

HOUSE BILL 272

Introduced by Hanson, et al.

1/17	Introduced
1/18	Referred to Natural Resources
1/25	Hearing
1/26	Tabled in Committee

1 House BILL NO. 272
2 INTRODUCED BY M. Hansen R. Knapp
3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; TO
7 PROVIDE THAT AN APPLICATION FOR A STRIP- OR
8 UNDERGROUND-COAL-MINING PERMIT MAY NOT BE APPROVED UNLESS
9 HYDROLOGIC CONSEQUENCES HAVE BEEN ASSESSED; TO ELIMINATE
10 REQUIREMENTS FOR NOTICE THAT AN ENVIRONMENTAL IMPACT
11 STATEMENT IS NECESSARY AND FOR COMPLETION OF THE STATEMENT;
12 TO REVISE TIME REQUIREMENTS FOR INSPECTIONS AND RELEASE OF
13 RECLAMATION BONDS; AND AMENDING SECTIONS 37-72-101,
14 82-4-222, 82-4-227, 82-4-231, AND 82-4-232, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 82-4-222, MCA, is amended to read:

18 "82-4-222. Permit application. (1) An operator
19 desiring a permit shall file an application which shall
20 contain a complete and detailed plan for the mining,
21 reclamation, revegetation, and rehabilitation of the land
22 and water to be affected by the operation. Such plan shall
23 reflect thorough advance investigation and study by the
24 operator and shall include all known or readily discoverable
25 past and present uses of the land and water to be affected

1 and the approximate periods of such use and shall state:

2 (a) the location and area of land to be affected by
3 the operation, with a description of access to the area from
4 the nearest public highways;

5 (b) the names and addresses of the owners of record
6 and any purchasers under contracts for deed of the surface
7 of the area of land to be affected by the permit and the
8 owners of record and any purchasers under contracts for deed
9 of all surface area within one-half mile of any part of the
10 affected area;

11 (c) the names and addresses of the present owners of
12 record and any purchasers under contracts for deed of all
13 subsurface minerals in the land to be affected;

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

16 (e) the permanent and temporary post-office addresses
17 of the applicant;

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

21 (g) whether the applicant is in compliance with
22 82-4-251 and, if known, whether every officer, partner,
23 director, or any individual owning of record or
24 beneficially, alone or with associates, 10% or more of any
25 class of stock of the applicant is subject to any of the

provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) whether the applicant has a record of outstanding reclamation fees with the federal coal regulatory authority;

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

(j) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(k) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an

analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

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

(m) a determination of the probable hydrologic

1 consequences of coal mining and reclamation operations, both
 2 on and off the mine site, with respect to the hydrologic
 3 regime, quantity and quality of water in surface- and
 4 ground-water systems, including the dissolved and suspended
 5 solids under seasonal flow conditions and the collection of
 6 sufficient data for the mine site and surrounding areas, so
 7 that cumulative impacts of all anticipated mining in the
 8 area upon the hydrology of the area and particularly upon
 9 water availability can be made. However, this determination
 10 is not required until such time as any existing hydrologic
 11 information on the general area prior to mining is made
 12 available from an appropriate federal or state agency that
 13 possesses the information. The permit may not be approved
 14 until such information is available and is incorporated into
 15 the application.

16 (n) a coal conservation plan; and

17 (o) such other or further information as the
 18 department may require.

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

22 (a) identify the area to correspond with the
 23 application;

24 (b) show any adjacent deep mining or surface mining
 25 and the boundaries of surface properties and names of owners

1 of record of the affected area and within 1,000 feet of any
 2 part of the affected area;

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

7 (d) show by appropriate markings the boundaries of the
 8 area of land affected, any cropline of the seam or deposit
 9 of mineral to be mined, and the total number of acres
 10 involved in the area of land affected;

11 (e) show the date on which the map was prepared and
 12 the north point;

13 (f) show the final surface and underground water
 14 drainage plan on and away from the area of land affected.
 15 This plan shall indicate the directional and volume flow of
 16 water, constructed drainways, natural waterways used for
 17 drainage, and the streams or tributaries receiving the
 18 discharge.

