

HOUSE BILL 728

Introduced by O'Keefe, et al.

2/15	Introduced
2/16	Referred to Natural Resources
2/17	Fiscal Note Requested
	Died in Committee

1 *Amuse* BILL NO. *728*
2 INTRODUCED BY *Rufe Blaylock*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OPERATOR
5 OF A COAL MINE AND A PERSON APPLYING FOR AN EXPLORATION
6 LICENSE OR PERMIT TO OPERATE A METAL MINE TO FILE A WATER
7 RESOURCES RECLAMATION BOND; ESTABLISHING CONDITIONS FOR
8 DETERMINING THE AMOUNT OF A BOND AND FOR RELEASING A BOND;
9 ESTABLISHING ADDITIONAL CONDITIONS FOR AN OPERATOR OF A COAL
10 MINE TO OBTAIN A FUTURE PERMIT IF A BOND IS FORFEITED;
11 PROHIBITING A METAL MINE OPERATOR FROM OBTAINING FUTURE
12 EXPLORATION LICENSES AND OPERATING PERMITS IF A BOND IS
13 FORFEITED; AUTHORIZING THE BOARD OF LAND COMMISSIONERS AND
14 THE DEPARTMENT OF STATE LANDS TO RECLAIM WATER RESOURCES IF
15 A BOND IS FORFEITED; AND AMENDING SECTIONS 82-4-202,
16 82-4-222, 82-4-223, 82-4-225, 82-4-227, 82-4-232, 82-4-240,
17 82-4-251, 82-4-332, 82-4-335, 82-4-336, AND 82-4-338, MCA."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 82-4-202, MCA, is amended to read:

21 "82-4-202. Policy -- findings. (1) It is the declared
22 policy of this state and its people to:

23 (a) maintain and improve the state's clean and
24 healthful environment for present and future generations;

25 (b) protect its environmental life-support system from

1 degradation;

2 (c) prevent unreasonable degradation of its natural
3 resources;

4 (d) restore, enhance, and preserve its scenic,
5 historic, archeologic, scientific, cultural, and
6 recreational sites;

7 (e) demand effective reclamation of all lands
8 disturbed by the taking of natural resources and maintain
9 state administration of the reclamation program;

10 (f) require the legislature to provide for proper
11 administration and enforcement, create adequate remedies,
12 and set effective requirements and standards (especially as
13 to reclamation of disturbed lands and water resources) in
14 order to achieve the aforementioned objectives contained in
15 this subsection (1); and

16 (g) provide for the orderly development of coal
17 resources through strip or underground mining to assure the
18 wise use of these resources and prevent the failure to
19 conserve coal.

20 (2) The legislature hereby finds and declares that:

21 (a) in order to achieve the aforementioned policy
22 objectives, promote the health and welfare of the people,
23 control erosion and pollution, protect domestic stock and
24 wildlife, preserve agricultural and recreational
25 productivity, save cultural, historic, and aesthetic values,

1 and assure a long-range dependable tax base, it is
 2 reasonably necessary to require, after March 16, 1973, that
 3 all strip-mining and underground-mining operations be
 4 limited to those for which 5-year permits are granted, that
 5 no permit be issued until the operator presents a
 6 comprehensive plan for reclamation and restoration and a
 7 coal conservation plan, together with an adequate
 8 performance bond bonds, and the plan is approved, that
 9 certain other things must be done, that certain remedies are
 10 available, that certain lands because of their unique or
 11 unusual characteristics may not be strip-mined or
 12 underground-mined under any circumstances, all as more
 13 particularly appears in the remaining provisions of this
 14 part, and that the department be given authority to
 15 administer and enforce a reclamation program that complies
 16 with Public Law 95-87, the Surface Mining Control and
 17 Reclamation Act of 1977, as amended;

18 (b) this part be deemed considered to be an exercise
 19 of the authority granted in the Montana constitution, as
 20 adopted June 6, 1972, and, in particular, a response to the
 21 mandate expressed in Article IX thereof and also be deemed
 22 considered to be an exercise of the general police power to
 23 provide for the health and welfare of the people."

24 **Section 2.** Section 82-4-222, MCA, is amended to read:

25 "82-4-222. Permit application. (1) An operator

1 desiring a permit shall file an application which ~~shall~~ must
 2 contain a complete and detailed plan for the mining,
 3 reclamation, revegetation, and rehabilitation of the land
 4 and water to be affected by the operation. ~~Such~~ The plan
 5 ~~shall~~ must reflect thorough advance investigation and study
 6 by the operator and ~~shall~~ must include all known or readily
 7 discoverable past and present uses of the land and water to
 8 be affected and the approximate periods of ~~such~~ use and
 9 ~~shall~~ must state:

10 (a) the location and area of land to be affected by
 11 the operation, with a description of access to the area from
 12 the nearest public highways;

