hearing, the board may order site inspections 12 of the area pertinent to the application. The board shall 13 within 20 days of the hearing notify the person who 14 15 requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No 16 17 person who presided at the informal conference may either preside at the hearing or participate in the decision 18

19 <u>thereon.</u>
20 (3)(10) In addition to the method of operation,
21 grading, backfilling, subsidence stabilization, water
22 control, highwall reduction, topsoiling, and reclamation
23 requirements of this part and rules adopted under this part,
24 the operator, consistent with the directives of subsection

-8-

25 (1) of this section, shall:

-7-

HB 784

HB 784

HB 0784/02

(a) bury under adequate fill all toxic materials,
 shale, mineral, or any other material determined by the
 department to be acid producing, toxic, undesirable, or
 creating a hazard;

5 (b) as directed by rules seal off tunnels, shafts, or
6 other openings or any breakthrough of water creating a
7 hazard;

8 (c) impound, drain, or treat all runoff or underground
9 mine waters so as to reduce soil erosion, damage to grazing
10 and agricultural lands, and pollution of surface and
11 subsurface waters;

12 (d) remove or bury all metal, lumber, and other refuse13 resulting from the operation;

(e) use explosives in connection with the operation 14 only in accordance with department regulations designed to 15 minimize noise, damage to adjacent lands, and water 16 17 pollution and ensure public safety and for other purposes; (f) adopt measures to prevent land subsidence unless 18 19 the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner 20 21 with measures for grading, topsoiling, and revegetating the 22 subsided land surface. In order for a controlled subsidence 23 plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public for 24 private buildings, roads, facilities, or use areas, 25

constitute a hazard to human life or health, or constitute a
 hazard to domestic livestock or to a viable agricultural
 operation, or violate any other restrictions the board may
 consider necessary.

5 (g) stockpile and protect from erosion all mining and 6 processing wastes until these wastes can be disposed of 7 according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as 9 possible back into the mine voids upon abandonment in such 10 manner as to prevent or minimize land subsidence. The 11 remaining waste material shall be disposed of as provided by 12 this part and the rules of the board.

13 (i) seal all portals, entryways, drifts, shafts, or
14 other openings between the surface and underground mine
15 workings when no longer needed;

16 (j) to the extent possible using the best technology
17 currently available, minimize disturbances and adverse
18 impacts of the operation on fish, wildlife, and related
19 environmental values and achieve enhancement of such
20 resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during

-9-

HB 784

-10-

HB 784

reclamation by:

1

2 (i) avoiding acid or other toxic mine drainage by such
3 measures as, but not limited to:

4 (A) preventing or removing water from contact with
 5 toxic-producing deposits;

6 (B) treating drainage to reduce toxic content which 7 adversely affects downstream water upon being released to 8 water courses:

9 (C) casing, sealing, or otherwise managing boreholes,
10 shafts, and wells and keeping acid or other toxic drainage
11 from entering ground and surface waters;

12 (ii) (A) conducting strip- or underground-mining 13 operations so as to prevent, to the extent possible using 14 the best technology currently available, additional 15 contributions of suspended solids to streamflow or runoff 16 outside the permit area but in no event shall contributions 17 be in excess of requirements set by applicable state or 18 federal law:

(B) constructing any siltation structures pursuant to
(ii)(A) of this subsection prior to commencement of stripor underground-mining operations, such structures to be
certified by a qualified registered engineer to be
constructed as designed and as approved in the reclamation
plan;

25 (iii) cleaning out and removing temporary or large.