19 (g) show the proposed location of waste or refuse
 20 area;

21 (h) show the proposed location of temporary subsoil
 22 and topsoil storage area;

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

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

25 (k) show the surface location lines of any geologic

1 cross sections which have been submitted;

2 (1) show a listing of plant varieties encountered in
3 the area to be affected and their relative dominance in the
4 area, together with an enumeration of tree varieties and the
5 approximate number of each variety occurring per acre on the
6 area to be affected, and the locations generally of the
7 various kinds and varieties of plants, including but not
8 limited to grasses, shrubs, legumes, forbs, and trees;

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

15 (n) contain such other or further information as the
16 department may require.

17 (3) If the department finds that the probable total
18 annual production at all locations of any strip- or
19 underground-coal-mining operation applied for will not
20 exceed 100,000 tons, any determination of probable
21 hydrologic consequences that the department requires and the
22 statement of result of test borings or core samplings shall,
23 upon written request of the operator, be performed by a
24 qualified public or private laboratory designated by the
25 department. The department shall assume the cost of the

1 determination and statement to the extent that it has
2 received funds for this purpose.

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

16 (5) Each applicant for a coal mining permit shall
17 submit as part of the application a certificate issued by an
18 insurance company authorized to do business in the state
19 certifying that the applicant has in force for the strip- or
20 underground-mining and reclamation operations for which the
21 permit is sought a public liability insurance policy, or
22 evidence that the applicant has satisfied other state or
23 federal self-insurance requirements. This policy shall
24 provide for personal injury and property damage protection
25 in an amount adequate to compensate any persons damaged as a

1 result of strip- or underground-coal-mining and reclamation
2 operations, including use of explosives, and entitled to
3 compensation under applicable provisions of state law. The
4 permittee must maintain the policy in full force and effect
5 during the term of the permit and any renewal until all
6 reclamation operations have been completed.

7 (6) Each applicant for a strip-mining or
8 underground-mining reclamation permit shall file a copy of
9 his application for public inspection with the clerk and
10 recorder at the courthouse of the county where the major
11 portion of mining is proposed to occur."

12 **Section 2.** Section 82-4-227, MCA, is amended to read:

13 "82-4-227. Refusal of permit. (1) An application for a
14 prospecting, strip-mining, or underground-mining permit or
15 major revision shall not be approved by the department
16 unless, on the basis of the information set forth in the
17 application, an on-site inspection, and an evaluation of the
18 operation by the department, the applicant has affirmatively
19 demonstrated that the requirements of this part and rules
20 will be observed and that the proposed method of operation,
21 backfilling, grading, subsidence stabilization, water
22 control, highwall reduction, topsoiling, revegetation, or
23 reclamation of the affected area can be carried out
24 consistently with the purpose of this part. The applicant
25 for a permit or major revision has the burden of

1 establishing that his application is in compliance with this
2 part and the rules adopted under it.

3 (2) The department shall not approve the application
4 for a prospecting, strip-mining, or underground-mining
5 permit where the area of land described in the application
6 includes land having special, exceptional, critical, or
7 unique characteristics or that mining or prospecting on that
8 area would adversely affect the use, enjoyment, or
9 fundamental character of neighboring land having special,
10 exceptional, critical, or unique characteristics. For the
11 purposes of this part, land is defined as having such
12 characteristics if it possesses special, exceptional,
13 critical, or unique:

14 (a) biological productivity, the loss of which would
15 jeopardize certain species of wildlife or domestic stock;

16 (b) ecological fragility, in the sense that the land,
17 once adversely affected, could not return to its former
18 ecological role in the reasonable foreseeable future;

19 (c) ecological importance, in the sense that the
20 particular land has such a strong influence on the total
21 ecosystem of which it is a part that even temporary effects
22 felt by it could precipitate a system-wide reaction of
23 unpredictable scope or dimensions; or

24 (d) scenic, historic, archeologic, topographic,
25 geologic, ethnologic, scientific, cultural, or recreational

significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) (i) the assessment of the probable hydrologic consequences of the proposed operation on the proposed mine plan area and adjacent areas with respect to hydrologic balance has been completed by the applicant; and

(a)(ii) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation thereof has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on

the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface-water or underground-water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued

1 prior to August 3, 1977, or to any revisions or renewals
2 thereof, or to any existing strip- or underground-mining
3 operations for which a permit was issued prior to August 3,
4 1977.

