

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 171
 2 INTRODUCED BY Tim Hanson
 3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
 6 STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH
 7 FEDERAL LAW AND REGULATIONS; AMENDING THE DEFINITION OF
 8 "PROSPECTING"; EXPANDING THE AUTHORITY TO DENY A PERMIT ON
 9 FEDERAL LAND OR BASED ON CURRENT VIOLATIONS; PROHIBITING
 10 COAL MINING ON CERTAIN FEDERAL LANDS; AND AMENDING SECTIONS
 11 82-4-203, 82-4-226, AND 82-4-227, MCA."
 12

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

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

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

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

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

1 sheet erosion, deposits by unconcentrated runoff or slope
 2 wash, together with talus, other mass movement accumulation,
 3 and windblown deposits.

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

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

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

25 (6) "Board" means the board of land commissioners



1 provided for in Article X, section 4, of the constitution of
2 this state.

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

7 (8) "Coal preparation" means the chemical or physical
8 processing of coal and its cleaning, concentrating, or other
9 processing or preparation. The term does not mean the
10 conversion of coal to another energy form or to a gaseous or
11 liquid hydrocarbon, except for incidental amounts that do
12 not leave the plant, nor does the term mean processing for
13 other than commercial purposes.

14 (9) "Coal preparation plant" means a commercial
15 facility where coal is subject to coal preparation. The term
16 includes commercial facilities associated with coal
17 preparation activities but is not limited to loading
18 buildings, water treatment facilities, water storage
19 facilities, settling basins and impoundments, and coal
20 processing and other waste disposal areas.

21 (10) "Commissioner" means the commissioner of state
22 lands provided for in 2-15-3202.

23 (11) "Contour strip mining" means that strip-mining
24 method commonly carried out in areas of rough and hilly
25 topography in which the coal or mineral seam outcrops along

1 the side of the slope and entrance is made to the seam by
2 excavating a bench or table cut at and along the site of the
3 seam outcropping with the excavated overburden commonly
4 being cast down the slope below the mineral seam and the
5 operating bench.

6 (12) "Degree" means from the horizontal and in each case
7 is subject to a tolerance of 5% error.

8 (13) "Department" means the department of state lands
9 provided for in Title 2, chapter 15, part 32.

10 (14) "Failure to conserve coal" means the nonremoval or
11 nonutilization of minable and marketable coal by an
12 operation, provided that the nonremoval or nonutilization of
13 minable and marketable coal in accordance with reclamation
14 standards established by the department shall may not be
15 considered failure to conserve coal.

16 (15) "Fill bench" means that portion of a bench or table
17 which is formed by depositing overburden beyond or downslope
18 from the cut section as formed in the contour method of
19 strip mining.

20 (16) "Imminent danger to the health and safety of the
21 public" means the existence of any condition or practice or
22 any violation of a permit or other requirement of this part
23 in a strip- or underground-coal-mining and reclamation
24 operation that could reasonably be expected to cause
25 substantial physical harm to persons outside the permit area

1 before such the condition, practice, or violation can be
 2 abated. A reasonable expectation of death or serious injury
 3 before abatement exists if a rational person, subjected to
 4 the same conditions or practices giving rise to the peril,
 5 would not expose-himself-or-herself willingly be exposed to
 6 the danger during the time necessary for abatement.

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

10 (18) "Method of operation" means the method or manner by
 11 which the cut, open pit, shaft, or excavation is made, the
 12 overburden is placed or handled, water is controlled, and
 13 other acts are performed by the operator in the process of
 14 uncovering and removing the minerals that affect the
 15 reclamation of the area of land affected.

16 (19) "Mirable coal" means that coal which can be removed
 17 through strip- or underground-mining methods adaptable to
 18 the location that coal is being mined or is planned to be
 19 mined.

20 (20) "Mineral" means coal and uranium.

21 (21) "Operation" means all of the premises, facilities,
 22 railroad loops, roads, and equipment used in the process of
 23 producing and removing mineral from and reclaiming a
 24 designated strip-mine or underground-mine area, including
 25 coal preparation plants, and all activities, including

1 excavation incident thereto to operations, or prospecting
 2 for the purpose of determining the location, quality, or
 3 quantity of a natural mineral deposit.

4 (22) "Operator" means a person engaged in strip mining
 5 or underground mining who removes or intends to remove more
 6 than 10,000 cubic yards of mineral or overburden or a person
 7 engaged in coal mining who removes or intends to remove more
 8 than 250 tons of coal from the earth by mining within 12
 9 consecutive calendar months in any one location or a person
 10 engaged in operating a coal preparation plant.

11 (23) "Overburden" means all of the earth and other
 12 materials which that lie above a natural mineral deposit and
 13 also means such the earth and other material after removal
 14 from their natural state in the process of mining.

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

18 (25) "Prime farmland" means that land previously
 19 prescribed by the United States secretary of agriculture on
 20 the basis of such factors as moisture availability,
 21 temperature regime, chemical balance, permeability,
 22 surface-layer composition, susceptibility to flooding, and
 23 erosion characteristics and which historically has been used
 24 for intensive agricultural purposes and as defined in the
 25 Federal Register.

1 (26) "Prospecting" means the removal of overburden, core
 2 drilling, construction of roads, or any other disturbance of
 3 the surface for the purpose of determining the location,
 4 quantity, or quality of a natural mineral deposit; ~~and,--on~~
 5 ~~areas--designated--unsuitable--for--coal--mining--pursuant--to~~
 6 ~~02-4-227--and--02-4-228~~; the gathering of surface or
 7 subsurface geologic, physical, or chemical data by mapping,
 8 trenching, geophysical, or other techniques necessary to
 9 determine the quality and quantity of overburden ~~and coal~~ in
 10 an area; ~~and~~ or the gathering of environmental data to
 11 establish the conditions of an area before beginning strip-
 12 or underground-coal-mining and reclamation operations under
 13 this part.

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

19 (28) "Remining" means conducting surface coal mining and
 20 reclamation operations that affect previously mined areas
 21 (for example, the recovery of additional mineral from
 22 existing gob or tailings piles).

23 (29) "Strip mining" means any part of the process
 24 followed in the production of mineral by the opencut method,
 25 including mining by the auger method or any similar method

1 ~~which~~ that penetrates a mineral deposit and removes mineral
 2 directly through a series of openings made by a machine
 3 ~~which~~ that enters the deposit from a surface excavation or
 4 any other mining method or process in which the strata or
 5 overburden is removed or displaced in order to recover the
 6 mineral. For the purposes of this part only, strip mining
 7 also includes remining and coal preparation. The terms
 8 "remining" and "coal preparation" are not included in the
 9 definition of "strip mining" for purposes of Title 15,
 10 chapter 35, part 1.

11 (30) "Subsidence" means a vertically downward movement
 12 of overburden materials resulting from the actual mining of
 13 an underlying mineral deposit or associated underground
 14 excavations.

15 (31) "Surface owner" means a person who holds legal or
 16 equitable title to the land surface and whose principal
 17 place of residence is on the land or who personally conducts
 18 farming or ranching operations upon a farm or ranch unit to
 19 be directly affected by strip-mining operations or who
 20 receives directly a significant portion of his income, if
 21 any, from ~~such~~ farming or ranching operations or the state
 22 of Montana where the state owns the surface.

23 (32) "Topsoil" means the unconsolidated mineral matter
 24 naturally present on the surface of the earth that has been
 25 subjected to and influenced by genetic and environmental

1 factors of parent material, climate, macroorganisms and
2 microorganisms, and topography, all acting over a period of
3 time, and that is necessary for the growth and regeneration
4 of vegetation on the surface of the earth.

5 (33) "Underground mining" means any part of the process
6 followed in the production of a mineral such that vertical
7 or horizontal shafts, slopes, drifts, or incline planes
8 connected with excavations penetrating the mineral stratum
9 or strata are utilized and includes mining by in situ
10 methods.

11 (34) "Unwarranted failure to comply" means the failure
12 of a permittee to prevent the occurrence of any violation of
13 his a permit or any requirement of this part due to
14 indifference, lack of diligence, or lack of reasonable care,
15 or the failure to abate any violation of such a permit or
16 this part due to indifference, lack of diligence, or lack of
17 reasonable care.

18 (35) "Waiver" means any document which that demonstrates
19 the clear intention to release rights in the surface estate
20 for the purpose of permitting the extraction of subsurface
21 minerals by strip-mining methods.

22 (36) "Written consent" means such a written statement as
23 is executed by the owner of the surface estate, upon a form
24 approved by the department, demonstrating that such the
25 owner consents to entry of an operator for the purpose of

1 conducting strip-mining operations and that such the consent
2 is given only to such strip-mining and reclamation
3 operations which that fully comply with the terms and
4 requirements of this part."

5 **Section 2.** Section 82-4-226, MCA, is amended to read:

6 "82-4-226. Prospecting permit. (1) On Except as
7 provided in subsection (8) and--after--March--167--1973,
8 prospecting by any person on land not included in a valid
9 strip-mining or underground-mining permit ~~shall--be~~ is
10 unlawful without possessing a valid prospecting permit
11 issued by the department as provided in this section. No A
12 prospecting permit ~~shall~~ may not be issued until the person
13 submits an application, the application is examined, amended
14 if necessary, and approved by the department, and adequate
15 reclamation performance bond is posted, all of which
16 prerequisites must be done in conformity with the
17 requirements of this part.