-11-

HB 784

settling ponds or other siltation structures from drainways
 after disturbed areas are revegetated and stabilized and
 depositing the silt and debris at a site and in a manner
 approved by the department;

5 (iv) restoring recharge capacity of the mined area to
6 approximate premining conditions;

7 (v) avoiding channel deepening or enlargement in
8 operations requiring the discharge of water from mines;

9 (vi) preserving throughout the mining and reclamation 10 process the essential hydrologic functions of alluvial 11 valley floors in the arid and semiarid areas of the country; 12 and

13 (vii) such other actions as the department may 14 prescribe;

15 (1) conduct strip- or underground-mine operations inaccordance with the approved coal conservation plan:

17 (m) stabilize and protect all surface areas, including18 spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and
noncombustible material in order to prevent drainage except
where the department determines that the resulting
impoundment of water in such auger holes may create a hazard
to the environment or the public health and safety;

24 (o) develop contingency plans to prevent sustained25 combustion;

-12-

HB 784

HB 784

1 (p) refrain from construction of roads or other access 2 ways up a streambed or drainage channel or in such proximity 3 to such channel so as to seriously alter the normal flow of 4 water;

5 (q) meet such other criteria as are necessary to 6 achieve reclamation in accordance with the purposes of this 7 part, taking into consideration the physical, 8 climatological, and other characteristics of the site;

9 (r) with regard to underground mines, eliminate fire
10 hazards and otherwise eliminate conditions which constitute
11 a hazard to health and safety of the public;

(s) locate openings for all new drift mines working
acid-producing or iron-producing coal seams in such a manner
as to prevent a gravity discharge of water from the mine.

{4+(11) An operator may not throw, dump, pile, or 15 permit the dumping, piling, or throwing or otherwise placing 16 17 any overburden, stones, rocks, mineral, earth, soil, dirt. 18 debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the 19 20 area of land which is under permit and for which a bond has 21 been posted under 82-4-223, as amended, or place the materials described in this section in such a way that 22 23 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of 24 that area of land. An operator shall conduct the strip- or 25

underground-mining operation in such a manner as to protect
 areas outside the permit area."

3 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 4 existing authority of the board of land commissioners or the 5 department of state lands to make rules on the subject of 6 the provisions of this act is extended to the provisions of 7 this act.

-End-

-13-

1	HOUSE BILL NO. 784
2	INTRODUCED BY HOLLIDAY, HALLIGAN
3	BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
6	STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING
7	TIME FRAMES; AMENDING SECTION 82-4-231, MCA."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section 1. Section 82-4-231, MCA, is amended to read:
11	82-4-231. Submission of and action on reclamation
12	plan. (1) As rapidly, completely, and effectively as the
13	most modern technology and the most advanced state of the
14	art will allow, each operator granted a permit under this
15	part shall reclaim and revegetate the land affected by his
16	operation, except that underground tunnels, shafts, or other
17	subsurface excavations need not be revegetated. Under the
18	provisions of this part and rules adopted by the board, an
19	operator shall prepare and carry out a method of operation,
20	plan of grading, backfilling, highwall reduction,
21	subsidence stabilization, water control, topsoiling, and a
22	reclamation plan for the area of land affected by his
23	operation. In developing a method of operation and plans of
24	backfilling, subsidence stabilization, water control,
25	grading, highwall reduction, topsoiling, and reclamation,

all measures shall be taken to eliminate damages to 1 2 landowners and members of the public, their real and personal property, public roads, streams, and all other 3 public property from soil erosion, subsidence, landslides, 4 5 water pollution, and hazards dangerous to life and property. (2) The reclamation plan shall set forth in detail the 6 7 manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the 8 9 steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety 10 standards. 11 (3) The application for permit or major revision of a 12

permit, which shall contain the reclamation plan, shall be
submitted to the department.
(4) The department shall determine whether the

application is administratively complete. An application is 16 administratively complete if it contains information 17 addressing each application requirement in 82-4-222 and the 18 rules implementing that section and all information 19 necessary to initiate processing and public review. The 20 21 department shall notify the applicant in writing of its 22 determination no later than 90 days after submittal of the application. If the department determines that the 23 application is not administratively complete, it shall 24 specify in the notice those items which the application must 25