5 (6) If the department finds that the overburden on any
6 part of the area of land described in the application for a
7 prospecting, strip-mining, or underground-mining permit is
8 such that experience in the state with a similar type of
9 operation upon land with similar overburden shows that
10 substantial deposition of sediment in streambeds,
11 subsidence, landslides, or water pollution cannot feasibly
12 be prevented, the department shall delete that part of the
13 land described in the application upon which the overburden
14 exists. The burden is on the applicant to demonstrate that
15 any area should not be deleted under this subsection.

16 (7) If the department finds that the operation will
17 constitute a hazard to a dwelling house, public building,
18 school, church, cemetery, commercial or institutional
19 building, public road, stream, lake, or other public
20 property, the department shall delete those areas from the
21 prospecting, strip-mining, or underground-mining permit
22 application before it can be approved. In no case may strip-
23 or underground-coal-mining be allowed within 300 feet of any
24 occupied dwelling, unless waived by the owner, nor within
25 300 feet of any public building, school, church, community,

1 or institutional building, or public park; nor within 100
2 feet of a cemetery; nor within 100 feet of the outside
3 right-of-way line of any public road, except where mine
4 access roads or haulage roads join such right-of-way line.
5 The department may permit such roads to be relocated or the
6 area affected to lie within 100 feet of the road if, after
7 public notice and opportunity for public hearing in the
8 locality, a written finding is made that the interests of
9 the public and the landowners affected will be protected.

10 (8) No strip- or underground-mining may be conducted
11 within 500 feet of active or abandoned underground mines in
12 order to prevent breakthroughs and to protect health or
13 safety of miners. The department shall permit an operator to
14 mine near, through, or partially through an abandoned
15 underground mine or closer to an active underground mine if:

16 (a) the nature, timing, and sequencing of specific
17 strip-mine activities and specific underground-mine
18 activities are jointly approved by the department and the
19 regulatory authority concerned with the health and safety of
20 underground miners; and

21 (b) such operations will result in improved resource
22 recovery, abatement of water pollution, or elimination of
23 hazards to the health and safety of the public.

24 (9) The department may not approve an application for
25 a strip- or underground-coal-mining operation if the area

1 proposed to be mined is included within an area designated
2 unsuitable for strip or underground coal mining or within an
3 area under review for this designation under an
4 administrative proceeding, unless in such an area as to
5 which an administrative proceeding has commenced pursuant to
6 this part, the operator making the permit application
7 demonstrates that prior to January 1, 1977, he made
8 substantial legal and financial commitments in relation to
9 the operation for which he is applying for a permit.

10 (10) No permit or major permit revision for a strip- or
11 underground-coal-mining operation may be issued unless the
12 applicant has affirmatively demonstrated by its coal
13 conservation plan that no failure to conserve coal will
14 occur. The department may require the applicant to submit
15 any information it considers necessary for review of the
16 coal conservation plan.

17 (11) Whenever information available to the department
18 indicates that any strip- or underground-coal-mining
19 operation owned or controlled by the applicant is currently
20 in violation of Public Law 95-87, as amended, or any state
21 law required by Public Law 95-87, as amended, or any law,
22 rule, or regulation of the United States or of any
23 department or agency in the United States pertaining to air
24 or water environmental protection, the department shall not
25 issue a strip- or underground-coal-mining permit or major

1 revision until the applicant submits proof that the
2 violation has been corrected or is in the process of being
3 corrected to the satisfaction of the administering agency.

4 (12) The department may not issue a strip- or
5 underground-coal-mining permit or major revision to any
6 applicant which it finds, after an opportunity for hearing,
7 owns or controls any strip- or underground-coal-mining
8 operation which has demonstrated a pattern of willful
9 violations of Public Law 95-87, as amended, or any state law
10 required by Public Law 95-87, as amended, of such a nature
11 and duration and with such resulting irreparable damage to
12 the environment to indicate an intent not to comply with the
13 provisions of this part.

14 (13) Subject to valid existing rights, no strip- or
15 underground-coal-mining operations except those which
16 existed as of August 3, 1977, may be conducted on private
17 lands within the boundaries of units of the national park
18 system, the national wildlife refuge systems, the national
19 wilderness preservation system, the wild and scenic rivers
20 system, including study rivers designated under section 5(a)
21 of the Wild and Scenic Rivers Act, or national recreation
22 areas designated by act of congress."