18 (2) An application for a prospecting permit ~~shall~~ must
19 be made in writing, notarized, and submitted to the
20 department in duplicate upon forms prepared and furnished by
21 it. The application ~~shall~~ must include among other things a
22 prospecting map and a prospecting reclamation plan of
23 substantially the same character as required for a
24 surface-mining or underground-mining map and reclamation
25 plan under this part. The department shall determine by

1 rules the precise nature of such the required prospecting
 2 map and reclamation plan. Any applicant who intends to
 3 prospect by means of core drilling shall specify the
 4 location and number of holes to be drilled, methods to be
 5 used in sealing aquifers, and such other information as may
 6 be required by the department. The applicant ~~must~~ shall
 7 state what types of prospecting and excavating techniques
 8 will be employed on the affected land. The application shall
 9 also include any other or further information the department
 10 may require.

11 (3) The application ~~shall~~ must be accompanied by a fee
 12 of \$100. This fee ~~shall~~ must be used as a credit toward the
 13 strip-mining or underground-mining permit fee provided by
 14 this part if the area covered by the prospecting permit
 15 becomes covered by a valid surface-mining or
 16 underground-mining permit obtained before or at the time the
 17 prospecting permit expires.

18 (4) Before the department gives final approval to the
 19 prospecting permit application, the applicant shall file
 20 with the department a reclamation and revegetation bond in a
 21 form and in an amount as determined in the same manner for
 22 strip-mining or underground-mining reclamation and
 23 revegetation bonds under this part.

24 (5) In the event that the holder of a prospecting
 25 permit desires to strip mine or underground mine the area

1 covered by the prospecting permit and has fulfilled all the
 2 requirements for a strip-mining or underground-mining
 3 permit, the department may permit the postponement of the
 4 reclamation of the acreage prospected if that acreage is
 5 incorporated into the complete reclamation plan submitted
 6 with the application for a strip-mining or
 7 underground-mining permit. Any land actually affected by
 8 prospecting or excavating under a prospecting permit and not
 9 covered by the strip-mining or underground-mining
 10 reclamation plan ~~shall~~ must promptly be reclaimed.

11 (6) The prospecting permit ~~shall~~ is valid for 1 year
 12 and ~~shall~~ is subject to renewal, suspension, and
 13 revocation in the same manner as strip-mining or
 14 underground-mining permits under this part.

15 (7) The holder of the prospecting permit shall file
 16 with the department the same progress reports, maps, and
 17 revegetation progress reports as are required of
 18 strip-mining or underground-mining operators under this
 19 part.

20 (8) Prospecting that is not conducted in an area
 21 designated unsuitable for coal mining pursuant to 82-4-227
 22 or 82-4-228 and that is not conducted for the purpose of
 23 determining the location, quality, or quantity of a natural
 24 mineral deposit is not subject to subsections (1) through
 25 (7). However, a person who conducts this prospecting shall

1 file with the department a notice of intent to prospect,
 2 containing the information required by the department,
 3 before commencing prospecting operations. If this
 4 prospecting substantially disturbs the natural land surface,
 5 it must be conducted in accordance with the performance
 6 standards of the department's rules regulating the conduct
 7 and reclamation of prospecting operations that remove coal.
 8 The department may inspect these prospecting and reclamation
 9 operations at any reasonable time."

10 **Section 3.** Section 82-4-227, MCA, is amended to read:

11 "82-4-227. Refusal of permit. (1) An application for a
 12 prospecting, strip-mining, or underground-mining permit or
 13 major revision shall may not be approved by the department
 14 unless, on the basis of the information set forth in the
 15 application, an onsite inspection, and an evaluation of the
 16 operation by the department, the applicant has affirmatively
 17 demonstrated that the requirements of this part and rules
 18 will be observed and that the proposed method of operation,
 19 backfilling, grading, subsidence stabilization, water
 20 control, highwall reduction, topsoiling, revegetation, or
 21 reclamation of the affected area can be carried out
 22 consistently with the purpose of this part. The applicant
 23 for a permit or major revision has the burden of
 24 establishing that ~~his~~ the application is in compliance with
 25 this part and the rules adopted under it.

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

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

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

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

22 (d) scenic, historic, archaeologic, topographic,
 23 geologic, ethnologic, scientific, cultural, or recreational
 24 significance. (In applying this subsection, particular
 25 attention should be paid to the inadequate preservation

1 previously accorded Plains Indian history and culture.)

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

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

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

13 (i) interrupt, discontinue, or preclude farming on
14 alluvial valley floors that are irrigated or naturally
15 subirrigated, excluding undeveloped rangelands that are not
16 significant to farming on alluvial valley floors and those
17 lands as to which the regulatory authority finds that if the
18 farming that will be interrupted, discontinued, or precluded
19 is of such small acreage as to be of negligible impact on
20 the farm's agricultural production; or

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

24 (4) Subsection (3)(b) does not affect those strip- or
25 underground-coal-mining operations that in the year

1 preceding the enactment of Public Law 95-87 produced coal in
2 commercial quantities and were located within or adjacent to
3 alluvial valley floors or had obtained specific permit
4 approval by the department to conduct strip- or
5 underground-coal-mining operations within alluvial valley
6 floors. If coal deposits are precluded from being mined
7 under this subsection, the commissioner shall certify to the
8 secretary of interior that the mineral owner or lessee may
9 be eligible for participation in coal exchange programs
10 pursuant to section 510(5) of Public Law 95-87.

11 (5) If the area proposed to be mined contains prime
12 farmland, the department may not grant a permit to mine coal
13 on the prime farmland unless it finds in writing that the
14 applicant has the technological capability to restore the
15 mined area, within a reasonable time, to equivalent or
16 higher levels of yield as nonmined prime farmland in the
17 surrounding area under equivalent levels of management and
18 can meet the soil reconstruction standards of 82-4-232(3).
19 Nothing in this subsection applies to any permit issued
20 prior to August 3, 1977, or to any revisions or renewals
21 thereof, or to any existing strip- or underground-mining
22 operations for which a permit was issued prior to August 3,
23 1977.

24 (6) If the department finds that the overburden on any
25 part of the area of land described in the application for a

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

10 (7) If the department finds that the operation will
 11 constitute a hazard to a dwelling house, public building,
 12 school, church, cemetery, commercial or institutional
 13 building, public road, stream, lake, or other public
 14 property, the department shall delete those areas from the
 15 prospecting, strip-mining, or underground-mining permit
 16 application before it can be approved. In no case may
 17 strip- or underground-coal-mining be allowed within 300 feet
 18 of any occupied dwelling, unless waived by the owner, nor
 19 within 300 feet of any public building, school, church,
 20 community, or institutional building, or public park; nor
 21 within 100 feet of a cemetery; nor within 100 feet of the
 22 outside right-of-way line of any public road, except where
 23 mine access roads or haulage roads join such the
 24 right-of-way line. The department may permit such the roads
 25 to be relocated or the area affected to lie within 100 feet

1 of the road if, after public notice and opportunity for
 2 public hearing in the locality, a written finding is made
 3 that the interests of the public and the landowners affected
 4 will be protected.

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

11 (a) the nature, timing, and sequencing of specific
 12 strip-mine activities and specific underground-mine
 13 activities are jointly approved by the department and the
 14 regulatory authority concerned with the health and safety of
 15 underground miners; and

16 (b) such the operations will result in improved
 17 resource recovery, abatement of water pollution, or
 18 elimination of hazards to the health and safety of the
 19 public.

20 (9) The department may not approve an application for a
 21 strip- or underground-coal-mining operation if the area
 22 proposed to be mined is included within an area designated
 23 unsuitable for strip or underground coal mining or within an
 24 area under review for this designation under an
 25 administrative proceeding, unless in such an area as to

1 which an administrative proceeding has commenced pursuant to
 2 this part, the operator making the permit application
 3 demonstrates that prior to January 1, 1977, he the operator
 4 made substantial legal and financial commitments in relation
 5 to the operation for which he the operator is applying for a
 6 permit.

7 (10) No A permit or major permit revision for a
 8 strip- or underground-coal-mining operation may not be
 9 issued unless the applicant has affirmatively demonstrated
 10 by its coal conservation plan that no failure to conserve
 11 coal will not occur. The department may require the
 12 applicant to submit any information it considers necessary
 13 for review of the coal conservation plan.

14 (11) Whenever information available to the department
 15 indicates that any strip- or underground-coal-mining
 16 operation owned or controlled by the applicant or by any
 17 person who owns or controls the applicant is currently in
 18 violation of Public Law 95-87, as amended, or any state law
 19 required by Public Law 95-87, as amended, or any law, rule,
 20 or regulation of the United States or of any department or
 21 agency in the United States pertaining to air or water
 22 environmental protection, the department ~~shall~~ may not issue
 23 a strip- or underground-coal-mining permit or major revision
 24 until the applicant submits proof that the violation has
 25 been corrected or is in the process of being corrected to

1 the satisfaction of the administering agency.

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

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0171, as introduced.

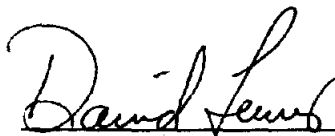
DESCRIPTION OF PROPOSED LEGISLATION:

A bill amending the Montana Strip and Underground Mine Reclamation Act to comply with federal law and regulations. This bill amends the definition of "prospecting", expands the authority to deny a permit on federal land or based on current violations, and corrects grammatical language to make the intent of the act more clear.

ASSUMPTIONS:

1. Montana will continue to implement its program and agreements with the federal government at the same level.
2. No new workload is expected due to these changes.

FISCAL IMPACT: No fiscal impact.