-2-

Montana Legislâtive Council

HB 784 REFERENCE BILL

1	address. The application shall be presumed administratively
2	complete as to those requirements not specified in the
3	notice.
4	(5) If the department determines that an environmental
5	impact statement on the application is required, it shall
6	notify the applicant in writing at the same time it gives
7	the applicant notice pursuant to subsection (4).
8	(6) After the applicant receives notice that the
9	application is administratively complete, he shall publish
10	notice of filing of the application once a week for 4
11	consecutive weeks in a newspaper of general circulation in
12	the locality of the proposed operation. The department shall
13	notify various local governmental bodies, planning agencies,
14	sewage and water treatment authorities, and water companies
15	in the locality in which the proposed mining will take place
16	of the application and provide a reasonable time for them to
17	submit written comments. Any person having an interest which
18	is or may be adversely affected or the officer or head of
19	any federal, state, or local governmental agency or
20	authority shall have the right to file written objections to
21	the proposed initial or revised application for permit or
22	major revision within 30 days of the applicant's published
23	notice. If written objections are filed and an objector
24	requests an informal conference, the department shall hold
25	an informal conference in the locality of the proposed

1	operation afteradequatepublicnotice within 30 days of
2	receipt of the request. The department shall notify the
3	applicant and all parties to the informal conference of its
4	decision and the reasons therefor within 60 days of the
5	informal conference. The department may arrange with the
6	applicant upon request by any party to the administrative
7	proceeding for access to the proposed mining area for the
8	purpose of gathering information relevant to the proceeding.
9	(7) The filing of written objections or a request for
10	an informal conference shall not preclude the department
11	from proceeding with its review of the application as
12	specified in subsection (8). The-department-shall-notify-the
13	applicantbycertifiedor-registered-mail-within-120-days
14	after-receipt-of-the-complete-application-if-it-is-or-is-not
15	acceptableThedepartmentmayextendthe120daysan
16	additional120daysuponnotification-of-the-operator-in
17	writingThe-department-shall-make-written-findings-granting
18	or-denying-the-permit-or-revision-application-in-whole-or-in
19	partif-the-application-is-not-acceptable;thedepartment
20	shall-set-forth-the-reasons-why-it-is-not-acceptable;-and-it
21	mayproposemodifications;deleteareas;orreject-the
22	entire-applicationA-landowner;operator;oranyperson
23	· · · · · · · · · · · · · · · · · · ·
4.5	with-an-interest-that-is-or-may-be-adversely-affected-may-by
24	with-an-interest-that-is-or-may-be-adversely-affected-may-by writtennoticerequest-a-hearing-by-the-boardThe-hearing

-4-

HB 784

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HB 0784/02

HB 784

-3-

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1 presided--at--the--informal-conference-may-either-preside-at the-hearing-or-participate--in--the--decision--thereon---Por 2 3 purposes --- of --- the --- hearing --- the -- board -- may -- order -- site 4 inspections-of-the-area-pertiment-to--the--application---The board--shall--notify--the--person-by-certified-or-registered 5 6 mail-and-all-other-persons-by-regular-mail--within--20--days 7 after--the--hearing--of-its-decision--Every-reclamation-plan 8 shall-be-subject-to-annual-review-and-modification-

9 (8) (a) The department shall review each 10 administratively complete application and determine the acceptability of the application. During the review, the 11 department may propose modifications to the application or 12 13 delete areas from the application in accordance with the 14 requirements of 82-4-228 82-4-227. A complete application is 15 considered acceptable when the application is in compliance 16 with all of the applicable requirements of this part and the 17 regulatory program pursuant to this part.

18 (b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

25 (c) If an environmental impact statement is determined

-5-

HB 784

to be necessary prior to making a permit decision, the 1 department shall complete and publish the 2 final environmental impact statement within 365 days of the date 3 of notice provided pursuant to subsection (5). 4 (d) Within 120 days after it determines that an 5 application is administratively complete, the department б 7 shall notify the applicant in writing whether the application is or is not acceptable. If the application is 8 not acceptable, the department shall set forth the reasons 9 why it is not acceptable, and it may propose modifications, 10 11 delete areas, or reject the entire application. All items not specified as unacceptable in the department's 12 notification are presumed to be acceptable. If the applicant 13 14 revises the application in response to a notice of 15 unacceptability, the department shall review the revised application and notify the applicant in writing within 120 16 days of the date of receipt whether the revised application 17 is acceptable. If the revision constitutes a significant 18 modification under subsection (8)(b), the department shall 19 conduct a new review, beginning with an administrative 20 21 completeness determination. (e) When the application is determined to be 22 acceptable, the department shall publish notice of its 23 determination once a week for 2 consecutive weeks in a 24 newspaper of general circulation in the locality of the 25