23 **Section 3.** Section 82-4-231, MCA, is amended to read:

24 "82-4-231. Submission of and action on reclamation
25 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 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 impact-statement-on-the-application-is--required--it--shall notify--the--applicant--in-writing-at-the-same-time-it-gives the-applicant-notice-pursuant-to-subsection-{4}--~~

~~{6}~~(5) After the applicant receives notice that the application is administratively complete, he shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department

1 shall notify various local governmental bodies, planning
 2 agencies, sewage and water treatment authorities, and water
 3 companies in the locality in which the proposed mining will
 4 take place of the application and provide a reasonable time
 5 for them to submit written comments. Any person having an
 6 interest which is or may be adversely affected or the
 7 officer or head of any federal, state, or local governmental
 8 agency or authority shall have the right to file written
 9 objections to the proposed initial or revised application
 10 for permit or major revision within 30 days of the
 11 applicant's published notice. If written objections are
 12 filed and an objector requests an informal conference, the
 13 department shall hold an informal conference in the locality
 14 of the proposed operation within 30 days of receipt of the
 15 request. The department shall notify the applicant and all
 16 parties to the informal conference of its decision and the
 17 reasons therefor within 60 days of the informal conference.
 18 The department may arrange with the applicant upon request
 19 by any party to the administrative proceeding for access to
 20 the proposed mining area for the purpose of gathering
 21 information relevant to the proceeding.

22 ~~(7)~~(6) The filing of written objections or a request
 23 for an informal conference shall not preclude the department
 24 from proceeding with its review of the application as
 25 specified in subsection ~~(8)~~(7).

1 ~~(8)~~(7) (a) The department shall review each
 2 administratively complete application and determine the
 3 acceptability of the application. During the review, the
 4 department may propose modifications to the application or
 5 delete areas from the application in accordance with the
 6 requirements of 82-4-227. A complete application is
 7 considered acceptable when the application is in compliance
 8 with all of the applicable requirements of this part and the
 9 regulatory program pursuant to this part.

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

17 ~~(c) If an environmental impact statement is determined~~
 18 ~~to be necessary prior to making a permit decision, the~~
 19 ~~department shall complete and publish the final~~
 20 ~~environmental impact statement within 365 days of the date~~
 21 ~~of notice provided pursuant to subsection (5).~~

22 ~~(d)~~(c) Within 120 days after it determines that an
 23 application is administratively complete, the department
 24 shall notify the applicant in writing whether the
 25 application is or is not acceptable. If the application is

1 not acceptable, the department shall set forth the reasons
 2 why it is not acceptable, and it may propose modifications,
 3 delete areas, or reject the entire application. All items
 4 not specified as unacceptable in the department's
 5 notification are presumed to be acceptable. If the applicant
 6 revises the application in response to a notice of
 7 unacceptability, the department shall review the revised
 8 application and notify the applicant in writing within 120
 9 days of the date of receipt whether the revised application
 10 is acceptable. If the revision constitutes a significant
 11 modification under subsection ~~(8)(b)(7)(b)~~, the department
 12 shall conduct a new review, beginning with an administrative
 13 completeness determination.

14 ~~(e)(d)~~ When the application is determined to be
 15 acceptable, the department shall publish notice of its
 16 determination once a week for 2 consecutive weeks in a
 17 newspaper of general circulation in the locality of the
 18 proposed operation. Any person having an interest that is or
 19 may be adversely affected may file a written objection to
 20 the determination within 10 days of the department's last
 21 published notice. If a written objection is filed and an
 22 objector requests an informal conference, the department
 23 shall hold an informal conference in the locality of the
 24 proposed operation within 20 days of receipt of the request.
 25 The department shall notify the applicant and all parties to

1 the informal conference of its decision and the reasons
 2 therefor within 10 days of the informal conference.