 1-19-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


MARION HANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0171, as introduced

HB 171

APPROVED BY COMM. ON
NATURAL RESOURCES

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3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

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12 not leave the plant, nor does the term mean processing for
13 other than commercial purposes.

14 (9) "Coal preparation plant" means a commercial
15 facility where coal is subject to coal preparation. The term
16 includes commercial facilities associated with coal
17 preparation activities but is not limited to loading
18 buildings, water treatment facilities, water storage
19 facilities, settling basins and impoundments, and coal
20 processing and other waste disposal areas.

21 (10) "Commissioner" means the commissioner of state
22 lands provided for in 2-15-3202.

23 (11) "Contour strip mining" means that strip-mining
24 method commonly carried out in areas of rough and hilly
25 topography in which the coal or mineral seam outcrops along

1 the side of the slope and entrance is made to the seam by
2 excavating a bench or table cut at and along the site of the
3 seam outcropping with the excavated overburden commonly
4 being cast down the slope below the mineral seam and the
5 operating bench.

6 (12) "Degree" means from the horizontal and in each case
7 is subject to a tolerance of 5% error.

8 (13) "Department" means the department of state lands
9 provided for in Title 2, chapter 15, part 32.

10 (14) "Failure to conserve coal" means the nonremoval or
11 nonutilization of minable and marketable coal by an
12 operation, provided that the nonremoval or nonutilization of
13 minable and marketable coal in accordance with reclamation
14 standards established by the department shall may not be
15 considered failure to conserve coal.

16 (15) "Fill bench" means that portion of a bench or table
17 which is formed by depositing overburden beyond or downslope
18 from the cut section as formed in the contour method of
19 strip mining.

20 (16) "Imminent danger to the health and safety of the
21 public" means the existence of any condition or practice or
22 any violation of a permit or other requirement of this part
23 in a strip- or underground-coal-mining and reclamation
24 operation that could reasonably be expected to cause
25 substantial physical harm to persons outside the permit area

1 before such the condition, practice, or violation can be
 2 abated. A reasonable expectation of death or serious injury
 3 before abatement exists if a rational person, subjected to
 4 the same conditions or practices giving rise to the peril,
 5 would not ~~expose-himself-or-herself~~ willingly be exposed to
 6 the danger during the time necessary for abatement.

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

10 (18) "Method of operation" means the method or manner by
 11 which the cut, open pit, shaft, or excavation is made, the
 12 overburden is placed or handled, water is controlled, and
 13 other acts are performed by the operator in the process of
 14 uncovering and removing the minerals that affect the
 15 reclamation of the area of land affected.

16 (19) "Minaable coal" means that coal which can be removed
 17 through strip- or underground-mining methods adaptable to
 18 the location that coal is being mined or is planned to be
 19 mined.

20 (20) "Mineral" means coal and uranium.

21 (21) "Operation" means all of the premises, facilities,
 22 railroad loops, roads, and equipment used in the process of
 23 producing and removing mineral from and reclaiming a
 24 designated strip-mine or underground-mine area, including
 25 coal preparation plants, and all activities, including

1 excavation incident thereto to operations, or prospecting
 2 for the purpose of determining the location, quality, or
 3 quantity of a natural mineral deposit.

4 (22) "Operator" means a person engaged in strip mining
 5 or underground mining who removes or intends to remove more
 6 than 10,000 cubic yards of mineral or overburden or a person
 7 engaged in coal mining who removes or intends to remove more
 8 than 250 tons of coal from the earth by mining within 12
 9 consecutive calendar months in any one location or a person
 10 engaged in operating a coal preparation plant.

11 (23) "Overburden" means all of the earth and other
 12 materials which that lie above a natural mineral deposit and
 13 also means such the earth and other material after removal
 14 from their natural state in the process of mining.

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

18 (25) "Prime farmland" means that land previously
 19 prescribed by the United States secretary of agriculture on
 20 the basis of such factors as moisture availability,
 21 temperature regime, chemical balance, permeability,
 22 surface-layer composition, susceptibility to flooding, and
 23 erosion characteristics and which historically has been used
 24 for intensive agricultural purposes and as defined in the
 25 Federal Register.

1 (26) "Prospecting" means the removal of overburden, core
 2 drilling, construction of roads, or any other disturbance of
 3 the surface for the purpose of determining the location,
 4 quantity, or quality of a natural mineral deposit; ~~and--on~~
 5 ~~areas--designated--unsuitable--for--coal--mining--pursuant--to~~
 6 ~~82-4-227--and--82-4-228~~, the gathering of surface or
 7 subsurface geologic, physical, or chemical data by mapping,
 8 trenching, geophysical, or other techniques necessary to
 9 determine the quality and quantity of overburden ~~and--coal~~ in
 10 an area; and or the gathering of environmental data to
 11 establish the conditions of an area before beginning strip-
 12 or underground-coal-mining and reclamation operations under
 13 this part.

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

19 (28) "Remining" means conducting surface coal mining and
 20 reclamation operations that affect previously mined areas
 21 (for example, the recovery of additional mineral from
 22 existing gob or tailings piles).

23 (29) "Strip mining" means any part of the process
 24 followed in the production of mineral by the opencut method,
 25 including mining by the auger method or any similar method

1 which that penetrates a mineral deposit and removes mineral
 2 directly through a series of openings made by a machine
 3 which that enters the deposit from a surface excavation or
 4 any other mining method or process in which the strata or
 5 overburden is removed or displaced in order to recover the
 6 mineral. For the purposes of this part only, strip mining
 7 also includes remining and coal preparation. The terms
 8 "remining" and "coal preparation" are not included in the
 9 definition of "strip mining" for purposes of Title 15,
 10 chapter 35, part 1.

11 (30) "Subsidence" means a vertically downward movement
 12 of overburden materials resulting from the actual mining of
 13 an underlying mineral deposit or associated underground
 14 excavations.

15 (31) "Surface owner" means a person who holds legal or
 16 equitable title to the land surface and whose principal
 17 place of residence is on the land or who personally conducts
 18 farming or ranching operations upon a farm or ranch unit to
 19 be directly affected by strip-mining operations or who
 20 receives directly a significant portion of his income, if
 21 any, from such farming or ranching operations or the state
 22 of Montana where the state owns the surface.

23 (32) "Topsoil" means the unconsolidated mineral matter
 24 naturally present on the surface of the earth that has been
 25 subjected to and influenced by genetic and environmental

1 factors of parent material, climate, macroorganisms and
2 microorganisms, and topography, all acting over a period of
3 time, and that is necessary for the growth and regeneration
4 of vegetation on the surface of the earth.

5 (33) "Underground mining" means any part of the process
6 followed in the production of a mineral such that vertical
7 or horizontal shafts, slopes, drifts, or incline planes
8 connected with excavations penetrating the mineral stratum
9 or strata are utilized and includes mining by in situ
10 methods.

11 (34) "Unwarranted failure to comply" means the failure
12 of a permittee to prevent the occurrence of any violation of
13 his a permit or any requirement of this part due to
14 indifference, lack of diligence, or lack of reasonable care,
15 or the failure to abate any violation of such a permit or
16 this part due to indifference, lack of diligence, or lack of
17 reasonable care.

18 (35) "Waiver" means any document which that demonstrates
19 the clear intention to release rights in the surface estate
20 for the purpose of permitting the extraction of subsurface
21 minerals by strip-mining methods.

22 (36) "Written consent" means such a written statement as
23 is executed by the owner of the surface estate, upon a form
24 approved by the department, demonstrating that such the
25 owner consents to entry of an operator for the purpose of

1 conducting strip-mining operations and that such the consent
2 is given only to such strip-mining and reclamation
3 operations which that fully comply with the terms and
4 requirements of this part."

5 **Section 2.** Section 82-4-226, MCA, is amended to read:

6 "~~82-4-226. Prospecting permit. (1) On~~ Except as
7 provided in subsection (8) ~~and--after--March--16,--1973,~~
8 prospecting by any person on land not included in a valid
9 strip-mining or underground-mining permit ~~shall--be~~ is
10 unlawful without possessing a valid prospecting permit
11 issued by the department as provided in this section. ~~No A~~
12 prospecting permit shall may not be issued until the person
13 submits an application, the application is examined, amended
14 if necessary, and approved by the department, and adequate
15 reclamation performance bond is posted, all of which
16 prerequisites must be done in conformity with the
17 requirements of this part.

18 (2) An application for a prospecting permit ~~shall~~ must
19 be made in writing, notarized, and submitted to the
20 department in duplicate upon forms prepared and furnished by
21 it. The application ~~shall~~ must include among other things a
22 prospecting map and a prospecting reclamation plan of
23 substantially the same character as required for a
24 surface-mining or underground-mining map and reclamation
25 plan under this part. The department shall determine by

1 rules the precise nature of such the required prospecting
 2 map and reclamation plan. Any applicant who intends to
 3 prospect by means of core drilling shall specify the
 4 location and number of holes to be drilled, methods to be
 5 used in sealing aquifers, and such other information as may
 6 be required by the department. The applicant must shall
 7 state what types of prospecting and excavating techniques
 8 will be employed on the affected land. The application shall
 9 also include any other or further information the department
 10 may require.

11 (3) The application ~~shall~~ must be accompanied by a fee
 12 of \$100. This fee ~~shall~~ must be used as a credit toward the
 13 strip-mining or underground-mining permit fee provided by
 14 this part if the area covered by the prospecting permit
 15 becomes covered by a valid surface-mining or
 16 underground-mining permit obtained before or at the time the
 17 prospecting permit expires.

