

HOUSE BILL NO. 784

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 THE SENATE

| | |
|-------------------|--|
| February 22, 1985 | Introduced and referred to Committee on Natural Resources. |
| March 19, 1985 | Committee recommend bill be concurrent in. Report adopted. |
| March 23, 1985 | Second reading, concurred in. |
| March 26, 1985 | Third reading, concurred in. Ayes, 49; Noes, 0. Returned to House. |

IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

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 after adequate public notice 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 ~~applicant by certified or registered mail within 120 days~~
 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~~

1 ~~presided at the informal conference may either preside at~~
 2 ~~the hearing or participate in the decision thereon. For~~
 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.~~

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. 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
 25 newspaper of general circulation in the locality of the

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 (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:

1 (a) bury under adequate fill all toxic materials,
2 shale, mineral, or any other material determined by the
3 department to be acid producing, toxic, undesirable, or
4 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 refuse
13 resulting from the operation;

14 (e) use explosives in connection with the operation
15 only in accordance with department regulations designed to
16 minimize noise, damage to adjacent lands, and water
17 pollution and ensure public safety and for other purposes;

18 (f) adopt measures to prevent land subsidence unless
19 the board approves a plan for inducing subsidence into an
20 abandoned operation in a predictable and controlled manner
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
24 will not cause a direct or indirect hazard to any public or
25 private buildings, roads, facilities, or use areas,

1 constitute a hazard to human life or health, or constitute a
2 hazard to domestic livestock or to a viable agricultural
3 operation, or violate any other restrictions the board may
4 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;

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

1 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
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;

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

1 settling ponds or other siltation structures from drainways
2 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, including
18 spoil piles, to effectively control air pollution;

19 (n) seal all auger holes with an impervious and
20 noncombustible material in order to prevent drainage except
21 where the department determines that the resulting
22 impoundment of water in such auger holes may create a hazard
23 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
 16 permit the dumping, piling, or throwing or otherwise placing
 17 any overburden, stones, rocks, mineral, earth, soil, dirt,
 18 debris, trees, wood, logs, or any other materials or
 19 substances of any kind or nature beyond or outside of the
 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
 22 materials described in this section in such a way that
 23 normal erosion or slides brought about by natural physical
 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 NEW SECTION. 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-

APPROVED BY COMM. ON NATURAL RESOURCES

1 HOUSE BILL NO. 784
2 INTRODUCED BY [Signature]
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
4 public property from soil erosion, subsidence, landslides,
5 water pollution, and hazards dangerous to life and property.

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.

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



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 after adequate public notice 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 applicant by certified or registered mail within 120 days
 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

1 ~~presided at the informal conference may either preside at~~
 2 ~~the hearing or participate in the decision thereon. For~~
 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.~~

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. 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
 25 newspaper of general circulation in the locality of the

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}(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:

1 (a) bury under adequate fill all toxic materials,
2 shale, mineral, or any other material determined by the
3 department to be acid producing, toxic, undesirable, or
4 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 refuse
13 resulting from the operation;

14 (e) use explosives in connection with the operation
15 only in accordance with department regulations designed to
16 minimize noise, damage to adjacent lands, and water
17 pollution and ensure public safety and for other purposes;

18 (f) adopt measures to prevent land subsidence unless
19 the board approves a plan for inducing subsidence into an
20 abandoned operation in a predictable and controlled manner
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
24 will not cause a direct or indirect hazard to any public or
25 private buildings, roads, facilities, or use areas,

1 constitute a hazard to human life or health, or constitute a
2 hazard to domestic livestock or to a viable agricultural
3 operation, or violate any other restrictions the board may
4 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;

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

1 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
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;

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

1 settling ponds or other siltation structures from drainways
2 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, including
18 spoil piles, to effectively control air pollution;

19 (n) seal all auger holes with an impervious and
20 noncombustible material in order to prevent drainage except
21 where the department determines that the resulting
22 impoundment of water in such auger holes may create a hazard
23 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 †(11) An operator may not throw, dump, pile, or
 16 permit the dumping, piling, or throwing or otherwise placing
 17 any overburden, stones, rocks, mineral, earth, soil, dirt,
 18 debris, trees, wood, logs, or any other materials or
 19 substances of any kind or nature beyond or outside of the
 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
 22 materials described in this section in such a way that
 23 normal erosion or slides brought about by natural physical
 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 NEW SECTION. 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-

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
4 public property from soil erosion, subsidence, landslides,
5 water pollution, and hazards dangerous to life and property.