3 ~~(f)(e)~~ The department shall prepare written findings
 4 granting or denying the permit or major revision application
 5 in whole or in part no later than 45 days from the date the
 6 application is determined acceptable or from the publication
 7 of the final environmental impact statement, whichever
 8 occurs later. However, if lands subject to the federal lands
 9 program are included in the application for permit or major
 10 revision, the department shall prepare and submit written
 11 findings to the federal regulatory authority. If the
 12 department's decision is to grant the permit, the department
 13 shall issue the permit on the date of its written finding
 14 or, if any federal concurrence is necessary, on the date
 15 when such concurrence is obtained. If the application is
 16 denied, specific reasons for the denial must be set forth in
 17 the written notification to the applicant.

18 ~~(g)(f)~~ If the department fails to act within the times
 19 specified in this subsection ~~(8)(7)~~, it shall immediately
 20 notify the board in writing of its failure to comply and the
 21 reasons for the failure to comply.

22 ~~(9)(8)~~ The applicant, a landowner, or any person with
 23 an interest that is or may be adversely affected by the
 24 department's permit decision may within 30 days of that
 25 decision submit a written notice requesting a hearing by the

board. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the board may order site inspections of the area pertinent to the application. The board shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

~~(10)~~(9) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(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;

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

(c) impound, drain, or treat all runoff or underground

mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

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

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

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, 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.

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

(h) deposit as much stockpiled waste material as

1 possible back into the mine voids upon abandonment in such
2 manner as to prevent or minimize land subsidence. The
3 remaining waste material shall be disposed of as provided by
4 this part and the rules of the board.

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

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

13 (k) minimize the disturbances to the prevailing
14 hydrologic balance at the mine site and in associated
15 offsite areas and to the quality and quantity of water in
16 surface-water and ground-water systems both during and after
17 strip- or underground-coal-mining operations and during
18 reclamation by:

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

21 (A) preventing or removing water from contact with
22 toxic-producing deposits;

23 (B) treating drainage to reduce toxic content which
24 adversely affects downstream water upon being released to
25 water courses;

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

4 (ii) (A) conducting strip- or underground-mining
5 operations so as to prevent, to the extent possible using
6 the best technology currently available, additional
7 contributions of suspended solids to streamflow or runoff
8 outside the permit area but in no event shall contributions
9 be in excess of requirements set by applicable state or
10 federal law;

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

17 (iii) cleaning out and removing temporary or large
18 settling ponds or other siltation structures from drainways
19 after disturbed areas are revegetated and stabilized and
20 depositing the silt and debris at a site and in a manner
21 approved by the department;

22 (iv) restoring recharge capacity of the mined area to
23 approximate premining conditions;

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

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

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

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

(m) stabilize and protect all surface areas, including 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;

(o) develop contingency plans to prevent sustained 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;

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

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute 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.

~~{11}~~(10) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 4. Section 82-4-232, MCA, is amended to read:

"82-4-232. Area mining required -- bond -- alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no

1 greater than 20 degrees from the horizontal. Highwall
2 reduction shall be commenced at or beyond the top of the
3 highwall and sloped to the graded spoil bank. Reduction,
4 backfilling, and grading shall eliminate all highwalls and
5 spoil peaks. The area of land affected shall be restored to
6 the approximate original contour of the land. When directed
7 by the department, the operator shall construct in the final
8 grading such diversion ditches, depressions, or terraces as
9 will accumulate or control the water runoff. Additional
10 restoration work may be required by the department according
11 to rules adopted by the board.

12 (2) In addition to the backfilling and grading
13 requirements, the operator's method of operation on steep
14 slopes may be regulated and controlled according to rules
15 adopted by the board. These rules may require any measure
16 whatsoever to accomplish the purpose of this part.

17 (3) For coal mining on prime farmlands, the board
18 shall establish by rule specifications for soil removal,
19 storage, replacement, and reconstruction, and the operator
20 shall as a minimum be required to:

21 (a) segregate the A horizon of the natural soil,
22 except where it can be shown that other available soil
23 materials will create a final soil having a greater
24 productive capacity; and if not utilized immediately,
25 stockpile this material separately from other spoil and

1 provide needed protection from wind and water erosion or
2 contamination by other acid or toxic material;

3 (b) segregate the B horizon of the natural soil, or
4 underlying C horizon or other strata, or a combination of
5 such horizons or other strata that are shown to be both
6 texturally and chemically suitable for plant growth and that
7 can be shown to be equally or more favorable for plant
8 growth than the B horizon in sufficient quantities to create
9 in the regraded final soil a root zone of comparable depth
10 and quality to that which existed in the natural soil; and
11 if not utilized immediately, stockpile this material
12 separately from other spoil and provide needed protection
13 from wind and water erosion or contamination by acid or
14 toxic material;

15 (c) replace and regrade the root zone material
16 described in subsection (3)(b) with proper compaction and
17 uniform depth over the regraded spoil material; and

18 (d) redistribute and grade in a uniform manner the
19 surface soil horizon described in (a) above.