18 (4) Before the department gives final approval to the
 19 prospecting permit application, the applicant shall file
 20 with the department a reclamation and revegetation bond in a
 21 form and in an amount as determined in the same manner for
 22 strip-mining or underground-mining reclamation and
 23 revegetation bonds under this part.

24 (5) In the event that the holder of a prospecting
 25 permit desires to strip mine or underground mine the area

1 covered by the prospecting permit and has fulfilled all the
 2 requirements for a strip-mining or underground-mining
 3 permit, the department may permit the postponement of the
 4 reclamation of the acreage prospected if that acreage is
 5 incorporated into the complete reclamation plan submitted
 6 with the application for a strip-mining or
 7 underground-mining permit. Any land actually affected by
 8 prospecting or excavating under a prospecting permit and not
 9 covered by the strip-mining or underground-mining
 10 reclamation plan ~~shall~~ must be promptly reclaimed.

11 (6) The prospecting permit ~~shall-be~~ is valid for 1 year
 12 and ~~shall--be~~ is subject to renewal, suspension, and
 13 revocation in the same manner as strip-mining or
 14 underground-mining permits under this part.

15 (7) The holder of the prospecting permit shall file
 16 with the department the same progress reports, maps, and
 17 revegetation progress reports as are required of
 18 strip-mining or underground-mining operators under this
 19 part.

20 (8) Prospecting that is not conducted in an area
 21 designated unsuitable for coal mining pursuant to 82-4-227
 22 or 82-4-228 and that is not conducted for the purpose of
 23 determining the location, quality, or quantity of a natural
 24 mineral deposit is not subject to subsections (1) through
 25 (7). However, a person who conducts this prospecting shall

1 file with the department a notice of intent to prospect,
 2 containing the information required by the department,
 3 before commencing prospecting operations. If this
 4 prospecting substantially disturbs the natural land surface,
 5 it must be conducted in accordance with the performance
 6 standards of the department's rules regulating the conduct
 7 and reclamation of prospecting operations that remove coal.
 8 The department may inspect these prospecting and reclamation
 9 operations at any reasonable time."

10 **Section 3.** Section 82-4-227, MCA, is amended to read:

11 **"82-4-227. Refusal of permit.** (1) An application for a
 12 prospecting, strip-mining, or underground-mining permit or
 13 major revision shall may not be approved by the department
 14 unless, on the basis of the information set forth in the
 15 application, an onsite inspection, and an evaluation of the
 16 operation by the department, the applicant has affirmatively
 17 demonstrated that the requirements of this part and rules
 18 will be observed and that the proposed method of operation,
 19 backfilling, grading, subsidence stabilization, water
 20 control, highwall reduction, topsoiling, revegetation, or
 21 reclamation of the affected area can be carried out
 22 consistently with the purpose of this part. The applicant
 23 for a permit or major revision has the burden of
 24 establishing that his the application is in compliance with
 25 this part and the rules adopted under it.

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

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

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

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

22 (d) scenic, historic, archaeological, topographic,
 23 geologic, ethnologic, scientific, cultural, or recreational
 24 significance. (In applying this subsection, particular
 25 attention should be paid to the inadequate preservation

1 previously accorded Plains Indian history and culture.)

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

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

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

13 (i) interrupt, discontinue, or preclude farming on
14 alluvial valley floors that are irrigated or naturally
15 subirrigated, excluding undeveloped rangelands that are not
16 significant to farming on alluvial valley floors and those
17 lands as to which the regulatory authority finds that if the
18 farming that will be interrupted, discontinued, or precluded
19 is of such small acreage as to be of negligible impact on
20 the farm's agricultural production; or

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

24 (4) Subsection (3)(b) does not affect those strip- or
25 underground-coal-mining operations that in the year

1 preceding the enactment of Public Law 95-87 produced coal in
2 commercial quantities and were located within or adjacent to
3 alluvial valley floors or had obtained specific permit
4 approval by the department to conduct strip- or
5 underground-coal-mining operations within alluvial valley
6 floors. If coal deposits are precluded from being mined
7 under this subsection, the commissioner shall certify to the
8 secretary of interior that the mineral owner or lessee may
9 be eligible for participation in coal exchange programs
10 pursuant to section 510(5) of Public Law 95-87.

11 (5) If the area proposed to be mined contains prime
12 farmland, the department may not grant a permit to mine coal
13 on the prime farmland unless it finds in writing that the
14 applicant has the technological capability to restore the
15 mined area, within a reasonable time, to equivalent or
16 higher levels of yield as nonmined prime farmland in the
17 surrounding area under equivalent levels of management and
18 can meet the soil reconstruction standards of 82-4-232(3).
19 Nothing in this subsection applies to any permit issued
20 prior to August 3, 1977, or to any revisions or renewals
21 thereof, or to any existing strip- or underground-mining
22 operations for which a permit was issued prior to August 3,
23 1977.

24 (6) If the department finds that the overburden on any
25 part of the area of land described in the application for a

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

10 (7) If the department finds that the operation will
 11 constitute a hazard to a dwelling house, public building,
 12 school, church, cemetery, commercial or institutional
 13 building, public road, stream, lake, or other public
 14 property, the department shall delete those areas from the
 15 prospecting, strip-mining, or underground-mining permit
 16 application before it can be approved. In no case may
 17 strip- or underground-coal-mining be allowed within 300 feet
 18 of any occupied dwelling, unless waived by the owner, nor
 19 within 300 feet of any public building, school, church,
 20 community, or institutional building, or public park; nor
 21 within 100 feet of a cemetery; nor within 100 feet of the
 22 outside right-of-way line of any public road, except where
 23 mine access roads or haulage roads join such the
 24 right-of-way line. The department may permit such the roads
 25 to be relocated or the area affected to lie within 100 feet

1 of the road if, after public notice and opportunity for
 2 public hearing in the locality, a written finding is made
 3 that the interests of the public and the landowners affected
 4 will be protected.

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

11 (a) the nature, timing, and sequencing of specific
 12 strip-mine activities and specific underground-mine
 13 activities are jointly approved by the department and the
 14 regulatory authority concerned with the health and safety of
 15 underground miners; and

16 (b) such the operations will result in improved
 17 resource recovery, abatement of water pollution, or
 18 elimination of hazards to the health and safety of the
 19 public.

20 (9) The department may not approve an application for a
 21 strip- or underground-coal-mining operation if the area
 22 proposed to be mined is included within an area designated
 23 unsuitable for strip or underground coal mining or within an
 24 area under review for this designation under an
 25 administrative proceeding, unless in such an area as to

1 which an administrative proceeding has commenced pursuant to
 2 this part, the operator making the permit application
 3 demonstrates that prior to January 1, 1977, he the operator
 4 made substantial legal and financial commitments in relation
 5 to the operation for which he the operator is applying for a
 6 permit.

7 (10) No A permit or major permit revision for a
 8 strip- or underground-coal-mining operation may not be
 9 issued unless the applicant has affirmatively demonstrated
 10 by its coal conservation plan that no failure to conserve
 11 coal will not occur. The department may require the
 12 applicant to submit any information it considers necessary
 13 for review of the coal conservation plan.

14 (11) Whenever information available to the department
 15 indicates that any strip- or underground-coal-mining
 16 operation owned or controlled by the applicant or by any
 17 person who owns or controls the applicant is currently in
 18 violation of Public Law 95-87, as amended, or any state law
 19 required by Public Law 95-87, as amended, or any law, rule,
 20 or regulation of the United States or of any department or
 21 agency in the United States pertaining to air or water
 22 environmental protection, the department shall may not issue
 23 a strip- or underground-coal-mining permit or major-revision
 24 AMENDMENT, OTHER THAN AN INCIDENTAL BOUNDARY REVISION, until
 25 the applicant submits proof that the violation has been

1 corrected or is in the process of being corrected to the
 2 satisfaction of the administering agency.

3 (12) The department may not issue a strip- or
 4 underground-coal-mining permit or major-revision AMENDMENT,
 5 OTHER THAN AN INCIDENTAL BOUNDARY REVISION, to any applicant
 6 which that it finds, after an opportunity for hearing, owns
 7 or controls any strip- or underground-coal-mining operation
 8 which that has demonstrated a pattern of willful violations
 9 of Public Law 95-87, as amended, or any state law required
 10 by Public Law 95-87, as amended, of such a nature and
 11 duration and with such resulting irreparable damage to the
 12 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 that
 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."

-End-

HOUSE BILL NO. 171

INTRODUCED BY M. HANSON, REHBEIN, DEVLIN
BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH FEDERAL LAW AND REGULATIONS; AMENDING THE DEFINITION OF "PROSPECTING"; EXPANDING THE AUTHORITY TO DENY A PERMIT ON FEDERAL LAND OR BASED ON CURRENT VIOLATIONS; PROHIBITING COAL MINING ON CERTAIN FEDERAL LANDS; AND AMENDING SECTIONS 82-4-203, 82-4-226, AND 82-4-227, MCA."

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

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

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

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

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

sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

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

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

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

(6) "Board" means the board of land commissioners



1 provided for in Article X, section 4, of the constitution of
2 this state.

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

7 (8) "Coal preparation" means the chemical or physical
8 processing of coal and its cleaning, concentrating, or other
9 processing or preparation. The term does not mean the
10 conversion of coal to another energy form or to a gaseous or
11 liquid hydrocarbon, except for incidental amounts that do
12 not leave the plant, nor does the term mean processing for
13 other than commercial purposes.