13 (b) the names and addresses of the owners of record
 14 and any purchasers under contracts for deed of the surface
 15 of the area of land to be affected by the permit and the
 16 owners of record and any purchasers under contracts for deed
 17 of all surface area within one-half mile of any part of the
 18 affected area;

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

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

24 (e) the permanent and temporary post-office addresses
 25 of the applicant;

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

(g) (i) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251, and he shall so certify; and

(ii) 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, a water resources reclamation 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 any 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 the seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall must 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 must depict subsurface conditions at such intervals as the department requires across the surface and shall must 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 must depict the thickness and geologic character of all known strata, beginning with the topsoil. In addition, each application for an underground-mining permit shall must 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

1 sections ~~shall~~ must also include all existing shafts,
2 entries, and haulageways.

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

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

25 (n) a coal conservation plan; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (4) In addition to the information and maps required
13 ~~above by subsections (1) through (3)~~, each application for a
14 permit ~~shall~~ must be accompanied by detailed plans or
15 proposals showing the method of operation, the manner, time
16 or distance, and estimated cost for backfilling, subsidence
17 stabilization, water control, grading work, highwall
18 reduction, topsoiling, planting, revegetating, and a
19 reclamation plan for the area affected by the operation.
20 ~~which The proposals shall~~ must meet the requirements of this
21 part and rules adopted under this part. The reclamation plan
22 ~~shall~~ must address the life of the operation and indicate
23 the size, sequence, and the timing of the subareas for which
24 it is anticipated that individual permits will be sought.

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

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

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

21 **Section 3.** Section 82-4-223, MCA, is amended to read:

22 "82-4-223. Permit fee and ~~--~~ surety bond ~~--~~ water
 23 resources reclamation bond. (1) An application fee of \$100
 24 ~~shall must~~ be paid before the permit required in this part
 25 ~~shall may~~ be issued.

1 (2) Before a permit may be issued, the operator shall
 2 file with the department a bond payable to the state of
 3 Montana with surety satisfactory to the department in the
 4 penal sum to be determined by the board, on the
 5 recommendation of the commissioner, of not less than \$200
 6 for each acre or fraction thereof ~~of an acre~~ of the area of
 7 land affected, with a minimum bond of \$10,000, conditioned
 8 upon the faithful performance of the requirements ~~set--forth~~
 9 ~~in of~~ this part and of the rules of the board. The operator
 10 may elect to deposit cash, negotiable bonds, or negotiable
 11 certificates of deposit of any bank organized or transacting
 12 business in the United States. The cash deposit or market
 13 value of ~~such the~~ securities ~~shall must~~ be equal to or
 14 greater than the amount of the bond required for the bonded
 15 area. The level of bonding ~~shall must~~ be relative to the
 16 degree of disturbance projected by the original permit and
 17 the annual report. A political subdivision or agency of the
 18 state need not file a bond unless required to do so by the
 19 board. The board shall adjust the amount of bond required
 20 if the cost of reclamation changes.

21 (3) In determining the amount of the bond, the board
 22 shall take into consideration the character and nature of
 23 the overburden, the future suitable use of the land
 24 involved, and the cost of backfilling, grading, highwall
 25 reduction, subsidence stabilization, water control,

1 topsoiling, and reclamation to be required, but ~~in-no-event~~
 2 ~~shall~~ the bond may not be less than the total estimated cost
 3 to the state of completing the work described in the
 4 reclamation plan.

5 (4) (a) In addition to the requirements of subsections
 6 (2) and (3), before a permit may be issued, the operator
 7 shall file with the department a water resources reclamation
 8 bond payable to the state of Montana with surety
 9 satisfactory to the department in a penal sum to be
 10 determined by the board, on the recommendation of the
 11 commissioner, and conditioned upon the faithful performance
 12 of the requirements set forth in this section and of the
 13 rules of the board. The board shall determine an amount for
 14 the bond that is reasonable to replace the water for uses
 15 existing prior to mining, including irrigation, domestic
 16 uses, minimum stream flows, and any other recognized
 17 beneficial uses. The board shall base its determination upon
 18 an assessment of the hydrologic information required by
 19 82-4-222(1)(m).

20 (b) The requirements of subsection (2) pertaining to
 21 acceptable alternate forms of surety and conditions of
 22 deposit, level of bonding, exceptions for political
 23 subdivisions or agencies of the state, and authority of the
 24 board to adjust the amount of the bond relative to the cost
 25 of reclamation apply to the water resources reclamation

1 bond. The water resources reclamation bond may not be less
 2 than the total estimated cost to the state of meeting the
 3 requirements of subsection (4)(c).