20 (4) All available topsoil shall be removed in a
21 separate layer, guarded from erosion and pollution, and kept
22 in such a condition that it can sustain vegetation of at
23 least the quality and variety it sustained prior to removal,
24 provided that the operator shall accord substantially the
25 same treatment to any subsurface deposit of material that is

1 capable, as determined by the department, of supporting
2 surface vegetation virtually as well as the present topsoil.
3 After the operation has been backfilled and graded, the
4 topsoil or the best available subsurface deposit of material
5 which is best able to support vegetation shall be returned
6 as the top layer.

7 (5) As determined by rules of the board, time limits
8 shall be established requiring backfilling, grading,
9 subsidence stabilization, water control, highwall reduction,
10 topsoiling, planting, and revegetation to be kept current.
11 All backfilling, subsidence stabilization, sealing, grading,
12 and topsoiling shall be completed before necessary equipment
13 is moved from the operation.

14 (6) (a) The permittee may file a request with the
15 department for the release of all or part of a performance
16 bond or deposit. Within 30 days after any application for
17 bond or deposit release has been filed with the department,
18 the permittee shall submit a copy of an advertisement notice
19 placed at least once a week for 4 successive weeks in a
20 newspaper of general circulation in the locality of the
21 prospecting or mining operation. The notice is considered
22 part of any bond release application and must contain a
23 notification of the precise location of the land affected,
24 the number of acres, the permit and the date approved, the
25 amount of the bond filed and the portion sought to be

1 released, the type and appropriate dates of reclamation work
2 performed, and a description of the results achieved as they
3 relate to the permittee's approved reclamation plan. In
4 addition, as part of any bond release application, the
5 permittee shall submit copies of letters that he has sent to
6 adjoining property owners, local governmental bodies,
7 planning agencies, and sewage and water treatment
8 authorities or water companies in the locality of the
9 operation, notifying them of his intention to seek release
10 from the bond.

11 (b) Upon receipt of the request and copies of the
12 notification made under subsection (6)(a), the department
13 shall, within ~~30~~ 90 days, conduct an inspection and
14 evaluation of the reclamation work involved. In the
15 evaluation, the department shall consider, among other
16 things, the degree of difficulty in completing any remaining
17 reclamation, whether pollution of surface and subsurface
18 water is occurring, the probability of continuance or future
19 occurrence of such pollution, and the estimated cost of
20 abating such pollution. The department shall notify the
21 permittee in writing of its decision to release or not to
22 release all or part of the performance bond within ~~60~~ 120
23 days of the filing of the request if no public hearing is
24 held pursuant to subsection (6)(f) or, if a public hearing
25 is held pursuant to that subsection, within ~~30~~ 60 days

thereafter.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with his approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be

applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(i)(k)(9)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or portion thereof, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might

1 be adversely affected by release of the bond or the
 2 responsible officer or head of any federal, state, or local
 3 governmental agency which has jurisdiction by law or special
 4 expertise with respect to any environmental, social, or
 5 economic impact involved in the operation or is authorized
 6 to develop and enforce environmental standards with respect
 7 to such operations has the right to file written objections
 8 to the proposed release from bond to the department within
 9 30 days after the last publication of the notice provided
 10 for in subsection (6)(a). If written objections are filed
 11 and a hearing requested, the department shall inform all the
 12 interested parties of the time and place of the hearing and,
 13 within 30 days of the request for such hearing, hold a
 14 public hearing in the locality of the operation proposed for
 15 bond release. The date, time, and location of the public
 16 hearing must be advertised by the department in a newspaper
 17 of general circulation in the locality for 2 consecutive
 18 weeks, and the hearing must be held in the locality of the
 19 operation proposed for bond release or at the state capital,
 20 at the option of the objector, within 30 days of the request
 21 for such hearing.