14 (9) "Coal preparation plant" means a commercial
15 facility where coal is subject to coal preparation. The term
16 includes commercial facilities associated with coal
17 preparation activities but is not limited to loading
18 buildings, water treatment facilities, water storage
19 facilities, settling basins and impoundments, and coal
20 processing and other waste disposal areas.

21 (10) "Commissioner" means the commissioner of state
22 lands provided for in 2-15-3202.

23 (11) "Contour strip mining" means that strip-mining
24 method commonly carried out in areas of rough and hilly
25 topography in which the coal or mineral seam outcrops along

1 the side of the slope and entrance is made to the seam by
2 excavating a bench or table cut at and along the site of the
3 seam outcropping with the excavated overburden commonly
4 being cast down the slope below the mineral seam and the
5 operating bench.

6 (12) "Degree" means from the horizontal and in each case
7 is subject to a tolerance of 5% error.

8 (13) "Department" means the department of state lands
9 provided for in Title 2, chapter 15, part 32.

10 (14) "Failure to conserve coal" means the nonremoval or
11 nonutilization of minable and marketable coal by an
12 operation, provided that the nonremoval or nonutilization of
13 minable and marketable coal in accordance with reclamation
14 standards established by the department shall may not be
15 considered failure to conserve coal.

16 (15) "Fill bench" means that portion of a bench or table
17 which is formed by depositing overburden beyond or downslope
18 from the cut section as formed in the contour method of
19 strip mining.

20 (16) "Imminent danger to the health and safety of the
21 public" means the existence of any condition or practice or
22 any violation of a permit or other requirement of this part
23 in a strip- or underground-coal-mining and reclamation
24 operation that could reasonably be expected to cause
25 substantial physical harm to persons outside the permit area

1 before such the condition, practice, or violation can be
 2 abated. A reasonable expectation of death or serious injury
 3 before abatement exists if a rational person, subjected to
 4 the same conditions or practices giving rise to the peril,
 5 would not expose-himself-or-herself willingly be exposed to
 6 the danger during the time necessary for abatement.

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

10 (18) "Method of operation" means the method or manner by
 11 which the cut, open pit, shaft, or excavation is made, the
 12 overburden is placed or handled, water is controlled, and
 13 other acts are performed by the operator in the process of
 14 uncovering and removing the minerals that affect the
 15 reclamation of the area of land affected.

16 (19) "Minaable coal" means that coal which can be removed
 17 through strip- or underground-mining methods adaptable to
 18 the location that coal is being mined or is planned to be
 19 mined.

20 (20) "Mineral" means coal and uranium.

21 (21) "Operation" means all of the premises, facilities,
 22 railroad loops, roads, and equipment used in the process of
 23 producing and removing mineral from and reclaiming a
 24 designated strip-mine or underground-mine area, including
 25 coal preparation plants, and all activities, including

1 excavation incident thereto to operations, or prospecting
 2 for the purpose of determining the location, quality, or
 3 quantity of a natural mineral deposit.

4 (22) "Operator" means a person engaged in strip mining
 5 or underground mining who removes or intends to remove more
 6 than 10,000 cubic yards of mineral or overburden or a person
 7 engaged in coal mining who removes or intends to remove more
 8 than 250 tons of coal from the earth by mining within 12
 9 consecutive calendar months in any one location or a person
 10 engaged in operating a coal preparation plant.

11 (23) "Overburden" means all of the earth and other
 12 materials which that lie above a natural mineral deposit and
 13 also means such the earth and other material after removal
 14 from their natural state in the process of mining.

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

18 (25) "Prime farmland" means that land previously
 19 prescribed by the United States secretary of agriculture on
 20 the basis of such factors as moisture availability,
 21 temperature regime, chemical balance, permeability,
 22 surface-layer composition, susceptibility to flooding, and
 23 erosion characteristics and which historically has been used
 24 for intensive agricultural purposes and as defined in the
 25 Federal Register.

1 (26) "Prospecting" means the removal of overburden, core
 2 drilling, construction of roads, or any other disturbance of
 3 the surface for the purpose of determining the location,
 4 quantity, or quality of a natural mineral deposit; ~~and--on~~
 5 ~~areas--designated--unsuitable--for--coal--mining--pursuant--to~~
 6 ~~82-4-227--and--82-4-228;~~ the gathering of surface or
 7 subsurface geologic, physical, or chemical data by mapping,
 8 trenching, geophysical, or other techniques necessary to
 9 determine the quality and quantity of overburden ~~and--coal~~ in
 10 an area; and or the gathering of environmental data to
 11 establish the conditions of an area before beginning strip-
 12 or underground-coal-mining and reclamation operations under
 13 this part.

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

19 (28) "Remining" means conducting surface coal mining and
 20 reclamation operations that affect previously mined areas
 21 (for example, the recovery of additional mineral from
 22 existing gob or tailings piles).

23 (29) "Strip mining" means any part of the process
 24 followed in the production of mineral by the opencut method,
 25 including mining by the auger method or any similar method

1 which that penetrates a mineral deposit and removes mineral
 2 directly through a series of openings made by a machine
 3 which that enters the deposit from a surface excavation or
 4 any other mining method or process in which the strata or
 5 overburden is removed or displaced in order to recover the
 6 mineral. For the purposes of this part only, strip mining
 7 also includes remining and coal preparation. The terms
 8 "remining" and "coal preparation" are not included in the
 9 definition of "strip mining" for purposes of Title 15,
 10 chapter 35, part 1.

11 (30) "Subsidence" means a vertically downward movement
 12 of overburden materials resulting from the actual mining of
 13 an underlying mineral deposit or associated underground
 14 excavations.

15 (31) "Surface owner" means a person who holds legal or
 16 equitable title to the land surface and whose principal
 17 place of residence is on the land or who personally conducts
 18 farming or ranching operations upon a farm or ranch unit to
 19 be directly affected by strip-mining operations or who
 20 receives directly a significant portion of his income, if
 21 any, from such farming or ranching operations or the state
 22 of Montana where the state owns the surface.

23 (32) "Topsoil" means the unconsolidated mineral matter
 24 naturally present on the surface of the earth that has been
 25 subjected to and influenced by genetic and environmental

1 factors of parent material, climate, macroorganisms and
2 microorganisms, and topography, all acting over a period of
3 time, and that is necessary for the growth and regeneration
4 of vegetation on the surface of the earth.

5 (33) "Underground mining" means any part of the process
6 followed in the production of a mineral such that vertical
7 or horizontal shafts, slopes, drifts, or incline planes
8 connected with excavations penetrating the mineral stratum
9 or strata are utilized and includes mining by in situ
10 methods.

11 (34) "Unwarranted failure to comply" means the failure
12 of a permittee to prevent the occurrence of any violation of
13 his a permit or any requirement of this part due to
14 indifference, lack of diligence, or lack of reasonable care,
15 or the failure to abate any violation of such a permit or
16 this part due to indifference, lack of diligence, or lack of
17 reasonable care.

18 (35) "Waiver" means any document which that demonstrates
19 the clear intention to release rights in the surface estate
20 for the purpose of permitting the extraction of subsurface
21 minerals by strip-mining methods.

22 (36) "Written consent" means such a written statement as
23 is executed by the owner of the surface estate, upon a form
24 approved by the department, demonstrating that such the
25 owner consents to entry of an operator for the purpose of

1 conducting strip-mining operations and that such the consent
2 is given only to such strip-mining and reclamation
3 operations which that fully comply with the terms and
4 requirements of this part."

5 **Section 2.** Section 82-4-226, MCA, is amended to read:

6 "82-4-226. Prospecting permit. (1) On Except as
7 provided in subsection (8) and--after--March--16--1973,
8 prospecting by any person on land not included in a valid
9 strip-mining or underground-mining permit ~~shall--be~~ is
10 unlawful without possessing a valid prospecting permit
11 issued by the department as provided in this section. No A
12 prospecting permit ~~shall~~ may not be issued until the person
13 submits an application, the application is examined, amended
14 if necessary, and approved by the department, and adequate
15 reclamation performance bond is posted, all of which
16 prerequisites must be done in conformity with the
17 requirements of this part.

18 (2) An application for a prospecting permit ~~shall~~ must
19 be made in writing, notarized, and submitted to the
20 department in duplicate upon forms prepared and furnished by
21 it. The application ~~shall~~ must include among other things a
22 prospecting map and a prospecting reclamation plan of
23 substantially the same character as required for a
24 surface-mining or underground-mining map and reclamation
25 plan under this part. The department shall determine by

1 rules the precise nature of such the required prospecting
 2 map and reclamation plan. Any applicant who intends to
 3 prospect by means of core drilling shall specify the
 4 location and number of holes to be drilled, methods to be
 5 used in sealing aquifers, and such other information as may
 6 be required by the department. The applicant must shall
 7 state what types of prospecting and excavating techniques
 8 will be employed on the affected land. The application shall
 9 also include any other or further information the department
 10 may require.

11 (3) The application ~~shall~~ must be accompanied by a fee
 12 of \$100. This fee ~~shall~~ must be used as a credit toward the
 13 strip-mining or underground-mining permit fee provided by
 14 this part if the area covered by the prospecting permit
 15 becomes covered by a valid surface-mining or
 16 underground-mining permit obtained before or at the time the
 17 prospecting permit expires.

18 (4) Before the department gives final approval to the
 19 prospecting permit application, the applicant shall file
 20 with the department a reclamation and revegetation bond in a
 21 form and in an amount as determined in the same manner for
 22 strip-mining or underground-mining reclamation and
 23 revegetation bonds under this part.