-6-

HB 0784/02

HB 784

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1	proposed operation. Any person having an interest that is or
2	may be adversely affected may file a written objection to
3	the determination within 10 days of the department's last
4	published notice. If a written objection is filed and an
5	objector requests an informal conference, the department
6	shall hold an informal conference in the locality of the
7	proposed operation within 20 days of receipt of the request.
8	The department shall notify the applicant and all parties to
9	the informal conference of its decision and the reasons
10	therefor within 10 days of the informal conference.
11	(f) The department shall prepare written findings
12	granting or denying the permit or major revision application
13	in whole or in part no later than 45 days from the date the
14	application is determined acceptable or from the publication
15	of the final environmental impact statement, whichever
16	occurs later. However, if lands subject to the federal lands
17	program are included in the application for permit or major
18	revision, the department shall prepare and submit written
19	findings to the federal regulatory authority. If the
20	department's decision is to grant the permit, the department
21	shall issue the permit on the date of its written finding
22	or, if any federal concurrence is necessary, on the date
23	when such concurrence is obtained. If the application is
24	denied, specific reasons for the denial must be set forth in
25	the written notification to the applicant.

1	(g) If the department fails to act within the times
2	specified in this subsection (8), it shall immediately
3	notify the board in writing of its failure to comply and the
4	reasons for the failure to comply.
5	(9) The applicant, a landowner, or any person with an
6	interest that is or may be adversely affected by the
7	department's permit decision may within 30 days of that
8	decision submit a written notice requesting a hearing by the
9	board. The notice must contain the grounds upon which the
10	requester contends that the decision is in error. The
11	hearing shall be held within 30 days of the request. For
12	purposes of a hearing, the board may order site inspections
13	of the area pertinent to the application. The board shall
14	within 20 days of the hearing notify the person who
15	requested the hearing, by certified mail, and all other
16	persons, by regular mail, of the findings and decisions. No
17	person who presided at the informal conference may either
18	preside at the hearing or participate in the decision
19	thereon.
20	(3)<u>(10)</u> In addition to the method of operation,
21	grading, backfilling, subsidence stabilization, water
22	control, highwall reduction, topsoiling, and reclamation
23	requirements of this part and rules adopted under this part,
24	the operator, consistent with the directives of subsection

25 (1) of this section, shall:

-7-

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HB 784

-8-

HB 784

HB 0784/02

(a) bury under adequate fill all toxic materials,
 shale, mineral, or any other material determined by the
 department to be acid producing, toxic, undesirable, or
 creating a hazard;

5 (b) as directed by rules seal off tunnels, shafts, or 6 other openings or any breakthrough of water creating a 7 hazard;

8 (c) impound, drain, or treat all runoff or underground
9 mine waters so as to reduce soil erosion, damage to grazing
10 and agricultural lands, and pollution of surface and
11 subsurface waters;

12 (d) remove or bury all metal, lumber, and other refuse13 resulting from the operation;

(e) use explosives in connection with the operation 14 15 only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water 16 pollution and ensure public safety and for other purposes; 17 (f) adopt measures to prevent land subsidence unless 18 the board approves a plan for inducing subsidence into an 19 abandoned operation in a predictable and controlled manner 20 21 with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence 22 plan to be approved, the applicant must show that subsidence 23 will not cause a direct or indirect hazard to any public or 24 private buildings, roads, facilities, or use areas, 25

constitute a hazard to human life or health, or constitute a
 hazard to domestic livestock or to a viable agricultural
 operation, or violate any other restrictions the board may
 consider necessary.