22 (g) Without prejudice to the rights of the objectors
 23 or the permittee or the responsibilities of the department
 24 pursuant to this section, the department may establish an
 25 informal conference to resolve such written objections.

1 (h) For the purpose of the hearing under subsection
 2 (6)(f), the department may administer oaths; subpoena
 3 witnesses or written or printed materials; compel the
 4 attendance of witnesses or the production of materials; and
 5 take evidence, including but not limited to site inspections
 6 of the land affected and other operations carried on by the
 7 permittee in the general vicinity. A verbatim record of each
 8 public hearing required by this section must be made, and a
 9 transcript must be made available on the motion of any party
 10 or by order of the department.

11 (7) An operator may propose alternative plans other
 12 than backfilling, grading, highwall reduction, topsoiling,
 13 or seeding to a permanent diverse vegetative cover if the
 14 restoration will be consistent with the purpose of this
 15 part. These plans shall be submitted to the department, and
 16 after consultation with the landowner, if the plans are
 17 approved by the board and complied with within the time
 18 limits as may be determined by the board as being reasonable
 19 for carrying out the plans, the backfilling, grading,
 20 highwall reduction, topsoiling, or revegetation requirements
 21 of this part may be modified by the board. An operator who
 22 proposes alternative plans that will affect an existing
 23 permit shall comply with the notice requirement of
 24 82-4-222(f)(1)(i).

25 (8) If alternate revegetation is proposed, a

1 management plan must be submitted showing how the area will
2 be utilized and any data necessary to show that the
3 alternate postmining land use can be achieved. Any plan must
4 require the operation as a minimum to:

5 (a) restore the land affected to a condition capable
6 of supporting the use which it was capable of supporting
7 prior to any mining operation or to a higher or better use
8 of which there is a reasonable likelihood, if the use or
9 uses do not present any actual or probable threat of water
10 diminution or pollution, and if the permit applicant's
11 proposed land use following reclamation is not deemed to be
12 impractical, unreasonable, or inconsistent with applicable
13 land use policies and plans, would not involve unreasonable
14 delay in implementation, and would not violate federal,
15 state, or local law; and

16 (b) prevent soil erosion to the extent achieved prior
17 to mining."

18 **Section 5.** Section 37-72-101, MCA, is amended to read:

19 "37-72-101. Construction blasting restrictions --
20 license required -- definitions -- exemptions. (1) No person
21 may engage in the practice of construction blasting unless
22 licensed or under the supervision of a person licensed as a
23 construction blaster by the workers' compensation division.

24 (2) For the purposes of this chapter:

25 (a) "construction blaster" means a person who engages

1 in construction blasting;

2 (b) "construction blasting" means the use of
3 explosives to:

4 (i) reduce, destroy, or weaken any residential,
5 commercial, or other building; or

6 (ii) excavate any ditch, trench, cut, or hole or
7 reduce, destroy, weaken, or cause a change in grade of any
8 land formation in the construction of any building, highway,
9 road, pipeline, sewerline, or electric or other utility
10 line;

11 (c) "division" means the workers' compensation
12 division of the department of labor and industry provided
13 for in 2-15-1702;

14 (d) "explosive" has the meaning given in 50-38-101;

15 (e) "magazine" has the meaning given in 50-38-101.

16 (3) Nothing in this chapter applies to the private or
17 commercial use of explosives by persons engaged in farming,
18 ranching, logging, geophysical work, drilling or development
19 of water, oil, or gas wells, or mining of any kind or to the
20 private use of explosives in the removal of stumps and rocks
21 from land owned by the person using the explosives, except
22 that the persons exempted from this chapter by this
23 subsection must comply with rules adopted under
24 37-72-201(1)(c) and the provisions of 37-72-102 apply to a
25 violation of those rules by an exempted person.

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1 (4) This chapter does not apply to persons conducting
2 blasting operations when the persons and operations are
3 subject to rules adopted under and implementing
4 82-4-231~~(f)(9)~~(e)."

5 **Section 6.** Extension of authority. Any existing
6 authority to make rules on the subject of the provisions of
7 [this act] is extended to the provisions of [this act].

-End-