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.

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

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 after adequate public notice 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 applicant by certified or registered mail within 120 days
 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

1 ~~presided at the informal conference may either preside at~~
 2 ~~the hearing or participate in the decision thereon. For~~
 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.~~

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

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
 25 newspaper of general circulation in the locality of the

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)(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:

1 (a) bury under adequate fill all toxic materials,
2 shale, mineral, or any other material determined by the
3 department to be acid producing, toxic, undesirable, or
4 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 refuse
13 resulting from the operation;

14 (e) use explosives in connection with the operation
15 only in accordance with department regulations designed to
16 minimize noise, damage to adjacent lands, and water
17 pollution and ensure public safety and for other purposes;

18 (f) adopt measures to prevent land subsidence unless
19 the board approves a plan for inducing subsidence into an
20 abandoned operation in a predictable and controlled manner
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
24 will not cause a direct or indirect hazard to any public or
25 private buildings, roads, facilities, or use areas,

1 constitute a hazard to human life or health, or constitute a
2 hazard to domestic livestock or to a viable agricultural
3 operation, or violate any other restrictions the board may
4 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;

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

1 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

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;

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.

1 settling ponds or other siltation structures from drainways

2 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, including

18 spoil piles, to effectively control air pollution;

19 (n) seal all auger holes with an impervious and

20 noncombustible material in order to prevent drainage except

21 where the department determines that the resulting

22 impoundment of water in such auger holes may create a hazard

23 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 ~~††~~(11) An operator may not throw, dump, pile, or
16 permit the dumping, piling, or throwing or otherwise placing
17 any overburden, stones, rocks, mineral, earth, soil, dirt,
18 debris, trees, wood, logs, or any other materials or
19 substances of any kind or nature beyond or outside of the
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
22 materials described in this section in such a way that
23 normal erosion or slides brought about by natural physical
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 NEW SECTION. 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-

HOUSE BILL NO. 784

INTRODUCED BY HOLLIDAY, HALLIGAN

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE STRIP MINE PERMIT APPLICATION REVIEW PROCEDURES; REVISING TIME FRAMES; AMENDING SECTION 82-4-231, MCA."

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

Section 1. Section 82-4-231, MCA, is amended to read:

"82-4-231. Submission of and action on reclamation plan. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation,

all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a 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 administratively complete if it contains information addressing each application requirement in 82-4-222 and the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must



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 after adequate public notice 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 ~~applicant by certified or registered mail within 120 days~~
 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~~

1 presided at the informal conference may either preside at
 2 the hearing or participate in the decision thereon. For
 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.

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 ~~82-4-220~~ 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

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
 25 newspaper of general circulation in the locality of the

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) (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:

1 (a) bury under adequate fill all toxic materials,
2 shale, mineral, or any other material determined by the
3 department to be acid producing, toxic, undesirable, or
4 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 refuse
13 resulting from the operation;

14 (e) use explosives in connection with the operation
15 only in accordance with department regulations designed to
16 minimize noise, damage to adjacent lands, and water
17 pollution and ensure public safety and for other purposes;

18 (f) adopt measures to prevent land subsidence unless
19 the board approves a plan for inducing subsidence into an
20 abandoned operation in a predictable and controlled manner
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
24 will not cause a direct or indirect hazard to any public or
25 private buildings, roads, facilities, or use areas,

1 constitute a hazard to human life or health, or constitute a
2 hazard to domestic livestock or to a viable agricultural
3 operation, or violate any other restrictions the board may
4 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;

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

1 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
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;

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

1 settling ponds or other siltation structures from drainways
2 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, including
18 spoil piles, to effectively control air pollution;

19 (n) seal all auger holes with an impervious and
20 noncombustible material in order to prevent drainage except
21 where the department determines that the resulting
22 impoundment of water in such auger holes may create a hazard
23 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
 16 permit the dumping, piling, or throwing or otherwise placing
 17 any overburden, stones, rocks, mineral, earth, soil, dirt,
 18 debris, trees, wood, logs, or any other materials or
 19 substances of any kind or nature beyond or outside of the
 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
 22 materials described in this section in such a way that
 23 normal erosion or slides brought about by natural physical
 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 NEW SECTION. 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-