5 (g) stockpile and protect from erosion all mining and
6 processing wastes until these wastes can be disposed of
7 according to the provisions of this part;

8 (h) deposit as much stockpiled waste material as
9 possible back into the mine voids upon abandonment in such
10 manner as to prevent or minimize land subsidence. The
11 remaining waste material shall be disposed of as provided by
12 this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or
other openings between the surface and underground mine
workings when no longer needed;

16 (j) to the extent possible using the best technology 17 currently available, minimize disturbances and adverse 18 impacts of the operation on fish, wildlife, and related 19 environmental values and achieve enhancement of such 20 resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface-water and ground-water systems both during and after strip- or underground-coal-mining operations and during

-9-

HB 784

-10-

HB 784

HB 784

1 reclamation by: (i) avoiding acid or other toxic mine drainage by such 2 measures as, but not limited to: ٦ (A) preventing or removing water from contact with 4 5 toxic-producing deposits; (B) treating drainage to reduce toxic content which 6 adversely affects downstream water upon being released to 7 8 water courses; (C) casing, sealing, or otherwise managing boreholes, 9 shafts, and wells and keeping acid or other toxic drainage 10 11 from entering ground and surface waters; (ii) (A) conducting strip- or 12 underground-mining 13 operations so as to prevent, to the extent possible using the best technology currently available, additional 14 15 contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions 16 be in excess of requirements set by applicable state or 17 18 federal law: 19 (B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip-20 21 or underground-mining operations, such structures to be certified by a qualified registered engineer to be 22 23 constructed as designed and as approved in the reclamation

25 (iii) cleaning out and removing temporary or large

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plan;

-11-

settling ponds or other siltation structures from drainways
 after disturbed areas are revegetated and stabilized and

3 depositing the silt and debris at a site and in a manner

4 approved by the department;

5 (iv) restoring recharge capacity of the mined area to
6 approximate premining conditions;

7 (v) avoiding channel deepening or enlargement in
8 operations requiring the discharge of water from mines;

9 (vi) preserving throughout the mining and reclamation 10 process the essential hydrologic functions of alluvial 11 valley floors in the arid and semiarid areas of the country; 12 and

13 (vii) such other actions as the department may 14 prescribe;

15 (1) conduct strip- or underground-mine operations in 16 accordance with the approved coal conservation plan;

17 (m) stabilize and protect all surface areas, including18 spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and
noncombustible material in order to prevent drainage except
where the department determines that the resulting
impoundment of water in such auger holes may create a hazard
to the environment or the public health and safety;

24 (c) develop contingency plans to prevent sustained25 combustion;

-12-

HB 784

HB 0784/02

(p) refrain from construction of roads or other access
 ways up a streambed or drainage channel or in such proximity
 to such channel so as to seriously alter the normal flow of
 water;

5 (q) meet such other criteria as are necessary to 6 achieve reclamation in accordance with the purposes of this 7 part, taking into consideration the physical, 8 climatological, and other characteristics of the site;

9 (r) with regard to underground mines, eliminate fire
10 hazards and otherwise eliminate conditions which constitute
11 a hazard to health and safety of the public;

12 (s) locate openings for all new drift mines working
13 acid-producing or iron-producing coal seams in such a manner
14 as to prevent a gravity discharge of water from the mine.

15 (4)(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing 16 any overburden, stones, rocks, mineral, earth, soil, dirt, 17 debris, trees, wood, logs, or any other materials or 18 substances of any kind or nature beyond or outside of the 19 20 area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the 21 materials described in this section in such a way that 22 23 normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of 24 that area of land. An operator shall conduct the strip- or 25

underground-mining operation in such a manner as to protect
 areas outside the permit area."

3 <u>NEW SECTION.</u> Section 2. Extension of authority. Any 4 existing authority of the board of land commissioners or the 5 department of state lands to make rules on the subject of 6 the provisions of this act is extended to the provisions of 7 this act.

-End-