4 (c) The department may not release the water resources
 5 reclamation bond until the department determines, based on
 6 the hydrologic assessment specified in subsection (4)(a),
 7 that any material damage to surface or ground water, in or
 8 outside the area covered by the permit, caused by mining or
 9 related operations has been repaired or reclaimed or the
 10 water resources have been replaced in quantity and quality
 11 comparable to their condition prior to mining. In the event
 12 that a water resource must be replaced, the operator is
 13 responsible for supplying water to affected water users
 14 until the water resource has been replaced to its previous
 15 quantity and quality. The department may not release the
 16 water resources reclamation bond until 20 years after any
 17 other reclamation bond or portion of bond required by this
 18 part has been released as set forth in 82-4-235."

19 **Section 4.** Section 82-4-225, MCA, is amended to read:

20 "82-4-225. Application for increase or reduction in
 21 permit area. The department may increase or reduce the area
 22 of land affected by an operation under a permit on
 23 application by an operator, but an increase may not extend
 24 the period for which an original permit was issued. An
 25 operator may, at any time, apply to the department for an

1 amendment of the permit ~~so-as~~ to increase or reduce the
 2 acreage affected by it. The operator shall file an
 3 application and map in the same form and with the same
 4 content as required for an original application under this
 5 part and shall pay an application fee of \$50 and shall file
 6 with the department a supplemental bond bonds in the amount
 7 to be determined under 82-4-223 for each acre or fraction of
 8 an acre of the increase approved and for any water resources
 9 that the department determines may be affected in addition
 10 to those included in the original permit. All procedures of
 11 this part pertaining to original applications apply to
 12 applications for the increase of the area of land affected,
 13 except for incidental boundary revisions. If the department
 14 approves a reduction in the acreage covered by the original
 15 or supplemental permit;

16 (1) it shall release the bond for each acre reduced,
 17 but in--no--case--shall the bond may not be reduced below
 18 \$10,000, except as provided in 82-4-223; and

19 (2) it may release a portion of the water resources
 20 reclamation bond if it determines, based on a review of the
 21 hydrologic assessment required by 82-4-223(4), that the
 22 reduction in acreage also reduces probable adverse
 23 hydrologic impacts caused by the mine."

24 **Section 5.** Section 82-4-227, MCA, is amended to read:

25 **"82-4-227. Refusal of permit.** (1) An application for a

1 prospecting, strip-mining, or underground-mining permit or
 2 major revision ~~shall~~ may not be approved by the department
 3 unless, on the basis of the information set forth in the
 4 application, an on-site inspection, and an evaluation of the
 5 operation by the department, the applicant has affirmatively
 6 demonstrated that the requirements of this part and rules
 7 will be observed and that the proposed method of operation,
 8 backfilling, grading, subsidence stabilization, water
 9 control, highwall reduction, topsoiling, revegetation, or
 10 reclamation of the affected area can be carried out
 11 consistently with the purpose of this part. The applicant
 12 for a permit or major revision has the burden of
 13 establishing that his application is in compliance with this
 14 part and the rules adopted under it.

15 (2) The department ~~shall~~ may not approve the
 16 application for a prospecting, strip-mining, or
 17 underground-mining permit where the area of land described
 18 in the application includes land having special,
 19 exceptional, critical, or unique characteristics or that
 20 mining or prospecting on that area would adversely affect
 21 the use, enjoyment, or fundamental character of neighboring
 22 land having special, exceptional, critical, or unique
 23 characteristics. For the purposes of this part, land is
 24 defined as having ~~such~~ these characteristics if it possesses
 25 special, exceptional, critical, or unique:

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

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

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

(d) scenic, historic, archeologic, topographic, 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) 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 of all anticipated mining 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

1 farmland, the department may not grant a permit to mine coal
 2 on the prime farmland unless it finds in writing that the
 3 applicant has the technological capability to restore the
 4 mined area, within a reasonable time, to equivalent or
 5 higher levels of yield as nonmined prime farmland in the
 6 surrounding area under equivalent levels of management and
 7 can meet the soil reconstruction standards of 82-4-232(3).
 8 Nothing in this subsection applies to any permit issued
 9 prior to August 3, 1977, or to any revisions or renewals
 10 thereof, or to any existing strip- or underground-mining
 11 operations for which a permit was issued prior to August 3,
 12 1977.

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

24 (7) (a) If the department finds that the operation
 25 will constitute a hazard to a dwelling house, public

1 building, school, church, cemetery, commercial or
 2 institutional building, public road, stream, lake, or other
 3 public property, the department shall delete those areas
 4 from the prospecting, strip-mining, or underground-mining
 5 permit application before it can be approved. In no case may
 6 strip- or underground-coal-mining be allowed:

7 (i) within 300 feet of any occupied dwelling, unless
 8 waived by the owner; nor

9 (ii) within 300 feet of any public building, school,
 10 church, community, or institutional building, or public
 11 park; nor

12 (iii) within 100 feet of a cemetery; nor or

13 (iv) within 100 feet of the outside right-of-way line
 14 of any public road, except where mine access roads or
 15 haulage roads join such the right-of-way line.