24 (5) In the event that the holder of a prospecting
 25 permit desires to strip mine or underground mine the area

1 covered by the prospecting permit and has fulfilled all the
 2 requirements for a strip-mining or underground-mining
 3 permit, the department may permit the postponement of the
 4 reclamation of the acreage prospected if that acreage is
 5 incorporated into the complete reclamation plan submitted
 6 with the application for a strip-mining or
 7 underground-mining permit. Any land actually affected by
 8 prospecting or excavating under a prospecting permit and not
 9 covered by the strip-mining or underground-mining
 10 reclamation plan ~~shall~~ must be promptly reclaimed.

11 (6) The prospecting permit ~~shall-be~~ is valid for 1 year
 12 and ~~shall--be~~ is subject to renewal, suspension, and
 13 revocation in the same manner as strip-mining or
 14 underground-mining permits under this part.

15 (7) The holder of the prospecting permit shall file
 16 with the department the same progress reports, maps, and
 17 revegetation progress reports as are required of
 18 strip-mining or underground-mining operators under this
 19 part.

20 (8) Prospecting that is not conducted in an area
 21 designated unsuitable for coal mining pursuant to 82-4-227
 22 or 82-4-228 and that is not conducted for the purpose of
 23 determining the location, quality, or quantity of a natural
 24 mineral deposit is not subject to subsections (1) through
 25 (7). However, a person who conducts this prospecting shall

1 file with the department a notice of intent to prospect,
 2 containing the information required by the department,
 3 before commencing prospecting operations. If this
 4 prospecting substantially disturbs the natural land surface,
 5 it must be conducted in accordance with the performance
 6 standards of the department's rules regulating the conduct
 7 and reclamation of prospecting operations that remove coal.
 8 The department may inspect these prospecting and reclamation
 9 operations at any reasonable time."

10 **Section 3.** Section 82-4-227, MCA, is amended to read:

11 "82-4-227. Refusal of permit. (1) An application for a
 12 prospecting, strip-mining, or underground-mining permit or
 13 major revision shall may not be approved by the department
 14 unless, on the basis of the information set forth in the
 15 application, an onsite inspection, and an evaluation of the
 16 operation by the department, the applicant has affirmatively
 17 demonstrated that the requirements of this part and rules
 18 will be observed and that the proposed method of operation,
 19 backfilling, grading, subsidence stabilization, water
 20 control, highwall reduction, topsoiling, revegetation, or
 21 reclamation of the affected area can be carried out
 22 consistently with the purpose of this part. The applicant
 23 for a permit or major revision has the burden of
 24 establishing that his the application is in compliance with
 25 this part and the rules adopted under it.

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

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

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

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

22 (d) scenic, historic, archaeological, topographic,
 23 geologic, ethnologic, scientific, cultural, or recreational
 24 significance. (In applying this subsection, particular
 25 attention should be paid to the inadequate preservation

1 previously accorded Plains Indian history and culture.)

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

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

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

13 (i) interrupt, discontinue, or preclude farming on
14 alluvial valley floors that are irrigated or naturally
15 subirrigated, excluding undeveloped rangelands that are not
16 significant to farming on alluvial valley floors and those
17 lands as to which the regulatory authority finds that if the
18 farming that will be interrupted, discontinued, or precluded
19 is of such small acreage as to be of negligible impact on
20 the farm's agricultural production; or

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

24 (4) Subsection (3)(b) does not affect those strip- or
25 underground-coal-mining operations that in the year

1 preceding the enactment of Public Law 95-87 produced coal in
2 commercial quantities and were located within or adjacent to
3 alluvial valley floors or had obtained specific permit
4 approval by the department to conduct strip- or
5 underground-coal-mining operations within alluvial valley
6 floors. If coal deposits are precluded from being mined
7 under this subsection, the commissioner shall certify to the
8 secretary of interior that the mineral owner or lessee may
9 be eligible for participation in coal exchange programs
10 pursuant to section 510(5) of Public Law 95-87.

11 (5) If the area proposed to be mined contains prime
12 farmland, the department may not grant a permit to mine coal
13 on the prime farmland unless it finds in writing that the
14 applicant has the technological capability to restore the
15 mined area, within a reasonable time, to equivalent or
16 higher levels of yield as nonmined prime farmland in the
17 surrounding area under equivalent levels of management and
18 can meet the soil reconstruction standards of 82-4-232(3).
19 Nothing in this subsection applies to any permit issued
20 prior to August 3, 1977, or to any revisions or renewals
21 thereof, or to any existing strip- or underground-mining
22 operations for which a permit was issued prior to August 3,
23 1977.

24 (6) If the department finds that the overburden on any
25 part of the area of land described in the application for a

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

10 (7) If the department finds that the operation will
 11 constitute a hazard to a dwelling house, public building,
 12 school, church, cemetery, commercial or institutional
 13 building, public road, stream, lake, or other public
 14 property, the department shall delete those areas from the
 15 prospecting, strip-mining, or underground-mining permit
 16 application before it can be approved. In no case may
 17 strip- or underground-coal-mining be allowed within 300 feet
 18 of any occupied dwelling, unless waived by the owner, nor
 19 within 300 feet of any public building, school, church,
 20 community, or institutional building, or public park; nor
 21 within 100 feet of a cemetery; nor within 100 feet of the
 22 outside right-of-way line of any public road, except where
 23 mine access roads or haulage roads join such the
 24 right-of-way line. The department may permit such the roads
 25 to be relocated or the area affected to lie within 100 feet

1 of the road if, after public notice and opportunity for
 2 public hearing in the locality, a written finding is made
 3 that the interests of the public and the landowners affected
 4 will be protected.

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

11 (a) the nature, timing, and sequencing of specific
 12 strip-mine activities and specific underground-mine
 13 activities are jointly approved by the department and the
 14 regulatory authority concerned with the health and safety of
 15 underground miners; and

16 (b) such the operations will result in improved
 17 resource recovery, abatement of water pollution, or
 18 elimination of hazards to the health and safety of the
 19 public.

20 (9) The department may not approve an application for a
 21 strip- or underground-coal-mining operation if the area
 22 proposed to be mined is included within an area designated
 23 unsuitable for strip or underground coal mining or within an
 24 area under review for this designation under an
 25 administrative proceeding, unless in such an area as to

1 which an administrative proceeding has commenced pursuant to
 2 this part, the operator making the permit application
 3 demonstrates that prior to January 1, 1977, he the operator
 4 made substantial legal and financial commitments in relation
 5 to the operation for which he the operator is applying for a
 6 permit.

7 (10) No A permit or major permit revision for a
 8 strip- or underground-coal-mining operation may not be
 9 issued unless the applicant has affirmatively demonstrated
 10 by its coal conservation plan that no failure to conserve
 11 coal will not occur. The department may require the
 12 applicant to submit any information it considers necessary
 13 for review of the coal conservation plan.

14 (11) Whenever information available to the department
 15 indicates that any strip- or underground-coal-mining
 16 operation owned or controlled by the applicant or by any
 17 person who owns or controls the applicant is currently in
 18 violation of Public Law 95-87, as amended, or any state law
 19 required by Public Law 95-87, as amended, or any law, rule,
 20 or regulation of the United States or of any department or
 21 agency in the United States pertaining to air or water
 22 environmental protection, the department shall may not issue
 23 a strip- or underground-coal-mining permit or major-revision
 24 AMENDMENT, OTHER THAN AN INCIDENTAL BOUNDARY REVISION, until
 25 the applicant submits proof that the violation has been

1 corrected or is in the process of being corrected to the
 2 satisfaction of the administering agency.

3 (12) The department may not issue a strip- or
 4 underground-coal-mining permit or major-revision AMENDMENT,
 5 OTHER THAN AN INCIDENTAL BOUNDARY REVISION, to any applicant
 6 which that it finds, after an opportunity for hearing, owns
 7 or controls any strip- or underground-coal-mining operation
 8 which that has demonstrated a pattern of willful violations
 9 of Public Law 95-87, as amended, or any state law required
 10 by Public Law 95-87, as amended, of such a nature and
 11 duration and with such resulting irreparable damage to the
 12 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 that
 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."

-End-

1 HOUSE BILL NO. 171

2 INTRODUCED BY M. HANSON, REHBEIN, DEVLIN

3 BY REQUEST OF THE DEPARTMENT OF STATE LANDS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA
6 STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH
7 FEDERAL LAW AND REGULATIONS; AMENDING THE DEFINITION OF
8 "PROSPECTING"; EXPANDING THE AUTHORITY TO DENY A PERMIT ON
9 FEDERAL LAND OR BASED ON CURRENT VIOLATIONS; PROHIBITING
10 COAL MINING ON CERTAIN FEDERAL LANDS; AND AMENDING SECTIONS
11 82-4-203, 82-4-226, AND 82-4-227, MCA."
12

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

14 **Section 1.** Section 82-4-203, MCA, is amended to read:15 "82-4-203. Definitions. Unless the context requires
16 otherwise, in this part the following definitions apply:17 (1) "Abandoned" means an operation where no mineral is
18 being produced and where the department determines that the
19 operation will not continue or resume.20 (2) "Alluvial valley floor" means the unconsolidated
21 stream-laid deposits holding streams where water
22 availability is sufficient for subirrigation or flood
23 irrigation agricultural activities; but the term does not
24 include upland areas which are generally overlain by a thin
25 veneer of colluvial deposits composed chiefly of debris from1 sheet erosion, deposits by unconcentrated runoff or slope
2 wash, together with talus, other mass movement accumulation,
3 and windblown deposits.4 (3) "Aquifer" means any geologic formation or natural
5 zone beneath the earth's surface that contains or stores
6 water and transmits it from one point to another in
7 quantities which permit or have the potential to permit
8 economic development as a water source.9 (4) "Area of land affected" means the area of land from
10 which overburden is to be or has been removed and upon which
11 the overburden is to be or has been deposited and includes
12 all land overlying any tunnels, shafts, or other excavations
13 used to extract the mineral, lands affected by the
14 construction of new railroad loops and roads or the
15 improvement or use of existing railroad loops and roads to
16 gain access and to haul the mineral, processing facilities
17 at or near the mine site or other mine associated
18 facilities, waste deposition areas, treatment ponds, and any
19 other surface or subsurface disturbance associated with
20 strip mining or underground mining, and all activities
21 necessary and incident to the reclamation of such
22 operations.23 (5) "Bench" means the ledge, shelf, table, or terrace
24 formed in the contour method of strip mining.