16 (b) The department may permit such roads referred to
 17 in subsection (7)(a)(iv) to be relocated or the area
 18 affected to lie within 100 feet of the road if, after public
 19 notice and opportunity for public hearing in the locality, a
 20 written finding is made that the interests of the public and
 21 the landowners affected will be protected.

22 (8) ~~No--strip~~ Strip- or underground-mining may not be
 23 conducted within 500 feet of active or abandoned underground
 24 mines in order to prevent breakthroughs and to protect
 25 health or safety of miners. The department shall permit an

1 operator to mine near, through, or partially through an
2 abandoned underground mine or closer to an active
3 underground mine if:

4 (a) the nature, timing, and sequencing of specific
5 strip-mine activities and specific underground-mine
6 activities are jointly approved by the department and the
7 regulatory authority concerned with the health and safety of
8 underground miners; and

9 (b) such the operations will result in improved
10 resource recovery, abatement of water pollution, or
11 elimination of hazards to the health and safety of the
12 public.

13 (9) The department may not approve an application for
14 a strip- or underground-coal-mining operation if the area
15 proposed to be mined is included within an area designated
16 unsuitable for strip or underground coal mining or within an
17 area under review for this designation under an
18 administrative proceeding, unless in such-an the area as to
19 which an administrative proceeding has commenced pursuant to
20 this part, the operator making the permit application
21 demonstrates that prior to January 1, 1977, he made
22 substantial legal and financial commitments in relation to
23 the operation for which he is applying for a permit.

24 (10) No A permit or major permit revision for a strip-
25 or underground-coal-mining operation may not be issued

1 unless the applicant has affirmatively demonstrated by its
2 coal conservation plan that ~~no~~ failure to conserve coal will
3 not occur. The department may require the applicant to
4 submit any information it considers necessary for review of
5 the coal conservation plan.

6 (11) Whenever information available to the department
7 indicates that any strip- or underground-coal-mining
8 operation owned or controlled by the applicant is currently
9 in violation of Public Law 95-87, as amended, or any state
10 law required by Public Law 95-87, as amended, or any law,
11 rule, or regulation of the United States or of any
12 department or agency in the United States pertaining to air
13 or water environmental protection, the department ~~shall~~ may
14 not issue a strip- or underground-coal-mining permit or
15 major revision until the applicant submits proof, consistent
16 with the requirements of 82-4-251(4) and (5), as applicable,
17 that the violation has been corrected or is in the process
18 of being corrected to the satisfaction of the administering
19 agency.

20 (12) The department may not issue a strip- or
21 underground-coal-mining permit or major revision to any
22 applicant which it finds, after an opportunity for hearing,
23 owns or controls any ~~strip~~ strip- or underground-coal-mining
24 operation which has demonstrated a pattern of willful
25 violations of Public Law 95-87, as amended, or any state law

1 required by Public Law 95-87, as amended, of such a nature
2 and duration and with such resulting irreparable damage to
3 the environment to indicate an intent not to comply with the
4 provisions of this part.

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

14 **Section 6.** Section 82-4-232, MCA, is amended to read:

15 "82-4-232. Area mining required -- bond -- alternative
16 plan. (1) Area strip mining, a method of operation which
17 does not produce a bench or fill bench, is required where
18 strip mining is proposed. All highwalls must be reduced and
19 the steepest slope of the reduced highwall ~~shall~~ may not be
20 ~~no~~ greater than 20 degrees from the horizontal. Highwall
21 reduction ~~shall~~ must be commenced at or beyond the top of
22 the highwall and sloped to the graded spoil bank. Reduction,
23 backfilling, and grading ~~shall~~ must eliminate all highwalls
24 and spoil peaks. The area of land affected ~~shall~~ must be
25 restored to the approximate original contour of the land.

1 When directed by the department, the operator shall
2 construct in the final grading ~~such~~ diversion ditches,
3 depressions, or terraces as will accumulate or control the
4 water runoff. Additional restoration work may be required by
5 the department according to rules adopted by the board.

6 (2) In addition to the backfilling and grading
7 requirements, the operator's method of operation on steep
8 slopes may be regulated and controlled according to rules
9 adopted by the board. These rules may require any measure
10 ~~whatsoever~~ to accomplish the purpose of this part.