25 (6) "Board" means the board of land commissioners

1 provided for in Article X, section 4, of the constitution of
2 this state.

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

7 (8) "Coal preparation" means the chemical or physical
8 processing of coal and its cleaning, concentrating, or other
9 processing or preparation. The term does not mean the
10 conversion of coal to another energy form or to a gaseous or
11 liquid hydrocarbon, except for incidental amounts that do
12 not leave the plant, nor does the term mean processing for
13 other than commercial purposes.

14 (9) "Coal preparation plant" means a commercial
15 facility where coal is subject to coal preparation. The term
16 includes commercial facilities associated with coal
17 preparation activities but is not limited to loading
18 buildings, water treatment facilities, water storage
19 facilities, settling basins and impoundments, and coal
20 processing and other waste disposal areas.

21 (10) "Commissioner" means the commissioner of state
22 lands provided for in 2-15-3202.

23 (11) "Contour strip mining" means that strip-mining
24 method commonly carried out in areas of rough and hilly
25 topography in which the coal or mineral seam outcrops along

1 the side of the slope and entrance is made to the seam by
2 excavating a bench or table cut at and along the site of the
3 seam outcropping with the excavated overburden commonly
4 being cast down the slope below the mineral seam and the
5 operating bench.

6 (12) "Degree" means from the horizontal and in each case
7 is subject to a tolerance of 5% error.

8 (13) "Department" means the department of state lands
9 provided for in Title 2, chapter 15, part 32.

10 (14) "Failure to conserve coal" means the nonremoval or
11 nonutilization of minable and marketable coal by an
12 operation, provided that the nonremoval or nonutilization of
13 minable and marketable coal in accordance with reclamation
14 standards established by the department shall may not be
15 considered failure to conserve coal.

16 (15) "Fill bench" means that portion of a bench or table
17 which is formed by depositing overburden beyond or downslope
18 from the cut section as formed in the contour method of
19 strip mining.

20 (16) "Imminent danger to the health and safety of the
21 public" means the existence of any condition or practice or
22 any violation of a permit or other requirement of this part
23 in a strip- or underground-coal-mining and reclamation
24 operation that could reasonably be expected to cause
25 substantial physical harm to persons outside the permit area

1 before such the condition, practice, or violation can be
 2 abated. A reasonable expectation of death or serious injury
 3 before abatement exists if a rational person, subjected to
 4 the same conditions or practices giving rise to the peril,
 5 would not ~~expose-himself-or-herself~~ willingly be exposed to
 6 the danger during the time necessary for abatement.

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

10 (18) "Method of operation" means the method or manner by
 11 which the cut, open pit, shaft, or excavation is made, the
 12 overburden is placed or handled, water is controlled, and
 13 other acts are performed by the operator in the process of
 14 uncovering and removing the minerals that affect the
 15 reclamation of the area of land affected.

16 (19) "Minaable coal" means that coal which can be removed
 17 through strip- or underground-mining methods adaptable to
 18 the location that coal is being mined or is planned to be
 19 mined.

20 (20) "Mineral" means coal and uranium.

21 (21) "Operation" means all of the premises, facilities,
 22 railroad loops, roads, and equipment used in the process of
 23 producing and removing mineral from and reclaiming a
 24 designated strip-mine or underground-mine area, including
 25 coal preparation plants, and all activities, including

1 excavation incident thereto to operations, or prospecting
 2 for the purpose of determining the location, quality, or
 3 quantity of a natural mineral deposit.

4 (22) "Operator" means a person engaged in strip mining
 5 or underground mining who removes or intends to remove more
 6 than 10,000 cubic yards of mineral or overburden or a person
 7 engaged in coal mining who removes or intends to remove more
 8 than 250 tons of coal from the earth by mining within 12
 9 consecutive calendar months in any one location or a person
 10 engaged in operating a coal preparation plant.

11 (23) "Overburden" means all of the earth and other
 12 materials which that lie above a natural mineral deposit and
 13 also means such the earth and other material after removal
 14 from their natural state in the process of mining.

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

18 (25) "Prime farmland" means that land previously
 19 prescribed by the United States secretary of agriculture on
 20 the basis of such factors as moisture availability,
 21 temperature regime, chemical balance, permeability,
 22 surface-layer composition, susceptibility to flooding, and
 23 erosion characteristics and which historically has been used
 24 for intensive agricultural purposes and as defined in the
 25 Federal Register.

1 (26) "Prospecting" means the removal of overburden, core
 2 drilling, construction of roads, or any other disturbance of
 3 the surface for the purpose of determining the location,
 4 quantity, or quality of a natural mineral deposit; ~~and~~ ~~on~~
 5 ~~areas--designated--unsuitable--for--coal--mining--pursuant--to~~
 6 ~~02-4-227--and--02-4-228~~, the gathering of surface or
 7 subsurface geologic, physical, or chemical data by mapping,
 8 trenching, geophysical, or other techniques necessary to
 9 determine the quality and quantity of overburden ~~and coal~~ in
 10 an area; ~~and~~ or the gathering of environmental data to
 11 establish the conditions of an area before beginning strip-
 12 or underground-coal-mining and reclamation operations under
 13 this part.

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

19 (28) "Remining" means conducting surface coal mining and
 20 reclamation operations that affect previously mined areas
 21 (for example, the recovery of additional mineral from
 22 existing gob or tailings piles).

23 (29) "Strip mining" means any part of the process
 24 followed in the production of mineral by the opencut method,
 25 including mining by the auger method or any similar method

1 which that penetrates a mineral deposit and removes mineral
 2 directly through a series of openings made by a machine
 3 which that enters the deposit from a surface excavation or
 4 any other mining method or process in which the strata or
 5 overburden is removed or displaced in order to recover the
 6 mineral. For the purposes of this part only, strip mining
 7 also includes remining and coal preparation. The terms
 8 "remining" and "coal preparation" are not included in the
 9 definition of "strip mining" for purposes of Title 15,
 10 chapter 35, part 1.

11 (30) "Subsidence" means a vertically downward movement
 12 of overburden materials resulting from the actual mining of
 13 an underlying mineral deposit or associated underground
 14 excavations.

15 (31) "Surface owner" means a person who holds legal or
 16 equitable title to the land surface and whose principal
 17 place of residence is on the land or who personally conducts
 18 farming or ranching operations upon a farm or ranch unit to
 19 be directly affected by strip-mining operations or who
 20 receives directly a significant portion of his income, if
 21 any, from such farming or ranching operations or the state
 22 of Montana where the state owns the surface.

23 (32) "Topsoil" means the unconsolidated mineral matter
 24 naturally present on the surface of the earth that has been
 25 subjected to and influenced by genetic and environmental

1 factors of parent material, climate, macroorganisms and
2 microorganisms, and topography, all acting over a period of
3 time, and that is necessary for the growth and regeneration
4 of vegetation on the surface of the earth.

5 (33) "Underground mining" means any part of the process
6 followed in the production of a mineral such that vertical
7 or horizontal shafts, slopes, drifts, or incline planes
8 connected with excavations penetrating the mineral stratum
9 or strata are utilized and includes mining by in situ
10 methods.

11 (34) "Unwarranted failure to comply" means the failure
12 of a permittee to prevent the occurrence of any violation of
13 his a permit or any requirement of this part due to
14 indifference, lack of diligence, or lack of reasonable care,
15 or the failure to abate any violation of such a permit or
16 this part due to indifference, lack of diligence, or lack of
17 reasonable care.

18 (35) "Waiver" means any document which that demonstrates
19 the clear intention to release rights in the surface estate
20 for the purpose of permitting the extraction of subsurface
21 minerals by strip-mining methods.

22 (36) "Written consent" means such a written statement as
23 is executed by the owner of the surface estate, upon a form
24 approved by the department, demonstrating that such the
25 owner consents to entry of an operator for the purpose of

1 conducting strip-mining operations and that such the consent
2 is given only to such strip-mining and reclamation
3 operations which that fully comply with the terms and
4 requirements of this part."

5 **Section 2.** Section 82-4-226, MCA, is amended to read:

6 "82-4-226. Prospecting permit. (1) On Except as
7 provided in subsection (8) and--after--March--16,--1973,
8 prospecting by any person on land not included in a valid
9 strip-mining or underground-mining permit shall--be is
10 unlawful without possessing a valid prospecting permit
11 issued by the department as provided in this section. No A
12 prospecting permit shall may not be issued until the person
13 submits an application, the application is examined, amended
14 if necessary, and approved by the department, and adequate
15 reclamation performance bond is posted, all of which
16 prerequisites must be done in conformity with the
17 requirements of this part.