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

15 (a) segregate the A horizon of the natural soil,
16 except where it can be shown that other available soil
17 materials will create a final soil having a greater
18 productive capacity; and if not utilized immediately,
19 stockpile this material separately from other spoil and
20 provide needed protection from wind and water erosion or
21 contamination by other acid or toxic material;

22 (b) segregate the B horizon of the natural soil, or
23 underlying C horizon or other strata, or a combination of
24 ~~such~~ the B and C horizons or other strata that are shown to
25 be both texturally and chemically suitable for plant growth

1 and that can be shown to be equally or more favorable for
2 plant growth than the B horizon in sufficient quantities to
3 create in the regraded final soil a root zone of comparable
4 depth and quality to that which existed in the natural soil;
5 and if not utilized immediately, stockpile this material
6 separately from other spoil and provide needed protection
7 from wind and water erosion or contamination by acid or
8 toxic material;

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

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

14 (4) All available topsoil ~~shall~~ must be removed in a
15 separate layer, guarded from erosion and pollution, and kept
16 in such a condition that it can sustain vegetation of at
17 least the quality and variety it sustained prior to removal,
18 provided that the operator shall accord substantially the
19 same treatment to any subsurface deposit of material that is
20 capable, as determined by the department, of supporting
21 surface vegetation virtually as well as the present topsoil.
22 After the operation has been backfilled and graded, the
23 topsoil or the best available subsurface deposit of material
24 which is best able to support vegetation ~~shall~~ must be
25 returned as the top layer.

1 (5) As determined by rules of the board, time limits
2 ~~shall~~ must be established requiring backfilling, grading,
3 subsidence stabilization, water control, highwall reduction,
4 topsoiling, planting, and revegetation to be kept current.
5 All backfilling, subsidence stabilization, sealing, grading,
6 and topsoiling ~~shall~~ must be completed before necessary
7 equipment is moved from the operation.

8 (6) (a) The permittee may file a request with the
9 department for the release of all or part of a performance
10 bond or deposit required by 82-4-223(2). Within 30 days
11 after any application for bond or deposit release has been
12 filed with the department, the permittee shall submit a copy
13 of an advertisement notice placed at least once a week for 4
14 successive weeks in a newspaper of general circulation in
15 the locality of the prospecting or mining operation. The
16 notice is considered part of any bond release application
17 and must contain a notification of the precise location of
18 the land affected, the number of acres, the permit and the
19 date approved, the amount of the bond filed and the portion
20 sought to be released, the type and appropriate dates of
21 reclamation work performed, and a description of the results
22 achieved as they relate to the permittee's approved
23 reclamation plan. In addition, as part of any bond release
24 application, the permittee shall submit copies of letters
25 that he has sent to adjoining property owners, local

governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of his intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (5)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such the pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days thereafter after the hearing.

(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 of the bond or deposit 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~~ The bond or deposit or any part of the bond or deposit may not 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(10)(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

1 type in the surrounding area under equivalent management
2 practices, as determined from the soil survey.

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

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

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

20 (F) Any person with a valid legal interest that might
21 be adversely affected by release of the bond or the
22 responsible officer or head of any federal, state, or local
23 governmental agency which has jurisdiction by law or special
24 expertise with respect to any environmental, social, or
25 economic impact involved in the operation or is authorized

1 to develop and enforce environmental standards with respect
2 to ~~such~~ the operations has the right to file written
3 objections to the proposed release from bond to the
4 department within 30 days after the last publication of the
5 notice provided for in subsection (6)(a). If written
6 objections are filed and a hearing requested, the department
7 shall inform all the interested parties of the time and
8 place of the hearing and, within 30 days of the request for
9 ~~such~~ hearing, hold a public hearing in the locality of the
10 operation proposed for bond release. The date, time, and
11 location of the public hearing must be advertised by the
12 department in a newspaper of general circulation in the
13 locality for 2 consecutive weeks, and the hearing must be
14 held in the locality of the operation proposed for bond
15 release or at the state capital, at the option of the
16 objector, within 30 days of the request for ~~such~~ hearing.

17 (g) Without prejudice to the rights of the objectors
18 or the permittee or the responsibilities of the department
19 pursuant to this section, the department may establish an
20 informal conference to resolve ~~such~~ written objections.

21 (h) For the purpose of the hearing under subsection
22 (6)(f), the department may administer oaths; subpoena
23 witnesses or written or printed materials; compel the
24 attendance of witnesses or the production of materials; and
25 take evidence, including but not limited to site inspections

1 of the land affected and other operations carried on by the
2 permittee in the general vicinity. A verbatim record of each
3 public hearing required by this section must be made, and a
4 transcript must be made available on the motion of any party
5 or by order of the department.

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

20 (8) If alternate revegetation is proposed, a
21 management plan must be submitted showing how the area will
22 be utilized and any data necessary to show that the
23 alternate postmining land use can be achieved. Any plan must
24 require the operation as a minimum to:

25 (a) restore the land affected to a condition capable

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

11 (b) prevent soil erosion to the extent achieved prior
12 to mining."