18 (2) An application for a prospecting permit shall must
19 be made in writing, notarized, and submitted to the
20 department in duplicate upon forms prepared and furnished by
21 it. The application shall must include among other things a
22 prospecting map and a prospecting reclamation plan of
23 substantially the same character as required for a
24 surface-mining or underground-mining map and reclamation
25 plan under this part. The department shall determine by

1 rules the precise nature of such the required prospecting
 2 map and reclamation plan. Any applicant who intends to
 3 prospect by means of core drilling shall specify the
 4 location and number of holes to be drilled, methods to be
 5 used in sealing aquifers, and ~~such~~ other information as may
 6 be required by the department. The applicant ~~must~~ shall
 7 state what types of prospecting and excavating techniques
 8 will be employed on the affected land. The application shall
 9 also include any other or further information the department
 10 may require.

11 (3) The application ~~shall~~ must be accompanied by a fee
 12 of \$100. This fee ~~shall~~ must be used as a credit toward the
 13 strip-mining or underground-mining permit fee provided by
 14 this part if the area covered by the prospecting permit
 15 becomes covered by a valid surface-mining or
 16 underground-mining permit obtained before or at the time the
 17 prospecting permit expires.

18 (4) Before the department gives final approval to the
 19 prospecting permit application, the applicant shall file
 20 with the department a reclamation and revegetation bond in a
 21 form and in an amount as determined in the same manner for
 22 strip-mining or underground-mining reclamation and
 23 revegetation bonds under this part.

24 (5) In the event that the holder of a prospecting
 25 permit desires to strip mine or underground mine the area

1 covered by the prospecting permit and has fulfilled all the
 2 requirements for a strip-mining or underground-mining
 3 permit, the department may permit the postponement of the
 4 reclamation of the acreage prospected if that acreage is
 5 incorporated into the complete reclamation plan submitted
 6 with the application for a strip-mining or
 7 underground-mining permit. Any land actually affected by
 8 prospecting or excavating under a prospecting permit and not
 9 covered by the strip-mining or underground-mining
 10 reclamation plan ~~shall~~ must be promptly reclaimed.

11 (6) The prospecting permit ~~shall~~ is valid for 1 year
 12 and ~~shall~~ is subject to renewal, suspension, and
 13 revocation in the same manner as strip-mining or
 14 underground-mining permits under this part.

15 (7) The holder of the prospecting permit shall file
 16 with the department the same progress reports, maps, and
 17 revegetation progress reports as are required of
 18 strip-mining or underground-mining operators under this
 19 part.

20 (8) Prospecting that is not conducted in an area
 21 designated unsuitable for coal mining pursuant to 82-4-227
 22 or 82-4-228 and that is not conducted for the purpose of
 23 determining the location, quality, or quantity of a natural
 24 mineral deposit is not subject to subsections (1) through
 25 (7). However, a person who conducts this prospecting shall

1 file with the department a notice of intent to prospect,
 2 containing the information required by the department,
 3 before commencing prospecting operations. If this
 4 prospecting substantially disturbs the natural land surface,
 5 it must be conducted in accordance with the performance
 6 standards of the department's rules regulating the conduct
 7 and reclamation of prospecting operations that remove coal.
 8 The department may inspect these prospecting and reclamation
 9 operations at any reasonable time."

10 **Section 3.** Section 82-4-227, MCA, is amended to read:
 11 "82-4-227. Refusal of permit. (1) An application for a
 12 prospecting, strip-mining, or underground-mining permit or
 13 major revision ~~shall~~ may not be approved by the department
 14 unless, on the basis of the information set forth in the
 15 application, an onsite inspection, and an evaluation of the
 16 operation by the department, the applicant has affirmatively
 17 demonstrated that the requirements of this part and rules
 18 will be observed and that the proposed method of operation,
 19 backfilling, grading, subsidence stabilization, water
 20 control, highwall reduction, topsoiling, revegetation, or
 21 reclamation of the affected area can be carried out
 22 consistently with the purpose of this part. The applicant
 23 for a permit or major revision has the burden of
 24 establishing that ~~his~~ the application is in compliance with
 25 this part and the rules adopted under it.

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

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

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

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

22 (d) scenic, historic, archaeologic, topographic,
 23 geologic, ethnologic, scientific, cultural, or recreational
 24 significance. (In applying this subsection, particular
 25 attention should be paid to the inadequate preservation

1 previously accorded Plains Indian history and culture.)

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

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

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

13 (i) interrupt, discontinue, or preclude farming on
14 alluvial valley floors that are irrigated or naturally
15 subirrigated, excluding undeveloped rangelands that are not
16 significant to farming on alluvial valley floors and those
17 lands as to which the regulatory authority finds that if the
18 farming that will be interrupted, discontinued, or precluded
19 is of such small acreage as to be of negligible impact on
20 the farm's agricultural production; or

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

24 (4) Subsection (3)(b) does not affect those strip- or
25 underground-coal-mining operations that in the year

1 preceding the enactment of Public Law 95-87 produced coal in
2 commercial quantities and were located within or adjacent to
3 alluvial valley floors or had obtained specific permit
4 approval by the department to conduct strip- or
5 underground-coal-mining operations within alluvial valley
6 floors. If coal deposits are precluded from being mined
7 under this subsection, the commissioner shall certify to the
8 secretary of interior that the mineral owner or lessee may
9 be eligible for participation in coal exchange programs
10 pursuant to section 510(5) of Public Law 95-87.

11 (5) If the area proposed to be mined contains prime
12 farmland, the department may not grant a permit to mine coal
13 on the prime farmland unless it finds in writing that the
14 applicant has the technological capability to restore the
15 mined area, within a reasonable time, to equivalent or
16 higher levels of yield as nonmined prime farmland in the
17 surrounding area under equivalent levels of management and
18 can meet the soil reconstruction standards of 82-4-232(3).
19 Nothing in this subsection applies to any permit issued
20 prior to August 3, 1977, or to any revisions or renewals
21 thereof, or to any existing strip- or underground-mining
22 operations for which a permit was issued prior to August 3,
23 1977.

24 (6) If the department finds that the overburden on any
25 part of the area of land described in the application for a

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

10 (7) If the department finds that the operation will
 11 constitute a hazard to a dwelling house, public building,
 12 school, church, cemetery, commercial or institutional
 13 building, public road, stream, lake, or other public
 14 property, the department shall delete those areas from the
 15 prospecting, strip-mining, or underground-mining permit
 16 application before it can be approved. In no case may
 17 strip- or underground-coal-mining be allowed within 300 feet
 18 of any occupied dwelling, unless waived by the owner, nor
 19 within 300 feet of any public building, school, church,
 20 community, or institutional building, or public park; nor
 21 within 100 feet of a cemetery; nor within 100 feet of the
 22 outside right-of-way line of any public road, except where
 23 mine access roads or haulage roads join such the
 24 right-of-way line. The department may permit such the roads
 25 to be relocated or the area affected to lie within 100 feet

1 of the road if, after public notice and opportunity for
 2 public hearing in the locality, a written finding is made
 3 that the interests of the public and the landowners affected
 4 will be protected.

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

11 (a) the nature, timing, and sequencing of specific
 12 strip-mine activities and specific underground-mine
 13 activities are jointly approved by the department and the
 14 regulatory authority concerned with the health and safety of
 15 underground miners; and

16 (b) such the operations will result in improved
 17 resource recovery, abatement of water pollution, or
 18 elimination of hazards to the health and safety of the
 19 public

20 (9) The department may not approve an application for a
 21 strip- or underground-coal-mining operation if the area
 22 proposed to be mined is included within an area designated
 23 unsuitable for strip or underground coal mining or within an
 24 area under review for this designation under an
 25 administrative proceeding, unless in such an area as to

1 which an administrative proceeding has commenced pursuant to
 2 this part, the operator making the permit application
 3 demonstrates that prior to January 1, 1977, he the operator
 4 made substantial legal and financial commitments in relation
 5 to the operation for which he the operator is applying for a
 6 permit.

7 (10) No A permit or major permit revision for a
 8 strip- or underground-coal-mining operation may not be
 9 issued unless the applicant has affirmatively demonstrated
 10 by its coal conservation plan that no failure to conserve
 11 coal will not occur. The department may require the
 12 applicant to submit any information it considers necessary
 13 for review of the coal conservation plan.

14 (11) Whenever information available to the department
 15 indicates that any strip- or underground-coal-mining
 16 operation owned or controlled by the applicant or by any
 17 person who owns or controls the applicant is currently in
 18 violation of Public Law 95-87, as amended, or any state law
 19 required by Public Law 95-87, as amended, or any law, rule,
 20 or regulation of the United States or of any department or
 21 agency in the United States pertaining to air or water
 22 environmental protection, the department ~~shall~~ may not issue
 23 a strip- or underground-coal-mining permit or major-revision
 24 AMENDMENT, OTHER THAN AN INCIDENTAL BOUNDARY REVISION, until
 25 the applicant submits proof that the violation has been

1 corrected or is in the process of being corrected to the
 2 satisfaction of the administering agency.

3 (12) The department may not issue a strip- or
 4 underground-coal-mining permit or major-revision AMENDMENT,
 5 OTHER THAN AN INCIDENTAL BOUNDARY REVISION, to any applicant
 6 which that it finds, after an opportunity for hearing, owns
 7 or controls any strip- or underground-coal-mining operation
 8 which that has demonstrated a pattern of willful violations
 9 of Public Law 95-87, as amended, or any state law required
 10 by Public Law 95-87, as amended, of such a nature and
 11 duration and with such resulting irreparable damage to the
 12 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 that
 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."

-End-