13 **Section 7.** Section 82-4-240, MCA, is amended to read:

14 "82-4-240. Reclamation of lands and water resources
15 after bond forfeited. In keeping with the provisions of this
16 part, the board may reclaim any affected lands or water
17 resources with respect to which a bond has been forfeited."

18 **Section 8.** Section 82-4-251, MCA, is amended to read:

19 "82-4-251. Noncompliance -- suspension of permits. (1)
20 The commissioner or an authorized representative of the
21 department shall, if he determines on the basis of an
22 inspection that any condition or practices exist or that the
23 permittee is in violation of any requirement of this part or
24 any permit condition required by the this part that creates
25 an imminent danger to the health or safety of the public or

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

21 (2) When, on the basis of an inspection, the
 22 department determines that any permittee is in violation of
 23 any requirement of this part or any permit condition
 24 required by this part which does not create an imminent
 25 danger to the health or safety of the public or cannot be

1 reasonably expected to cause significant and imminent
 2 environmental harm to land, air, or water resources, the
 3 commissioner or his authorized representative shall issue a
 4 notice to the permittee or his agent fixing a reasonable
 5 time, not exceeding 90 days, for the abatement of the
 6 violation and providing opportunity for public hearing. If,
 7 upon expiration of the period of time as originally fixed or
 8 subsequently extended, for good cause shown and upon the
 9 written finding of the commissioner or his authorized
 10 representative, the commissioner or his authorized
 11 representative finds that the violation has not been abated,
 12 he shall immediately order a cessation of the operation or
 13 the portion thereof of the operation relevant to the
 14 violation. ~~Such~~ The cessation order remains in effect until
 15 the commissioner or his authorized representative determines
 16 that the violation has been abated or until modified,
 17 vacated, or terminated by the commissioner or his authorized
 18 representative pursuant to subsection ~~(5)~~(6). In the order
 19 of cessation issued under this subsection, the commissioner
 20 shall determine the steps necessary to abate the violation
 21 in the most expeditious manner possible and shall include
 22 the necessary measures in the order.

23 (3) When, on the basis of an inspection, the
 24 commissioner or his authorized representative determines
 25 that a pattern of ~~violations~~ violation of any requirements

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

20 (4) Any additional permits held by an operator whose
 21 mining permit has been revoked ~~shall~~ must be suspended and
 22 the operator is not eligible to receive another permit or to
 23 have the suspended permits reinstated until he has complied
 24 with all the requirements of this part in respect to former
 25 permits issued him. An operator, including any firm or

1 business association of which that operator was a principal
 2 or controlling member, who has forfeited a bond;

3 (a) required by this part is not eligible to receive
 4 another permit or to renew or supplement a permit unless the
 5 land or water resources for which the bond was forfeited ~~has~~
 6 have been reclaimed without cost to the state or the
 7 operator has paid into the reclamation account a sum that,
 8 together with the value of the bond, the board finds
 9 adequate to reclaim the lands or water resources; or

10 (b) required by any other state as a prerequisite to
 11 mining is not eligible to receive another permit or to renew
 12 or supplement a permit under this part unless the operator
 13 furnishes adequate documentation to the board demonstrating
 14 that the land or water resources in the other state for
 15 which the bond was forfeited have been reclaimed to the
 16 satisfaction of and without cost to the other state or that
 17 the operator has paid to the other state a sum the other
 18 state finds adequate to reclaim the land or water resources.

19 (5) In addition to the requirements of subsection (4),
 20 an operator who has forfeited a water resources reclamation
 21 bond is not eligible to receive another permit or to renew
 22 or supplement a permit under this part unless the water
 23 resources for which the bond was forfeited have been
 24 restored in quantity and quality comparable to their
 25 condition prior to mining.

1 †5†(6) Notices and orders issued pursuant to this
2 section ~~shall~~ must set forth with reasonable specificity the
3 nature of the violation and the remedial action required,
4 the period of time established for abatement, and a
5 reasonable description of the portion of the operation to
6 which the notice or order applies. Each notice or order
7 issued under this section ~~shall~~ must be given promptly to
8 the permittee or his agent by the department or the
9 commissioner or his authorized representative who issues the
10 notice or order. All such notices and orders must be in
11 writing and be signed by the commissioner or his authorized
12 ~~representatives~~ representative. Any notice or order issued
13 pursuant to this section may be modified, vacated, or
14 terminated by the commissioner or his authorized
15 representative, provided that any notice or order issued
16 pursuant to this section that requires cessation of mining
17 by the operator expires within 30 days of actual notice to
18 the operator unless a public hearing is held at the site or
19 within such reasonable proximity to the site that any
20 viewings of the site can be conducted during the course of
21 public hearing.

22 †6†(7) A person issued a notice or an order of
23 cessation pursuant to this section or any person having an
24 interest that is or may be adversely affected by an order or
25 by modification, vacation, or termination of an order may

1 apply to the department for review of that order within 30
2 days of its issuance or within 30 days of its modification,
3 vacation, or termination. Upon receipt of the application,
4 the department shall make an investigation. The
5 investigation ~~shall~~ must provide an opportunity for public
6 hearing at the request of the applicant or the person having
7 an interest who is or may be adversely affected to enable
8 the applicant or the person to present information relating
9 to the issuance and continuance of the notice or order or
10 the modification, vacation, or termination of it. The filing
11 of an application for review under this subsection may not
12 operate as a stay of any order or notice. The department
13 shall make findings of fact and issue a written decision
14 incorporating an order vacating, affirming, modifying, or
15 terminating the order.

16 †7†(8) Whenever an order is issued under this section
17 or as the result of any administrative proceeding under this
18 part, at the request of any person, a sum equal to the
19 aggregate amount of all costs, expenses, and attorney fees
20 as determined by the department to have been reasonably
21 incurred by such the person for or in connection with his
22 participation in such the proceedings, including any
23 judicial review of agency actions, may be assessed against
24 either party as the court, resulting from judicial review,
25 or the department, resulting from administrative

proceedings, considers proper.

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

Section 9. Section 82-4-332, MCA, is amended to read:

"82-4-332. Exploration license. (1) An exploration license ~~shall~~ must be issued to any applicant ~~therefor~~ who ~~shall~~:

(a) ~~pay~~ pays a fee of \$5 to the board;

(b) ~~agree~~ agrees to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the board; and

(c) is ~~not be~~ in default of any other reclamation obligation under this law.

(2) An application for an exploration license ~~shall~~ must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application ~~shall~~ must include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall by rule

determine the precise nature of ~~such~~ the exploration map or sketch. The applicant ~~must~~ shall state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of the certificate to the board.

(4) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond and a water resources reclamation bond in a form and amount as determined by the department in accordance with 82-4-338.

(5) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan ~~shall~~ must be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department.

(6) The board may not issue an exploration license to a person if that person or a firm or business association of which that person was a principal or controlling member failed to comply with the provisions of this part, the rules adopted under this part, a permit or license issued under this part, or a permit, license, or other approval to conduct exploration operations that was obtained from another state, and that failure resulted in the forfeiture of a bond."

Section 10. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No A person shall may not engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board ~~to do so~~. A separate operating permit ~~shall--be~~ is required for each complex. Prior to receiving an operating permit from the board, ~~any a person must~~ shall pay the basic permit fee of \$25 and ~~must~~ shall submit an application, on a form provided by the board, which ~~shall~~ must contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its

resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that ~~such the~~ structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 ~~shall~~ must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as

required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(5) The board may not issue an operating permit to a person if that person or a firm or business association of which that person was a principal or controlling member failed to comply with the provisions of this part, the rules adopted under this part, a permit or license issued under this part, or a permit, license, or other approval to conduct mining operations that was obtained from another

1 state, and that failure resulted in the forfeiture of a
2 bond."

3 **Section 11.** Section 82-4-336, MCA, is amended to read:

4 "82-4-336. Reclamation plan and specific reclamation
5 requirements. (1) The reclamation plan ~~shall~~ must provide
6 that reclamation activities, particularly those relating to
7 control of erosion, to the extent feasible, ~~shall~~ must be
8 conducted simultaneously with the operation and in any case
9 ~~shall~~ must be initiated promptly after completion or
10 abandonment of the operation on those portions of the
11 complex that will not be subject to further disturbance. In
12 the absence of an order by the board providing a longer
13 period, the plan ~~shall~~ must provide that reclamation
14 activities ~~shall~~ must be completed not more than 2 years
15 after completion or abandonment of the operation on that
16 portion of the complex.

17 (2) In the absence of emergency or suddenly threatened
18 or existing catastrophe, an operator may not depart from an
19 approved plan without previously obtaining from the
20 department written approval of his proposed change.

21 (3) Provision ~~shall~~ must be made to avoid accumulation
22 of stagnant water in the mined area which may serve as a
23 host or breeding ground for mosquitoes or other
24 disease-bearing or noxious insect life.

25 (4) All final grading ~~shall~~ must be made with

1 nonnoxious, nonflammable, noncombustible solids unless
2 approval has been granted by the board for a supervised
3 sanitary fill.

4 (5) Where mining has left an open pit exceeding 2
5 acres of surface area and the composition of the floor or
6 walls of the pit are likely to cause formation of acid,
7 toxic, or otherwise pollutive solutions (~~hereinafter~~
8 "objectionable effluents") on exposure to moisture, the
9 reclamation plan ~~shall~~ must include provisions which
10 adequately provide for:

11 (a) insulation of all faces from moisture or water
12 contact by covering to a depth of 2 feet or more with
13 material or fill not susceptible itself to generation of
14 objectionable effluents;

15 (b) processing of any objectionable effluents in the
16 pit before their being allowed to flow or be pumped out of
17 it to reduce toxic or other objectionable ratios to a level
18 considered safe to humans and the environment by the board;

19 (c) drainage of any objectionable effluents to
20 settling or treatment basins when the objectionable
21 effluents must be reduced to levels considered safe by the
22 board before release from the settling basin; or

23 (d) absorption or evaporation of objectionable
24 effluents in the open pit itself; and

25 (e) prevention of entrance into the open pit by

persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegetative cover ~~shall~~ must be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover ~~shall~~ must meet county standards for noxious weed control.

(7) The reclamation plan ~~shall~~ must provide for the reclamation of all disturbed land and water resources. Proposed reclamation ~~shall~~ must provide for the reclamation of:

(a) disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such the excepted cases, the board shall require sufficient measures to ~~insure~~ ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands; and

(b) water resources, including surface and ground water, to a quantity and quality comparable to that which existed prior to mining.

(8) A reclamation plan ~~shall~~ must be approved by the board if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan ~~shall~~ must provide for

permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste rock dumps. The plan ~~shall~~ must also provide measures to prevent objectionable postmining ground water discharges."

Section 12. Section 82-4-338, MCA, is amended to read:

"82-4-338. Performance bond. (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than \$200 or more than \$2,500 for each acre or fraction thereof of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part and the rules of the board. In lieu of ~~such the~~ bond, the applicant may file with the board a cash deposit, or an assignment of a certificate of deposit, ~~or other surety~~ acceptable to the board. Regardless of the above limits, the bond ~~shall~~ may not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency ~~shall~~ may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. Such The blanket bond ~~shall~~ must adequately secure the estimated total number of acres of disturbed land. When determined by the department that the

1 set bonding level of a permit or license does not represent
2 the present costs of reclamation, the department may modify
3 the bonding requirements of that permit or license.

4 (2) In addition to the requirements of subsection (1),
5 the applicant shall file with the department a water
6 resources reclamation bond payable to the state of Montana
7 with surety satisfactory to the department and conditioned
8 upon the faithful performance of the requirements set forth
9 in this part and the rules of the board. The department
10 shall determine an amount for the bond that is reasonable to
11 replace the water for uses existing prior to mining,
12 including irrigation, domestic uses, minimum stream flows,
13 and any other recognized beneficial uses. The department
14 shall base its determination on a hydrologic assessment of
15 the probable consequences of mining and reclamation
16 operations, both on and off the mine site, with respect to
17 the hydrologic regime, quantity, and quality of water in the
18 surface and ground water systems, including dissolved and
19 suspended solids under seasonal flow conditions, and
20 sufficient data for the mine site and surrounding areas so
21 that cumulative impacts of all anticipated mining in the
22 area upon the hydrology of the area and particularly upon
23 water availability can be made. The department may require
24 the applicant to provide information about the proposed
25 exploration or mining operation and data concerning the

1 hydrologic regime, quantity, and quality of water in the
2 surface and ground water systems in addition to other
3 information that the applicant is required to file under
4 this part to assist the department in preparing the
5 hydrologic assessment.

6 (a) The requirements of subsection (1) pertaining to
7 acceptable alternate forms of surety in lieu of a bond,
8 exceptions for public and governmental agencies, and
9 authority granted to the department to modify the bonding
10 level of a permit or license to represent the present costs
11 of reclamation apply to the water resources reclamation
12 bond. The amount of the bond may not be less than the
13 estimated cost to the state to repair or replace damaged
14 water resources.

15 (b) The department may not release the water resources
16 reclamation bond until the department determines, based on
17 the hydrologic assessment required by this section, that any
18 material damage to surface or ground water, in or outside
19 the area covered by the exploration license or operating
20 permit, caused by mining or related operations has been
21 repaired or reclaimed or the water resources have been
22 replaced in quantity and quality comparable to their
23 condition prior to mining. In the event that a water
24 resource must be replaced, the operator is responsible for
25 supplying water to affected water users until the water

resource has been replaced to its previous quantity and quality. The department may not release the water resources reclamation bond until 20 years after any other performance bond or portion of a bond required by this part has been released.

†2†(3) No Consistent with the provisions of subsection (2), a bond filed in accordance with the provisions of this part shall may not be released by the department until the provisions of this part, the rules adopted pursuant thereto to this part, and this reclamation plan have been fulfilled.

†3†(4) No A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

NEW SECTION. Section 13. Reclamation of water resources after bond forfeited. In keeping with the provisions of this part, the department may reclaim an affected water resource with respect to which a water resources bond has been forfeited.

NEW SECTION. Section 14. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 15. Codification instruction. [Section 13] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title

1 82, chapter 4, part 3, apply to [section 13].

-End-